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John F. Tavaglione, Chairman
County of Riverside Board of Supervisors
County of Riverside Administrative Center
4080 Lemon Street, 5th Floor
Riverside, CA 92501

September 24, 2012

**Re: Board of Supervisors Hearing, September 25, 2012, Item 3.56,
Amendments to Ordinance Nos. 348 and 555 Allowing Fast Track
Authorization for Surface Mining Permits, Reclamation Plans and Wind
Energy Conversion System (WECS) Permits, OPPOSE IN PART**

Dear Chairman Tavaglione and Honorable Members of the Board,

There are fatal legal and procedural defects and important policy reasons why the Board should not adopt the measures before you relative to surface mining. Accordingly, to adopt these action items will expose the County to significant legal risk.

The Pechanga Band of Luiseño Indians (Tribe) respectfully asks that you not act rashly, and instead reject or delay action on those parts of the amendments related to surface mining for the following reasons:¹

1. The Planning Commission has not reviewed the proposed amendments to the Zoning Ordinance,
2. The State Mining & Geology Board ("SMGB") has not reviewed the proposed amendments to the local surface mining ordinance,

¹ The Tribe is not taking a position at this time relative to those parts of the proposed action related to WECS permits, except to make the general statement that wind projects should not be located in tribally significant cultural or sacred places.

Submitted by

Courtney Coyle
9/25/12 Item 3.56
(date)



3. The actions before you are not properly subject to the CEQA exemption claimed in the staff report, and even if the exemption were to cover the actions, the County has not provided a sufficient basis for its application,

4. The proposed action is premature given the pending state audit of the County's implementation of the Surface Mining and Reclamation Act ("SMARA"),

5. The County has not consulted with local or tribal governments that would be impacted for years to come by this sweeping policy shift,

6. Projects in the midst of litigation should NOT be fast tracked, as has been recently recognized by this Board and County Counsel, and

7. Liberty Quarry will not meet the criteria for fast tracking, so if that is a major impetus for the proposal, the proposal should be rejected.

Finally, should the Board approve the actions before it today over the Tribe's objections, the Tribe respectfully requests two revisions, related to consideration of fast-tracking for specific projects, stated at the conclusion of the letter.

I. **There are Legal, Procedural and Policy Reasons Why the Board Must Not Adopt Fast Tracking for Surface Mines**

1. **Planning Commission Must Review Amendments to Zoning Ordinance**

According to Government Code section 65854, proposed Zoning Ordinance revisions shall be heard in a public hearing before the Lead Agency Planning Commission. To our knowledge, no such hearing has been held on the proposed actions relative to amending Ordinance No. 348 "Riverside County Zoning Ordinance". By attempting to bypass requirements of state law, the Board would be acting beyond its authority and in an arbitrary and capricious manner. It is as though the Board is already trying to act within a fast-track authority – an authority that it does not legally have.

2. **State Mining & Geology Board Must Review Revisions to Surface Mining Ordinances**

The staff report states that the amendments to Ordinance 555 Implementing the Surface Mining and Reclamation Act of 1975 (SMARA) will take effect 30 days after adoption of the amended ordinance. However, the proposed amendments to Ordinance 555 must first go before the SMGB.



We understand from the Department of Conservation that the amendment process for local SMARA ordinances is as follows:

- 1) A Draft of the proposed ordinance is sent to the SMGB,
- 2) Within one month, SMGB reviews and returns comments,
 - a) If changes are inconsistent with state law, they must be changed, or
 - b) If comments are only suggestions or recommendations, the lead agency must consider them, but is not required to revise the proposed ordinance,
- 3) The local board or commission adopts the ordinances,
- 4) Adopted ordinances are sent to SMGB,
- 5) Ordinances are certified by the SMGB at a Board hearing.

No explanation is given in the Staff Report as to the County's outreach to the Department or SMGB, or whether and how the necessary steps outlined above are accommodated before or in the County referenced 30-day adoption window.

Additionally, these revisions to the local SMARA ordinance should have gone before your Planning Commission. No rationale is provided in the Staff Report for either omission.

3. Improper Use of CEQA "Common Sense" or "Catch All" Exemption

The use of CEQA exemption 15061(b)(3) here is improper. First, no analysis was referenced in the Staff Report or was otherwise provided to the public explaining how the proposal will have "no possibility of causing a significant effect on the environment." As this Board is aware from the original Liberty Quarry project, that FEIR found that that particular mining project would have significant and unmitigable impacts,² and the Board received testimony of additional significant impacts regarding tribal cultural resources, among others,

² The FEIR concluded that the project would have significant and unmitigated impacts to the following: air quality (construction, operation and cumulative); biology (cumulative); traffic and transportation (operation, cumulative and to the City of Temecula); and utilities/water supply (cumulative). The Planning Commission denial findings also reference other lines of evidence regarding potentially significant environmental impacts. See for example, Planning Commission Denial Findings, December 7, 2011, *passim*. (Attached as Exhibit 5.)



during the hearings it held culminating in project denial of the quarry. Further, from comments on the proposed actions, there is ample evidence of potential adverse effects that is far beyond the CEQA "fairly arguable" standard³. Moreover, no threshold or initial environmental study or Initial Study appears to have been prepared to show any evidence or the County's thought process in reaching its conclusion to use the exemption.

When, as here, the agency's determination has the effect of dispensing with further environmental review at the earliest possible stage, the burden of proof regarding environmental effects is on the agency, not the public. *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106. CEQA requires that the agency exemption determination be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision. An agency simply cannot declare that there will be no effects. Therefore, by failing to provide any evidence or analysis that it truly considered whether the proposed actions could adversely impact the environment, the County would be found to have abused its discretion: Its proposed use of the exemption is without substantiation in the record.

Second, if legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt. *Ibid.* Here, it cannot be "seen with certainty" that there is "no possibility" that the activity may have a significant effect on the environment. Review of new and existing surface mining projects is complex and highly technical. Moreover, these projects tend to be long-term projects involving activities spanning many decades with a broad range of environmental effects.

By bypassing the Riverside County Planning Commission for some or all new and renewed mining projects countywide, mining projects and reclamation plans would not be subject to the current, necessary level of technical review by the County or the public, as the total time for review of complex environmental documents and their technical appendices, as well as the number of public hearings and multiple disciplinary technical reviewers would be significantly reduced. Indeed, in considering the peculiar path that has led us to the proposed actions, it is illuminating to reflect on why planning commissions exist in the first place: "Government reformers, seeking to take local government out of the hands of party 'machines', reorganized administrative procedures in an attempt to reduce political influence on decisions." Good-government advocates properly understood that by removing all decision-making from an appointed to

³ Please see, for example, attached as Exhibit 1, testimony from the July 31, 2012, Board hearing initiating the fast track revisions for surface mines (Transcript pages 21-23; 56-60) and attached as Exhibit 2, the letter from the Pechanga Office of the General Counsel dated September 10, 2012, relative to revising Board Policy A-32, Procedures for Fast Track Processing, held at the Board on September 11, 2012. (See Transcript attached as Exhibit 3.)



an elected body as the primary reviewers of such projects, political influence could dominate decisions, instead of good planning and objective land use principles. (Governor's Office of Planning & Research, *The Planning Commissioner's Book*, revised May 1998, Part One.)

This proposed fast track process could result in overlooking potentially significant environmental effects, reasonable alternatives, culturally-appropriate mitigation, project redesign and reclamation plan revisions, among other analyses, that can reduce environmental effects and would provide for less robust project vetting than currently occurs under the present policies. The result would be a relaxed level of regulation of new and existing surface mines causing the potential for increased levels of direct physical environmental harms to the environment, notably including those involving aesthetic, air, biological, cultural resource, geological, health and human safety, hydrological, and traffic impacts, effects that are common to many surface mining projects and often unavoidable even with mitigation applied.

A vote to adopt the proposals before you could also cause reasonably foreseeable indirect physical changes in the environment, such as incentivizing the development of additional surface mines or expansion of existing surface mines in the County. While the Tribe does not oppose all mining, these changes are a significant concern under CEQA, and would be particularly relevant to an assessment of cumulative impacts, given that Riverside County has the most sand and gravel quarries (35 quarries) of any county in the state of California (over 10 percent of all California quarries.) (Data from the U.S. Mine Safety and Health Administration, September 2012.)

Moreover, the Board's action can be considered a CEQA project even if further decisions must be made before actual construction occurs; the Board's approval of a plan that is a first or essential step leading to environmental impacts, even if it is just "a piece of paper" is sufficient. *Fullerton Joint Union High School District v. State Board of Education*, (1982) 32 Cal.3d 779. Moreover, although it may be uncertain whether the total impact will be significant enough to require an EIR, it is clear that it is sufficient to require at least an initial study to inquire into the need for such a report. *Ibid.*

In sum, each of the proposed actions above relative to surface mining must fail, because each of these actions is an attempt to improperly shortcut necessary and considered review processes to establish fast tracking, which in turn has the potential for resulting in unanalyzed environmental harms.



4. Today's Action is Premature Given the Pending State Lead Agency Review Team Audit of Riverside County

It is also premature to even consider adopting these measures until the Department of Conservation's Lead Agency Review Team (LART) completes its audit of Riverside County. We understand from the Department that that review is scheduled to start as soon as the end of this month.

The LART program was established in 2006 by the legislature to help lead agencies meet their responsibilities under SMARA. California is the only state in the continental United States where local agencies and not the state or federal governments regulate mine reclamation. (SMGB Information Report 2007-04, A Comparison of Regulatory Surface Mining Programs in the Western States.) The purpose of LART is to help lead agencies meet their responsibilities under SMARA and improve compliance by mine operators. It is implemented through the Office of Mine Reclamation (OMR).

Typically, first, the LART Team goes through all mining permits, reclamation plans, interim management plans, financial assurance mechanisms, annual inspection reports and enforcement related documentation for each surface mining operation in the county. OMR then evaluates the county's performance of procedural requirements of SMARA such as the County's conducting of annual inspections of all surface mining operations, requiring proper submission and annual adjustment of financial assurances and requiring operators of idle surface mining operations to submit interim management plans.

LART will also examine how much the county charges each mine for conducting SMARA related business to verify how they are funding SMARA. LART will look to ensure that the county has the proper policies in place related to: mining ordinances, planning actions, mineral resource management policies, and classified/designated areas.

Next, the LART evaluates the county's performance of annual mine inspections and will perform site visits to surface mining operations to determine whether observed SMARA violations have been identified and accurately reflected in the County's inspection reports. Where violations have been identified, OMR will assess the County's use of its SMARA enforcement powers to achieve prompt compliance by mine operators; for violations previously unidentified, OMR will consult with the County to determine the steps that should be taken to achieve compliance. It is worth noting that in 2008 (the date of the last available report), Riverside County was in the top 5 least compliant of 58 counties (with active mines in the state) with a high number of abandoned mines. (SMARA Update Newsletter, Department of Conservation, OMR, Spring 2008, "*Spotlight: Top 10 Counties with Abandoned Mines*", Page 12, Vol. 12, No.1.)



Third, OMR will review and analyze the most recent financial assurance cost estimates for each surface mine within the county. A summary of findings will be provided to the county with the expectation that any issues raised will be addressed in the next annual adjustment of the financial assurance amount. In cases where the financial assurances are determined to be substantially inadequate, OMR will consult with the county on the need to require an interim increase in the financial assurance mechanism. In 2008 (the last data available), the County of Riverside was in the top 20 least compliant counties for percentage of mines with updated financial assurances. (SMGB Information Report 2007-01 Report, SMARA Lead Agency Performance Regarding Mine Reclamation.)

Finally, a draft report and findings will be prepared and discussed with the county. OMR will provide technical assistance to improve the adequacy and effectiveness of the county's SMARA program. In cases of ongoing noncompliance, OMR will work with the county to develop a plan and timeline for bringing these operators into compliance. In some cases, the OMR can assume the SMARA responsibilities of the county, until the county comes back into compliance. (SMARA Update Newsletter, Department of Conservation, OMR, Fall 2006, "OMR Launches New Lead Agency Review Program", Page 1, Vol. 10, No.4.)

As of Summer 2011, 42 out of the 58 counties in California have been evaluated. Since 2008, LART has documented several areas of SMARA implementation in which counties had the most difficulty. The following list highlights these "problem" areas in order of frequency (some of which are particularly relevant to the proposal to fast track new proposed mines, such as numbers 1, 3, 4, 5 and also underscore the multiple legal defects in the County's use of the "common sense" CEQA exemption for the action):

1. Inadequate financial assurances,
2. Lack of staff expertise,
3. Missing or deficient inspection reports (slope stability, monitoring and enforcement of revegetation requirements, erosion and sediment control problems),
4. Failing to exercise SMARA authority to charge operators for the costs of carrying out lead agency SMARA responsibilities,
5. Reclamation plans failing to meet SMARA standards including inaccurate disturbed acreage mine boundaries,
6. Missing or out of date mineral resource management policies,



7. Failure to secure interim management plans for idle mines,
8. Absence of enforcement of SMARA's annual reporting requirements, and
9. Failure to follow SMARA's mine closure processes and requirements.

(SMARA Update Newsletter, Department of Conservation, OMR, Summer 2011, "More Than Just Lead Agency Review", Pages 10-11, Vol. 15, No. 2.)

In sum, why put a program on the fast track that tends to have across the board deficiencies within nearly every local government in California: "For the most part, overall performance of lead agencies implementing SMARA in California is poor. This reflects a number of factors including financial constraints among lead agencies, limited or nonexistent in-house technical expertise, and the lower priority this program has in contrast to other programs within the lead agency jurisdiction." (SMGB Information Report 2007-01, Report on SMARA Lead Agency Performance Regarding Mine Reclamation.) While the SMGB had not yet exercised its assumption authority following the 2007 statewide evaluation, OMR reports that lead agencies are taking notice and looking more closely at their SMARA programs -- not trying to shortcut them. *Ibid.*

Specific to Riverside, its surface mining program has not been subject to a LART audit. Moreover, the County's SMARA ordinance has not been certified since 1994, ranking it within only 8 of 56 counties with the oldest certifications. (SMGB, Lead Agency Ordinance List, 2010.) There could be current, significant deficiencies in the County's implementation of SMARA. To amend the existing surface mining ordinance and to allow for new and existing mines to be fast-tracked when the state-wide data shows that these operations have across-the-board deficiencies would almost certainly compound and increase those deficiencies.

Absent a LART finding (or other environmental review) that the current "regular track" program is working (a finding that would not be expected given the County's history and other state-wide data), the prudent course would be for the Board to wait until the final LART report is complete, examine how its overall program is doing, make any necessary corrections, then decide if fast tracking is appropriate for all surface mines countywide.

5. Failure to Consult with Stakeholders and Address Tribe's Concerns Stated in the Record

To our knowledge, the County has made no effort to consult with any of the local or tribal governments within the County regarding the proposed actions, even



though the revisions could have sweeping county-wide impacts. In fact, County Counsel made clear at the July 31, 2012, Board hearing to initiate the amendments to allow for fast tracking of surface mines, that the only stakeholder or "expert" with which it consulted was Granite's legal counsel. (See attached, July 31, 2012, Hearing Transcript, page 7.)⁴ Nor do we believe efforts were made to outreach to other stakeholders since that hearing.

We also note that the Staff Report does not even attempt to address the concerns that the Tribe previously submitted to the County on fast tracking of surface mines. Please see, for example, attached as Exhibit 1, testimony from the July 31, 2012, Board hearing initiating the fast track revisions for surface mines (Transcript pages 21-23; 56-60) and attached as Exhibit 2, the letter from the Pechanga Office of the General Counsel dated September 10, 2012, relative to revising Board Policy A-32, Procedures for Fast Track Processing, held at the Board on September 11, 2012. (See Transcript attached as Exhibit 3.) Nor did the County consult or otherwise discuss the actions proposed today with the Tribe despite its requests at both hearings. The Tribe reasserts each of its previous concerns relative to the proposed action.

6. Projects in the Midst of Litigation Should NOT be Fast Tracked

During the Board's consideration of fast-tracking to benefit veterans and the jobless on September 11, 2012, County Counsel advised the Board that it would be inappropriate to include solar energy as one of the specifically-referenced additions to the fast track policy due to pending litigation against the County. (See attached September 11, 2012, Transcript, pages 3-5).⁵

County Counsel advised that, ". . . [T]he request to exclude Solar from Renewable Energy and the policy emanated from our office and the feeling was because of pending litigation there's really a need to, to bring that before the Planning Commission and vet these on an individual basis there before bringing them to the Board." *Ibid.* Two Supervisors affirmatively agreed on the record that due to the pending litigation and associated legal issues, such projects should not be added to the policy. The motion to strike Solar from the proposal passed unanimously.

⁴ That Granite's legal counsel is now also the County's legal counsel in defending the litigation filed against both the County and Granite related to the County's approval of the Liberty Quarry FEIR, and that Granite has a reapplication for its quarry pending before the same County, raises not just potential questions of bias but of legal ethics.

⁵ See attached as Exhibit 6, Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, *Independent Energy Producers Association and Large-Scale Solar Association vs. County of Riverside*, INC 1200838, and associated exhibits.



As you know, two lawsuits have already been filed against the Board's certification of the EIR for the denied Liberty Quarry: *De Luz 2000 dba Save Our Southwest Hills and Elsinore Murrieta Anza Resource Conservation District vs. County of Riverside and Granite Construction Company*, RIC 1211812 and *City of Temecula vs. County of Riverside and Granite Construction Company*, RIC 1211312. For the same reasons stated above, the Tribe agrees it is inappropriate to revise fast track policies and ordinances to provide for projects or new categories of projects that could be fast tracked that are subject to ongoing litigation. Surface mines should not be treated preferentially to solar projects. Both are complex and involve a plethora of potentially significant adverse impacts to local governments and affected communities.⁶ To do otherwise would be to invite additional charges of positive bias by the County in favor of certain projects or applicants.

7. Liberty Quarry will not Meet Criteria for Fast Tracking

The extent of schedule benefits that might accrue to a fast-tracked Liberty Quarry remain unclear, as explored by Supervisor Buster at the July 31, 2012, hearing. (Exhibit 1, July 31, 2012, Hearing Transcript, pages 83-92.) Moreover, because state and federal environmental review for the proposed quarry was bifurcated, environmental analysis pursuant to NEPA, the Clean Water Act and the National Historic Preservation Act (NHPA) Section 106, among other federal authorities, must still be conducted.

A significant number of the asserted jobs will not immediately or quickly come on line to provide the required level of economic benefits due to the fact that jobs will simply be transferred from other operations (are not truly new jobs) and because of the nature of commencing surface mining operations and the long lead time required.

This is precisely why your Planning Commission, in denying the Liberty Quarry 4-1 last August, concluded "Although the Project would create approximately 100 jobs, these jobs would be generated in the future at a time when all

⁶ There are also some similarities between the proposed action today, and the litigation against the County over the so-called "sun tax." Both involve a lack of consultation with stakeholders (even though a much greater effort, including at least seven meetings, occurred in the solar matter, with none in the instant proposal). Both involve a recognition by County entities that unavoidable adverse impacts to communities including impacts to visual, cultural, historic (including "historic landscapes"), recreational and biological resources could occur. Both also involve the use of the "common sense" exemption under CEQA. Exhibit 6, Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, *Independent Energy Producers Association and Large-Scale Solar Association vs. County of Riverside*, INC 1200838, and associated exhibits. This, along with other recent cases, raises the potential for a Pattern & Practice claim of misuse of that CEQA exemption by the County in trying to skirt required environmental review at the earliest feasible opportunity.



improving sectors would also show increasing job needs. Jobs are needed now in the County." The Planning Commission also concluded "Many of the jobs that would result from the Project would be truck driving positions that would be transplanted jobs, not newly created jobs. As a result, based on the public's testimony, the increase in jobs is relatively small and does not help justify the Project's unavoidable adverse environmental impacts." (See Exhibit 5, Planning Commission Denial Findings, page 25.)

Finally, the Board cannot rely on the certified EIR to process the Liberty Quarry reapplication due to changed circumstances, most notably, tribal cultural resources, as there is significant new information resulting in new and more severe significant environmental impacts, not evaluated in the original EIR, that will require major revisions to the EIR and a new round of public and responsible and trustee agency review.

Given that the reapplication for the quarry will not meet the required fast track criteria, it makes little sense for the Board to continue to move forward with the actions before it related to fast tracking surface mining.

II. The Tribe Requests Two Actions Should the Board Approve Fast Tracking for Surface Mines

1. Requested Revision to Ordinance

Should the Board approve fast tracking for surface mines over the Tribe's objection, the Tribe respectfully requests that the Board insert into the ordinance an amendment that the Supervisor for the District within which the project is located must support the fast tracking determination. This is particularly necessary when there are potentially significant or unmitigable environmental impacts, such as those associated with surface mining in general, and Liberty Quarry in particular. The Supervisor for the District often understands the land use issues and environmental sensitivities of the project area best.

2. Request that Board Retain Fast Track Authorization

Also, the Tribe respectfully requests that the Board publicly commit to assuming sole jurisdiction for any fast track authorization for the proposed Liberty Quarry mine, or any proposed mine in that geographical area, given the highly controversial nature of that project and the highly sensitive nature of the area, the Luiseño Ancestral Origin Landscape. We believe it would be an improper delegation of authority for the EDA Director, one unelected official, to make such important determinations regarding the project given the project's long-term nature, complexity and level of significant impacts.



III. Conclusion

For the legal, procedural and policy reasons outlined above, the Tribe respectfully requests that the Board not take action on those portions of today's agenda relative to surface mining until the LART report is finalized, necessary reviews by the Planning Commission and the Department of Conservation have been completed and the proper CEQA analysis and review is performed and substantiated in the record.

Very truly yours,



Courtney Ann Coyle
Attorney at Law

Attachments - 6

cc: Clerk of the Board
Office of County Counsel
John Macarro, Pechanga, Office of General Counsel
Louise Burke, Pechanga, Tribal Council Secretary



JULY 31, 2012 BOARD OF SUPERVISORS MEETING: ITEM 3.8 - Adoption of an
Order Initiating an Amendment to Ordinance No. 348 Relating to Zoning; and Ordinance No. 555
Implementing the Surface Mining Act of 1975.

1 {SPELLING OF NAMES IS 'BEST GUESS'} {1 OF 2.MP3 – 00:21:28}

2 CHAIR TAVAGLIONE: We're going to go to item 3.84 now starting with our
3 first speakers, and once again I'm going to remind everyone; there you go, you can wave
4 your hats instead of applauding or booing. We know the colors by now and
5 {AUDIENCE LAUGHTER} and if you; and again, please stick to your time limits.

6 Some of you have nine minutes; some of you have six minutes. You have to have
7 had your time given to you or loaned to by someone else who will not have the
8 opportunity to speak again. I'm going to start as we normally would with the elected
9 officials representing the area...

10 MALE SPEAKER: Mr. Chair...

11 CHAIR TAVAGLIONE: Followed by the...

12 MALE SPEAKER: Mr. Chair....

13 CHAIR TAVAGLIONE: It's...

14 MALE SPEAKER: Forgive me for interrupting you but I think it would be
15 appropriate to have the supervisor introduced as agenda item...

16 CHAIR TAVAGLIONE: Yeah.

17 MALE SPEAKER: And we should have questions of staff before we take public
18 testimony.

19 CHAIR TAVAGLIONE: Yeah, we're going to do that. I just wanted to give first
20 the order in which we're going to do this. We're going to have the elected officials...

21 MALE SPEAKER: Uh huh; (Mister)...

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22 CHAIR TAVAGLIONE: ...followed by Chairman Macarro, and followed by
23 those in opposition, followed by those in support. That's typically what we do. I hate to
24 make all of you wait around forever, but that's typically what we do.

25 So, going with item 3.84, I'm going to start with Supervisor Benoit, who initiated
26 this item and then comments by members of the Board and questions for staff; Supervisor
27 Benoit.

28 SUPERVISOR BENOIT: Yes, thank you colleagues and members of the
29 audience. The item before us today; item 3.84, is an item that would direct staff to bring
30 back for consideration amendments to a couple of County ordinances; item 348 and 555.
31 If approved by this Board the; today's action would simply allow this Board the
32 discretion to include surface mining among the list of other types of projects that would
33 be eligible for consideration by this Board at a future date to be included in what we have
34 termed the fast track process. That process was designed to allow for certain types of
35 projects that are job creating to have a quicker turnaround time and in that process there
36 are still opportunities for public discussion and, and input.

37 Fast tracking of an original, new, previously unvetted proposal is something this
38 Board would probably not want to do, and, but that would be an option available that is
39 not available today. If this Board had the fast tracking option available, perhaps the only
40 time it would be used for this type of a project is one that was one that was previously
41 well vetted and a proposal that, that had had the kind of scrutiny of the one that most of
42 you in the room are here about might meet that criteria, but it would be up to the Board, if
43 the Board had that discretion, which at this time we don't.

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44 So the only item on the agenda today is should we direct staff to prepare for
45 discussion appropriate amendments that would allow us to have a discussion about fast
46 tracking a specific proposal, and if we take that step today staff will bring a proposal back
47 in draft language that we can appropriately and legally, procedurally discuss about
48 whether or not we should be doing that kind of processing of a particular type of
49 application.

50 So I want to be clear that; I know that a number of the people in the room are
51 supporters of a, or opponents of a project that is certainly one that wouldn't possibly be
52 considered if this Board took that action to allow it to be considered, but we're not here
53 today to talk about the specific of any proposal; we're here to talk about whether or not
54 we should allow that discussion to take place, and procedurally and under the Brown Act,
55 which we just reaffirmed our allegiance to, we have to limit our discussion to whether or
56 not we should have staff develop that kind of an alternative for us to consider.

57 I think we should. I think we ought to have that discretion as a Board in a certain
58 number of limited circumstances to authorize that type of a process. We should use that
59 discretion sparingly and...and knowledgably and it remains to be seen if; one, this Board
60 will vote to ask staff to prepare that kind of an amendment; two, at some future date
61 whether this Board would support making that change once it's codified in writing as a
62 draft proposal, and then finally should those steps actually occur, then I would expect that
63 this proposal that most of you in the room are here about would be completely and fully
64 and publically vetted but in front of this Board.

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65 But I wanted to make it clear that I believe that today's action as agendized in our
66 agenda simply is an action to direct staff to prepare a proposal that we would need to
67 have the debate about the merits of any project when that is on the agenda and not today.

68 With that said, I would like to move that we approve the direction to staff to
69 prepare the items for future discussion, and I understand that you may have some
70 amendment I'd be happy to consider.

71 CHAIR TAVAGLIONE: Well; I, yeah, I want to hear from Supervisor Stone
72 first, followed by; and I do have some....questions for staff; Supervisor Stone.

73 SUPERVISOR STONE: Thank you. Mr. Chair, my fellow colleagues, we have a
74 process in the County that is a fast track process that is, is designed to bring jobs to
75 fruition in the County, approve commercial development that brings significant sales tax
76 revenue to the County and we have undertaken that responsibility within our Economic
77 Development Department. And while I appreciate Supervisor's; Supervisor Benoit's
78 agendization today of, you know, our Brown Act affirmation even though the state says
79 we cannot follow the Brown Act, there are none of us on this dais that wish to reduce the
80 transparency and openness of government.

81 But I believe that's in conflict to, to this particular agenda item that is really not a
82 modification of Ordinance 555, our Surface Mining and Reclamation Act of 1975; it's
83 really the desecration of the Ordinance, and I've taken liberty to, to read it line by line
84 and there are references to the Planning Commission in its 12 pages, 12 times. There are
85 references to our Planning Director 34 times in the 12 pages, and the Ordinance is written
86 in such a way that it's really the Planning Commission that makes the final decision on
87 whether a quarry is approved or not approved, and certainly the applicant or the

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88 opponents have the right in accordance with this ordinance to appeal it to the Board of
89 Supervisors.

90 The Ordinance; you know, has references to other ordinances. We have
91 Ordinance Number 752, which is a pre-application review procedure. This is where we
92 sit down with a(n) applicant and we discuss...

93 FEMALE SPEAKER: {WHISPER – NOT INTELLIGIBLE}

94 SUPERVISOR STONE: ...the steps that they need to go through for an
95 appropriate examination of their project. It's called a PAR, and the PAR is divided into
96 three categories. The simplest ones are category one; the most complex proposals are
97 classified as a category three.

98 If you look at category three, item number two is Surface Mining Permits. So I
99 would assume if we're going to strip Planning Commission approval or, or consideration
100 of Mining Permits, then I would ask County Counsel, would we have to also amend
101 Ordinance 752; and then Ordinance 752 or excuse me, Ordinance 555 also refers back to
102 the Public Resources Code, Section 2777, "*A lead agency shall notify the Director of the*
103 *filing of an application for a Permit to Conduct a Surface Mining Operation within 30*
104 *days of the application being filed by the lead agency.*" So, "*and failure to file with the*
105 *Director under this section shall be a cause of action under 2774.4.*"

106 So what that means is that this is not just a County review, there's also a State
107 review, and certainly cannot force the State to fast track anything. They're busy with
108 their own business. You know, just trying to get the Hemet-Ryan Air Base funded
109 through the Department of Finance has been a huge debacle for us as we, we need an air
110 attack base quickly.

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111 So these are the questions that I have for, for County Staff; the first is, have we
112 consulted with outside counsel that specializes in mining permits with regard to the
113 efficacy and the legal authority of this Board to change this ordinance, and is there a
114 requirement that we must go through the CEQA process to do it?

115 Second question is, is there any other jurisdictions in the State of California that
116 have a fast track bypassing the Planning Commission to fast track a mine, which is one of
117 the most invasive permits. It would be like saying we want to minimize the permitting of
118 a county dump. Would Eagle Mountain have served the public well by fast tracking it for
119 economic development reasons?

120 So I'd like County Counsel to address that and also address item, Section Four of
121 our Ordinance 555; "*The Planning Director shall notify the Department of Conservation*
122 *of the filing of each application for a permit within time period required by Section*
123 *2774(e).*"

124 In other words, we are going to be consulting with the State. How can we require
125 the State to fast track an application in the; in the, in the best interest of creating jobs,
126 which the Supervisor (agendized this); that has agendized this is, is trying to promote?

127 CHAIR TAVAGLIONE: Okay, thank you Supervisor Stone. Madam Counsel.

128 COUNTY COUNSEL WATTS-BAZAN: Supervisor Stone could you repeat
129 your first question?

130 SUPERVISOR STONE: My first question has...

131 COUNTY COUNSEL WATTS-BAZAN: There were {TWO PEOPLE
132 SPEAKING SIMULTANEOUSLY - NOT INTELLIGIBLE} I'm sorry, I didn't catch all
133 of them.

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134 SUPERVISOR STONE: That's okay. Has County Counsel consulted with
135 outside counsel specializing in mining law with regards to the efficacy and legal authority
136 of this County in modifying our ordinance and the, in our complying with CEQA as a
137 part of that process?

138 COUNTY COUNSEL WATTS-BAZAN: Okay, first, I have not initiated any
139 consultation with outside counsel; however, counsel for Liberty Quarry has contacted me
140 and provided their input and comments on, on proceeding with, with the action that's
141 before you today.

142 SUPERVISOR STONE: That's the fox guarding the henhouse, isn't it? That's
143 just their application that we're ultimately going to be considering, Madam Counsel.

144 COUNTY COUNSEL WATTS-BAZAN: You asked me a direct question.

145 SUPERVISOR STONE: Okay, I didn't like your answer, that's all.

146 COUNTY COUNSEL WATTS-BAZAN: I didn't initiate discussion.

147 SUPERVISOR STONE: Go ahead.

148 COUNTY COUNSEL WATTS-BAZAN: Okay, secondly, I'm not aware of any
149 other jurisdictions in the State of California that allow fast tracking of mines. I can check
150 into that.

151 SUPERVISOR STONE: And why do you think that might be? Why do you
152 think that might be?

153 COUNTY COUNSEL WATTS-BAZAN: I didn't know it was going to be a
154 question today. {AUDIENCE LAUGHTER}

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155 SUPERVISOR STONE: (You're) sitting here. You're the legal authority. I want
156 to know why you think that this is not prevalent throughout the State of California and
157 other jurisdictions. Why don't you think it should be fast tracked everywhere?

158 COUNTY COUNSEL WATTS-BAZAN: I'm happy to look into that for you.
159 This is a proposal that was brought forward by Supervisor Benoit.

160 SUPERVISOR STONE: Okay, and what about regard with consultation with the
161 State? How do we effectuate the turnaround time with the State?

162 COUNTY COUNSEL WATTS-BAZAN: As far as consultation with the State
163 on, on any amendment to Ordinance 555 I did look that up.

164 SUPERVISOR STONE: Thank you.

165 COUNTY COUNSEL WATTS-BAZAN: And we, we are required to provide
166 our Ordinance if it's adopted to the State for a certification, so this change would have to
167 be reviewed by the State and they would have to, to certify our ordinance. I have,
168 however, looked at; our Ordinance needs to be consistent with all State mining policies
169 that are adopted by the State Mining Board.

170 I'm, I'm familiar with some of those provisions and I've reviewed them and I
171 believe that any ordinance allowing for fast tracking of, of mining operations specifically
172 would be consistent with those policies. Those policies, the State policies, do not address
173 fast tracking of Surface Mining Permit Applications before this jurisdiction.

174 SUPERVISOR STONE: Maybe not yet, but when they see this they may
175 consider input on that. Does the State have veto power on us bringing the ordinance to
176 fruition? Can they say no, we don't like the way it's written and you need to modify it?

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177 COUNTY COUNSEL WATTS-BAZAN: If the State doesn't agree that it's
178 consistent with their policy; yes, they would recommend back to the County that we
179 modify our policy.

180 SUPERVISOR STONE: And what about CEQA? What are our CEQA
181 requirements in making such a dramatic change to our ordinance without understanding
182 the, the effects to the environment in accordance with CEQA Law? Are we exempt?

183 COUNTY COUNSEL WATTS-BAZAN: Certainly if this is brought back, we
184 will insure CEQA is complied with.

185 SUPERVISOR STONE: Thank you.

186 CHAIR TAVAGLIONE: Alright, any other comments by members of the Board
187 at this point in time? Supervisor; Supervisor Benoit, your motion was a bit early, but I
188 just want to clarify.

189 Is, does your motion; is it specifically to begin the fast track process for Surface
190 Mining Permits or is it more of a general item to talk about fast tracking projects that are
191 appropriately, that are, that are, that do not yet fall within the policy, our ordinance of fast
192 tracking options?

193 SUPERVISOR BENOIT: You know, I believe the way the ordinance was, or the
194 ordinance; it wasn't an ordinance; the Form 11 was drafted, did specifically refer to
195 surface mining, but I would certainly be open if it's legally permissible to, as the, when
196 we direct staff to, to prepare ordinance change that other appropriate businesses that are
197 currently not on our list of those approved for fast tracking be considered.

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198 I have no objection to adding those if that's legally permissible in the... At this
199 point in the process it seems to me we're only giving direction to staff to, to investigate
200 and, and draft potential language for consideration by the Board.

201 CHAIR TAVAGLIONE: Okay, and the reason I ask the question; that the, the
202 initial Form 11 or at least the Form 11 that's in front of us; the, the concern that I, that I
203 do have is that it's specific to Surface Mining Permits, but yet there are others and I've
204 done some research with; our Fast Track Policy has been in place since 19; actually in the
205 late...70s, I believe, and then it was, it was strengthened, if you will, and basically put
206 into form in 1995 when a number of us came on the Board and there were; we were in
207 severe economic times at that time.

208 There were some exclusions and have continued to be some exclusions and we all
209 understand the need to insure that we...we follow CEQA and in issues of federal;
210 adjacent to federal lands, NEPA. But there are a couple of other land use, very important
211 ones that are, that provide jobs and also income into our County and those are WECS;
212 those are the wind energy projects; as well as solar, and one that has been left off, and I
213 don't; I haven't been able to find out why we excluded this other than perhaps some,
214 some areas of controversy surrounding by communities but large scale family; family
215 care facilities, for instance, childcare facilities, large scale ones. Is that correct? Do you,
216 do you recall?

217 COUNTY COUNSEL WATTS-BAZAN: I don't recall.

218 CHAIR TAVAGLIONE: I have it here in front of me.

219 COUNTY COUNSEL WATTS-BAZAN: I didn't work on the Fast Track
220 Ordinance, I'm sorry.

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221 CHAIR TAVAGLIONE: That's okay. I have it here in front of me, but it was,
222 and I'll get it for you as we get further into discussion.

223 COUNTY COUNSEL WATTS-BAZAN: I believe, though, that on large, large
224 care daycare; large daycare facilities...

225 CHAIR TAVAGLIONE: Yeah.

226 COUNTY COUNSEL WATTS-BAZAN: ...don't go to, to the Planning
227 Commission; so I don't; I'm not sure there would be an ability to...

228 CHAIR TAVAGLIONE: Okay.

229 COUNTY COUNSEL WATTS-BAZAN: ...fast track those.

230 CHAIR TAVAGLIONE: In any event, there, there are a few and I'd like those to
231 at least be considered today if we do move down this path because the bottom line is
232 when we talk about fast track, we're talking about, and just put aside the issue of, of the
233 concern that many of you have today with the, with mines. When we talk about fast
234 track, the policy was put into place to get jobs into the, into the community quicker and
235 tax dollars back into the, the jurisdiction's communities quicker.

236 So with that part of the discussion to be considered I'm going to; unless there are
237 any further comments by my colleagues, I'm going to withhold your motion for now,
238 Supervisor Benoit if that's okay...

239 SUPERVISOR BENOIT: Okay.

240 CHAIR TAVAGLIONE: ...and we will go to comments, or the public, starting
241 with Mayor Chuck Washington for City of Temecula. Chuck, you have nine minutes,
242 and, and then Mayor Pro-Tem Mike Naggar, City of Temecula, Councilmember Maryann
243 Edwards. Mike, you have six... {AUDIENCE CLAPPING} Mike has nine. (Hey...)

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244 TEMECULA MAYOR WASHINGTON: Thank you, Mr. Chairman, thank you.
245 I wanted to make sure I was appropriately dressed before the Board. {BACKGROUND
246 CHUCKLING}

247 CHAIR TAVAGLIONE: Thanks Chuck.

248 TEMECULA MAYOR WASHINGTON: Good morning, Supervisors,
249 Chairman; I'm Chuck Washington, Mayor of the City of Temecula and a Riverside
250 County resident for 23 years.

251 Supervisor Benoit is requesting that the County of Riverside change its Fast Track
252 Policy and during his comments I heard the word 'discretion' used as if what we're really
253 considering here is just to think about making the change, but it seems like it's more than
254 coincidence to me that this occurs at the same time that Granite Construction has
255 submitted their latest request to get a quarry built, and so the various County ordinances
256 are to accommodate Granite Construction's request for fast tracking.

257 I have two primary points that I would like to relate, but I would also like to refer
258 to an editorial that appeared in today's Press Enterprise. "*Procedural shortcuts are the*
259 *wrong way to handle a contentious public issue. Riverside County Supervisors should*
260 *reject a proposal to fast track revised plans for a quarry near Temecula. The project*
261 *calls for scrupulous public review, not convenient haste.*" So it isn't just those of us in
262 Temecula.

263 FEMALE SPEAKER: {WHISPER - NOT INTELLIGIBLE}

264 TEMECULA MAYOR WASHINGTON: Point one; why, why would you
265 change your law to enable impactful mining projects all over Riverside County to be

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266 hurried through an approval process and why now? There's certainly no rush for
267 aggregate.

268 Granite Construction's reason purports economic benefits as the premise to fast
269 track their ineligible project, but it's the same economic exaggeration. It cannot be
270 ignored, but yet Granite Construction's own economist, John Husing, admitted at the
271 August 15th Planning Commission Meeting and I quote, "*Whether or not you have this*
272 *facility, Liberty Quarry that is, demand is demand. All that will change is where the*
273 *material comes from,*" end quote.

274 And what this means; any sales tax and jobs from Liberty Quarry simply dilutes
275 sales tax and jobs from other existing quarries. Attrition will occur at our local quarries
276 when Granite takes their business, so jobs will just be transplanted, not newly created.

277 Moreover, the County loses tax revenue with Liberty Quarry because Granite
278 Construction's business model is that they are the contractor, unlike our existing local
279 quarries in Western Riverside County who are not contractors and must charge sales tax
280 on their aggregate. Granite Construction won't have to pay any sales tax whatsoever on
281 their aggregate for construction jobs. This reduces sales tax revenue to the County.

282 So, the carrot that Granite is feeding the County at 20¢ a ton will be dwarfed by
283 the County's overall regional losses, which is demonstrated by economists at multiple
284 hearings over the last year, would amount to over 3.6 billion dollars of cumulative net
285 losses over the 50 year lifetime of a quarry.

286 Point two; this is a significant {THROAT CLEARING} pardon me, modification
287 to the County's governing ordinances and fast track process that takes the program from
288 specific and relatively small scale land use decisions to allow future large scale

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289 environmentally significant surface mining projects that are monumental to communities
290 and tens of thousands of people to be rushed through approvals at the expense of the
291 health and welfare of our citizenry.

292 Now, I've spoken a number of times with Supervisor Benoit about flying
293 airplanes. He knows that I've been an airline pilot since 1987, but I wouldn't imagine
294 that he'd give a, a moment's thought about fast tracking a major airport in anyone's
295 community in Riverside County without going through the proper approval process
296 because of the impact that a project like that would have on the community.

297 This isn't a minor change to your ordinances or your long standing policies. This
298 is a major change. Expediting industrial surface mining projects opens Pandora's Box to
299 hurry approvals for projects with colossal impacts when these projects, in particular,
300 would specifically be thoroughly and carefully analyzed.

301 Can you imagine if Supervisor Stone proposed turning Tahquitz Canyon out in
302 the desert community into one of the nation's largest quarries in just 90 short days? Can
303 you imagine if the County wizzed the Double Butte Mountain Quarry Proposal through
304 approvals a few years ago?

305 The fast track process bypasses valuable review by your Planning Commissioners
306 as well as public input and expert review at that level. It rushes your County Planning
307 Staff to attempt to analyze enormous industrial projects, including the applications,
308 exhibits, and all required special studies within 21 days, which is 15 business days and
309 really only 12 since you're closed on Fridays.

310 Twelve working days to analyze a massive project is outrageous. To put this into
311 perspective, it took County Counsel three months to draft denial findings for Liberty

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312 Quarry, yet you are now being asked to push staff to comprehensively review projects of
313 this magnitude in just 12 working days.

314 Again, I would like to refer to the editorial in the Press Enterprise, "*Fast tracking*
315 *the quarry plans would inevitably look like a political end run around thorough review*
316 *on the issues or an attempt to restrict public input and bypass opposition to the quarry.*"

317 On behalf of hundreds of thousands of citizens in Riverside County, why would
318 you change your law to push massive surface mining projects through a rushed approval
319 process to serve a wealthy developer? Perhaps at a state level making such
320 accommodations and slipping approvals through discretely was standard practice.
321 Riverside County; however, does not undermine its people and should not be bullied into
322 becoming that type of governance.

323 We plan on continuing to come back and fight this issue, so putting it off to
324 another day doesn't mean we won't be here. I, as mayor, my colleagues on the council,
325 and my constituents have plenty of fight left in us. Thank you. {AUDIENCE
326 APPLAUSE}

327 CHAIR TAVAGLIONE: Okay, I'm going to remind everyone, please, you can
328 wave your hands; you can wave your hats, but no clapping, okay? That just delays, so
329 thank you Mayor; thank you Mayor Washington. Pro-Tem; Mayor Pro-Tem Mike
330 Naggar.

331 TEMECULA MAYOR PRO-TEM NAGGAR: Honorable Chair, members of the
332 Board of Supervisors and staff, Mike Naggar, a proud member of serving the citizens of
333 Temecula for the past 15 years.

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334 I'm going to ask that you summarily reject the notion of fast tracking Surface
335 Mining Permits for the very reason that it compromises the rights of the citizens to
336 mobilize. It also compromises and puts a severe burden on your cities. I think it's a bit
337 disingenuous to try to; to not just mention that this is, this is about Liberty Quarry and to
338 somehow preclude discussion about Liberty Quarry because it might violate the Brown
339 Act, again, would compromise the citizens' right to speak.

340 This is about Liberty Quarry. It's the 800 pound gorilla in the room and they filed
341 their application last week to piggyback and approve on the certified or the attempt to
342 certify the Environmental Impact Report, though their project was denied.

343 To let you know how the citizens of Temecula and rather the Temecula Valley
344 feel about this; this is tantamount to fast tracking a prison in Palm Springs, Supervisor
345 Benoit, and doing it over a 90 day period. Your citizens would be outraged at it, yet
346 we're being forced to consider that here in Temecula, keeping in mind that the citizens of
347 Temecula Valley elected Supervisor Stone. We defer to him. We let him know how we
348 feel about things and if anything should be done in relation to this, should be checked
349 with the Supervisor first so he can see how his citizens feel about fast tracking a project.

350 Keep in mind, with Liberty Quarry the councils of Temecula and the councils of
351 Murrieta and I believe Menifee as well, have indicated that they are against Liberty
352 Quarry. You're talking about over 200-250,000 people have gone to their Supervisor and
353 said no, we don't want this.

354 Putting it in perspective, if you were to skip CEQA review for a project like
355 Liberty Quarry, it's tantamount to fast tracking a Surface Mine Permit for Yosemite,

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356 because we believe that the area where Liberty Quarry is going is tantamount to a
357 Yosemite in Southwest Riverside County.

358 Many of you have not been there. I hike there; I horseback ride there; I ride my
359 mountain bike there. If you were to go there and see the type of impact that this type of
360 project would have on that area, you would draw the same correlation that I did, yet this
361 type of, this type of agenda item would have us mobilize, review the matter, and come to
362 some sort of conclusion for such a life changing, area changing, and altering project and
363 have to do that in 90 days. That is a ridiculous notion.

364 Lastly, I wanted you to know, and I speak from my heart that I'm a bit grieved.
365 This whole Liberty Quarry thing has now caused the City of Temecula to be at odds with
366 the County of Riverside. We have worked profoundly together on many, many good
367 projects since the 2000s. We're doing good things with land use, and transportation, and
368 job creation. Now we find ourselves having to sue the County of Riverside and waste an
369 enormous amount of tax dollars at a time when we can ill afford to waste those tax
370 dollars. We should not be at odds. But then here's the rub. Liberty Quarry is picking up
371 your attorneys' fees.

372 SPEAKER FROM THE AUDIENCE: No!

373 TEMECULA MAYOR PRO-TEM NAGGAR: {RECORDING CUTTING IN
374 AND OUT} And so it's an easy decision for you to make, but keep in mind, when we try
375 to balance our budget in the City of Temecula we're now having to budge; budget fees.
376 It's cost us just to, just to correct the Environmental Impact Report that Liberty Quarry
377 tried to float, which I believe firmly they wanted to get into the court so that a judge
378 could direct them and tell them what to do, in essence; in essence as quarries go fast

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379 tracking it through the court system, cost us close to three-quarters of a million dollars
380 just to bring before you what is plainly obvious. Now we're going to be spending on
381 legal fees as well.

382 The cities and the County should not be at odds in that manner, and that is what
383 grieves me the most, so in conclusion I don't think I'll need my six minutes, Mr. Chair.
384 In all of these things I ask vehemently that you defer; that you take this off the agenda,
385 drop it, but if anything's going to be fast tracked in anybody's district and in particular
386 because Liberty Quarry has now filed their application and the inference is to fast track
387 them, Supervisor Benoit, no matter what, how this agenda item is, is presented, that it be
388 deferred to the Supervisor of the area to see if he wants it fast tracked. That respect
389 should at least be accorded to Supervisor Stone. Thank you very much.

390 CHAIR TAVAGLIONE: Thank you, Mike. Maryann Edwards; Councilmember
391 Maryann Edwards.

392 {BACKGROUND DISCUSSION FROM THE AUDIENCE}

393 TEMECULA COUNCILMEMBER EDWARDS: Good morning. I've opted for
394 orange shoes rather than a hat, but the hat will sit symbolically right here next to me.

395 Supervisor Benoit, you may be surprised to learn that I agree with you. Can you
396 imagine the unmitigated gall of Senator Calderon, a person from outside the region trying
397 to dictate to the Salton Sea residents what they should and should not allow in their area?
398 You were outraged by that and so am I. Strangely enough, I see the same, the same
399 correlation with what you're trying to do to the residents of Southwest Riverside County.

400 In May hundreds of people filled this chamber to speak to elective representatives
401 whose actions are supposed to benefit the entire County through due process.

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402 Just as the Planning Commission before you, you listened to the People and
403 denied the Liberty Quarry Project because you believed the People when they proved that
404 negative impacts of the Liberty Quarry far outweighed any unproven benefit and a few
405 weeks later you took unprecedented action; you ignored the People and approved an
406 horrendously flawed Environmental Impact Report for a project that you have ruled
407 didn't even exist.

408 You declared that the project didn't exist by your denial, yet at the urging of a
409 powerful corporation aided by one of your colleagues with what could only be described
410 as questionable ethics, a majority of you took the action that has brought the County to
411 this lowly state; multiple lawsuits filed by an historic Tribe, citizens group,
412 environmental groups, individuals, and a city highly regarded for its sound governance
413 and fiscal stability.

414 Supervisor Benoit, like a Sacramento veteran, your calculated and questionable
415 actions on behalf of one of your largest campaign contributors have led the County and
416 this body to this shameful day in an obvious attempt to sidestep due process, avoid public
417 scrutiny, and approve this most impactful of all projects forever, surface mining in
418 Riverside County.

419 After years of hard work by highly respected Supervisors like Roy Wilson, Bob
420 Buster, Tom Mullins, Jeff Stone; outstanding leadership in young prosperous cities like
421 Temecula and Murrieta, and the unprecedented business and cultural success of the
422 Pechanga People, Riverside County has turned the corner; no longer the county of meth
423 labs and chicken slaughter houses, no longer the county is which to dump gravel mines

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424 and huge power lines; Riverside County and its leaders, you were growing in respect and
425 reputation as a rising Southern California economic powerhouse until now.

426 Indeed, the majority's actions on behalf of one of Supervisor Benoit's largest
427 campaign contributors have caused newspapers from San Diego to Sacramento to
428 compare you to the failed leaders in cities like Bell and San Bernardino and yet today's
429 questionable action item, again driven by Supervisor Benoit, proposes that you from this
430 day forward sidestep public scrutiny and the oversight of your own Planning Commission
431 not just for the horrific Liberty Quarry Project, which you denied because if its
432 horrendous impacts, but all quarry and mining projects in any city near any sacred land
433 on any major preserve in the County forever.

434 And while you may argue that your discretion is...is the issue here; Gentlemen,
435 you will not always be here. There will be people after you that may not have the same
436 discretion that you have. When you make decisions like this you must think in the long
437 term. This is not for today, this is not for tomorrow, this is for forever when you're gone,
438 and there could be five unscrupulous supervisors sitting in these seats someday that could
439 turn Riverside County into a fully, fully engaged mining community or a toxic waste
440 dump or anything else. If we start down this road avoiding public scrutiny where will it
441 lead us?

442 I'm embarrassed for this body and for the County that I call my home for 24
443 years. I hope that by today's decision you once again will set Riverside County on a path
444 toward respect and prosperity through increased public engagement and transparency.

445 I'll let the Press Enterprise editorial staff have the last word today regarding
446 Supervisor Benoit's questionable aid to the failed Liberty Quarry Project.

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447 *“The County should be seeking a decision that can successfully withstand public*
448 *scrutiny, not a choice that requires the least amount of time and effort.”* And
449 {RECORDING PAUSE} I add my own words to blatantly assist a huge project that will
450 shackle the County to open pit mining operations forever. {AUDIENCE APPLAUSE
451 AND CHEERS}

452 MALE SPEAKER IN THE AUDIENCE: Well said!

453 FEMALE SPEAKER IN THE AUDIENCE: You should run for County
454 Supervisor. {AUDIENCE LAUGHTER} {MULTIPLE DISCUSSIONS FROM THE
455 AUDIENCE – NOT INTELLIGIBLE}

456 CHAIR TAVAGLIONE: {GAVEL BANG Alright, here’s the deal; anymore
457 outbursts we’ll ask the deputies to remove those that are outbursting, okay? Respectful
458 as before, I won’t allow anything else. I can stop the meeting whenever I need and I will
459 do that, so respect what I’ve already said. If you don’t we’ll continue it to another day
460 and we can take up special meetings. We can do it next week if you’d like even though
461 we’re scheduled to be dark. So it’s your choice. Chairman Macarro.

462 CHAIRMAN M. MACARRO: Thank you, good afternoon, miiyuyam. My name
463 is Mark Macarro. I’m the duly elected Tribal Chairman for the Pechanga Band of
464 Luiseño Indians of the Pechanga Indian Reservation in Temecula.

465 Chairman Tavaglione and members of the Board, on December 7th your Planning
466 Commission voted four to one to formally deny the proposed Liberty Quarry Project and
467 to deny its EIR. In February of this year you stood with your Planning Commission and
468 tens of thousands of Southwest Riverside County residents opposed to this mine by
469 denying the project, but in May this Board voted three to two to certify what many

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470 respected and independent observers believe is an inadequate and deeply flawed EIR, and
471 now here we are today less than three months after that divisive vote trying to prevent
472 Liberty Quarry from being ramrodded into the one and only Luiseño Creation Area that
473 exists.

474 A vote to fast track surface mining permits will mean more months of
475 unnecessary and contentious debates and campaigning. To deny this fast track, however,
476 would bring some much needed pause and clarity.

477 Supervisor Tavaglione, in May you spoke of encouraging the parties to come to
478 some sort of resolution. You need to know; all of you need to know, that Pechanga
479 learned of the Revised Liberty Quarry Application in the form of a Granite press release
480 the day the application was submitted. There was no outreach to our Tribe in advance of
481 the submission.

482 As importantly; I am pleased to share with you that our Tribe very recently
483 reacquired some land just outside the bound, the Liberty Quarry Project boundary. A
484 couple hundred years after losing most of our land to settlers under the color of state and
485 federal law, we are once again landowners on that mountain in that immediate area in the
486 amount of five acres. As we have consistently said throughout the course of these
487 deliberations, we are very interested in reacquiring as much of our Creation Area as
488 possible.

489 In closing, Pechanga asks you to deny this unnecessary and suspect attempt to fast
490 track the Liberty Quarry. Stand with us and the tens of thousands of Temecula residents
491 who stand in solidarity against this mine, and we thank you for your consideration.

492 CHAIR TAVAGLIONE: Thank you.

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493 CHAIRMAN M. MACARRO: I'll be happy to answer any questions at any
494 point.

495 CHAIR TAVAGLIONE: Thank you, Chairman Macarro, any questions? I see
496 no questions. Thank you. Peter Thorson, Peter, representing City of Temecula.

497 TEMECULA LEGAL COUNSEL THORSON: Mr. Chairman and members of
498 the Board of Supervisors thank you for this opportunity to speak. As is obvious, the City
499 of Temecula urges you to vote no on the proposed motion to fast track surface mines in
500 the County of Riverside.

501 Surface mines are among the most complex and controversial land use projects in
502 any city or county and Liberty Quarry is obviously at the top of that list. This Board and
503 the Planning Commission quite appropriately provided significant opportunities for the
504 public to comment on this proposal last year and earlier this year.

505 This Board should be very grateful for the opportunity to have all of the issues
506 related to that Surface Mine Application fully discussed and evaluated by many different
507 people in the course of those public hearings before the Planning Commission, as well as
508 the Board. It is only from these discussions that the People can be confident that the
509 Board is basing its decision on all available facts and opinions.

510 Public participation and debate is not meant to be efficient. It is meant to result in
511 the best possible decisions for the community and from those debates come the
512 compromises, the additional measures, the solutions to the problems that are raised.

513 In addition to the public policy issues at stake in this motion, there are a couple of
514 legal considerations that we believe the Board must take into account in deciding this.
515 First, the motion seeks to an amendment to Ordinance No. 348, which is the County's

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516 Zoning Ordinance. As an amendment to the Zoning Ordinance the government code
517 requires the County to analyze the, the amendment's environmental impacts, prepare the
518 necessary CEQA documents, hold public hearings before the Planning Commission and
519 before the Board, and as the County Counsel pointed out just a little while ago, to also
520 seek the approval of the State Division of Mines for the change to the Ordinance.

521 The proceedings necessary to adopt the change to the Zoning Ordinance to put
522 this on fast track are obviously going to take far more time than the time required to hold
523 hearings before the Planning Commission, so in addition (of) the policy considerations,
524 you're really not gaining much in the way of moving this forward by fast track.

525 Second, we question the County's legal authority to use the fast track for this type
526 of project; really, for any project, let alone surface mining. The government code
527 requires public hearings before the Board of Supervisors and a planning agency, and
528 while the law makes it clear that either the Board or Planning Commission can be the
529 planning agency, we question whether you can make that decision on an ad hoc basis on
530 particular projects, let alone with the way this is currently set up where the Director of
531 Economic Development is entitled to make that determination.

532 CHAIR TAVAGLIONE: Peter, I need you to wrap up.

533 TEMECULA LEGAL COUNSEL THORSON: Thank you very much.

534 CHAIR TAVAGLIONE: Alright, thank you; you still had two seconds. Alright,
535 Tom (Corbett)? Where's Tom? Tom, you have six minutes time given to you by Susan
536 Dye.

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537 TOM CORBETT: (Thank you, Sir). I didn't have a hat or shoes, so I got the
538 only thing orange in our house. {AUDIENCE LAUGHTER} But my wife put the tape
539 on so it wouldn't be considered a weapon. {AUDIENCE LAUGHTER}

540 CHAIR TAVAGLIONE: I would ask the clerk to start as soon as they come up to
541 the podium, thank you. {OFF MIKE} (Gee).

542 TOM CORBETT: Supervisor; Supervisors and staff, members of the public, I
543 want to thank you for the opportunity to speak today. I'd like to start out with; I'd like to
544 start out with something that we heard this morning, some, some music from the 60s, and
545 I thought that was really good and I wanted to play a little bit to set the tone here for us
546 today. {BEGINNING OF BUFFALO SPRINGFIELD - *FOR WHAT IT'S WORTH*-
547 PLAYED}

548 CHAIR TAVAGLIONE: Tom, we're not here to listen to music. You can shut
549 the music off.

550 TOM CORBETT - OFF MIKE: (I have six minutes).

551 CHAIR TAVAGLIONE: You don't have; we're not here to be entertained by
552 music. If you have something to say, you're welcome to say it. We're not going to take
553 people's time by listening to music, so shut the music off.

554 TOM CORBETT: {NOT INTELLIGIBLE}

555 CHAIR TAVAGLIONE: I do have {NOT INTELLIGIBLE} {MORE
556 BUFFALO SPRINGFIELD - *FOR WHAT IT'S WORTH*- PLAYED}. Shut of the...

557 TOM CORBETT: I've shut it off.

558 CHAIR TAVAGLIONE: Okay, thank you. We're not going to be playing games
559 in here, ladies and gentlemen, so if you want to speak in an orderly fashion like we did at

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560 the other hearings; you're welcome to do that. The minute you stop, we're going to
561 adjourn the meeting. Point blank, that's the way it's going to happen.

562 TOM CORBETT: I understand.

563 CHAIR TAVAGLIONE: Continue.

564 TOM CORBETT: So are you saying that we can't use any, anything that would
565 emphasize our points?

566 CHAIR TAVAGLIONE: Visual aids as we normally do, Tom.

567 TOM CORBETT: Okay.

568 CHAIR TAVAGLIONE: You've been to a number of these meetings over the
569 years.

570 TOM CORBETT: Of course.

571 CHAIR TAVAGLIONE: If you have visual aids, you let know, we will set it up.
572 We're not going to be here listening to music. We don't have time for that.

573 TOM CORBETT: Okay.

574 CHAIR TAVAGLIONE: Continue please.

575 TOM CORBETT: Okay....I would like to address the issue of the quarry as a 23
576 year resident of this County. My wife, Debbie, and I moved here to the Murrieta-
577 Temecula Valley in 1989, so we've been here 23 years, and one of the reasons that we
578 moved to the Murrieta-Temecula Valley is the quality of the air that is there, and I would
579 like to ask Supervisor Benoit, Supervisor Tavaglione, Supervisor Ashley; I'd like to let
580 you know, I have two grandchildren that have very severe breathing problems. They
581 have asthma and other lung problems.

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582 And is it okay with you Supervisors who are supporting this measure that my
583 grandchildren's health deteriorate as they have to breathe the particulate matter that will
584 be spewing from the proposed mine? Is that; that's okay with you?

585 Is it okay with you that I, an 11 year cancer survivor with a severely compromised
586 immune system, which by the way I got as a result of exposure to Agent Orange while I
587 was serving my country in 1968 and 1969; is it okay with you that I be subjected to the
588 pollution with the highly likely result that I will die because my immune system cannot
589 fight, it cannot fight the invaders as they enter my lungs, lungs that nearly quit in March
590 of this year when a local hospital put me in a two week medically induced coma to save
591 my life.

592 You know, I think you really, really need to think about the personal impact that
593 your proposal, sir, Mr. Benoit, could have on the nearly three to four hundred thousand
594 residents of the Murrieta-Temecula Valley.

595 The, the study that was submitted has been highly discredited and you have
596 hundreds of doctors in this Valley, hundreds of doctors in this Valley, who are telling you
597 that this is not the way to go.

598 Why would you put the health and safety of the citizens of this County at risk, and
599 why would you do it from the desert, sir? Why would you want to impose this upon
600 Supervisor Stone's district and the support that Supervisor Buster has shown for us?

601 We don't understand. We don't appreciate it. We don't like it. And you know,
602 it's just, it's, it's insane that you do this and in....in the words of my friend John
603 McEnroe, I must say {SOUND CLIP OF McENROE: You can't be serious!} You can't
604 be serious. Thank you.

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605 CHAIR TAVAGLIONE: {GAVEL BANG} Thank you, Tom.

606 TOM CORBETT: Thank you.

607 CHAIR TAVAGLIONE: Our next speaker is Paul Jacobs, and then we will
608 adjourn after Tom, or excuse me, after Paul to lunch and Executive Session, and then
609 we'll reconvene back here at one o'clock.

610 PAUL JACOBS: Chairman and Supervisors, my name is Paul Jacobs, a
611 Temecula resident and city council candidate. Supervisor Benoit, you propose creating a
612 political civil war between Riverside County districts.

613 This divisive approach is bad government and violates the public trust. You want
614 to deny Temecula the local control you enjoy in your own County district. Massive
615 quarries that blast material immediately next to an ecological reserve and upwind of
616 valuable vineyards were never meant to be fast tracked.

617 Only months ago this quarry at this location was denied after exhaustive Planning
618 Commission and Board of Supervisors hearings. Forget those considered deliberations.
619 Bully pro-tem Benoit wants to fast track Liberty Quarry right up Temecula's backyard.

620 The County LAFCO denied Temecula's rightful annexation area and sucker
621 punched the City into giving up its sphere of influence on behalf of Granite Construction.
622 But even all that influence and effort to approve the quarry was almost soundly defeated
623 after two massive County public hearings.

624 Granite's revised application has not been adequately reviewed, but Supervisor
625 Benoit throws all caution to the silica wind to fast track a blasting quarry that will
626 devastate Pechanga, Rainbow, De Luz, and Temecula, along with the County's thriving
627 winery tourism industry.

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628 To thoughtlessly fast track a gravel pit upwind of a unique wine growing climate
629 is economic suicide to Riverside County. The fallout of particulate matter from daily
630 blasting mixed with significant diesel emissions are guaranteed to negatively impact the
631 yield and quality of grapes in the County's award winning Wine Region.

632 After years of public hearings the Liberty Quarry Project was denied by two
633 bodies of County government. It is despicable to subvert the public process and the will
634 of the People with this backdoor fast track betrayal of the public trust.

635 Supervisor Benoit represents Granite Construction, not the citizens of Riverside
636 County. Supervisor Benoit should find a job he enjoys, such as being a lobbyist in
637 Washington, DC. He has no business pretending to be a representative of the People.
638 Thank you.

639 CHAIR TAVAGLIONE: Alright, that concludes our speakers for now. We are
640 going to adjourn to lunch and Executive Session to reconvene back here at approximately
641 one o'clock.

642 FEMALE SPEAKER: Chairman, if I can just announce {NOT INTELLIGIBLE}
643 close session.

644 CHAIR TAVAGLIONE: Okay, go ahead.

645 FEMALE SPEAKER: Thank you. With respect to the exposure to litigation, we
646 have a claim of TBC Contractors, and a copy of that is available for public dissemination.
647 The facts and circumstances showing exposure to litigation are set forth in that claim,
648 thank you.

649 CHAIR TAVAGLIONE: Thank you, (Pam).

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650 {FIFTEEN SECONDS OF BACKGROUND CONVERSATION / END OF 1 OF
651 2 MP3}

652 {BEGINNING OF 2 OF 2.MP3}

653 MALE SPEAKER: Still at lunch.

654 CHAIR TAVAGLIONE: Jean Powell? Alright, we're going to give everybody
655 about two minutes to come back in and hopefully the speakers are on outside. Those that
656 aren't here will just go to the end of the line.

657 {APPROXIMATELY TWO MINUTE PERIOD OF NO SPEAKING}

658 CHAIR TAVAGLIONE: Keesha? Okay. Alright, I'm going to call on Ken
659 Johnson. Is Ken Johnson back? Still out to lunch? Okay. Jean Powell? Jean Powell.
660 Elizabeth White.

661 ELIZABETH WHITE: Here.

662 CHAIR TAVAGLIONE: Please come forward. You'll have three minutes,
663 Elizabeth. Is Duane Hancock here?

664 DUANE HANCOCK: Yo.

665 CHAIR TAVAGLIONE: Okay, Duane, you'll be after, after Elizabeth, please, uh
666 huh.

667 ELIZABETH WHITE: Good afternoon. When this session first started we had a,
668 an invocation read and it, I don't remember the exact words, but it was something to the
669 effect of we're lucky to be in this country because we can have differences and still be
670 able to debate, and I believe if you go along with Supervisor (Ben-wah) or I'm very
671 sorry, Benoit, if you go along with this vote to fast track the quarry bypassing the
672 Planning Commission, the City, and the Citizens, and the Indian Nation that are in the

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673 district that we're, that's going to be most affected by this that that would just contradict
674 those words.

675 And I think it's very important that Supervisor Stone would not go to someone
676 else's district and try to fast track something that had nothing to do with that district, and
677 I hope you'll all keep that in mind, because it could happen in your district, too. That's
678 all I really have to say, thanks.

679 CHAIR TAVAGLIONE: Thank you, Miss White. Duane Hancock. Mr.
680 Hancock will be followed by Paul Chuberka.

681 DUANE HANCOCK: My name is Duane Hancock. I'm a resident of Temecula
682 and I feel that Supervisor Benoit's proposal is way out of line as far as trying to change
683 things so he can fast track this quarry thing, and I don't know how Mr. Stone feels about
684 it, but to me it's almost like your next door neighbor letting his dog out and taking a crap
685 on your front yard, so... {AUDIENCE LAUGHTER} That's how I look at it and think of
686 a backside, so thank you.

687 CHAIR TAVAGLIONE: Thank you, Mr. Hancock. Paul Chuberka, Mr.
688 Chuberka is going to be followed by Susan Miyamoto-Jurkowski.

689 PAUL CHUBERKA: Thank you very much for this opportunity to make a
690 presentation. My name is Paul Chuberka. I've lived in Murrieta for the past ten years.
691 It's been my retirement home by choice. Before that I had worked in the chemical
692 industry as a chemical engineer for 37 years. A good part of that involved construction
693 of major plants located throughout the country.

694 I was aware of economic and environmental impacts, and governments' treating
695 them. I have been very pleased by the public hearings that have gone on for this project

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696 that we've done and now to have placed before us something that basically would permit
697 that to be eliminated from the project that we would like to have done is terrifying, in
698 fact.

699 You five people cannot be fully informed on all that goes on. You know that, and
700 nobody else in the country can be either. There requires back and forth discussions and
701 understandings of the things that can go forward, and complex projects require complex
702 analysis. There's just no other alternate.

703 I; we talked already about the Press Enterprise's editorial this morning, and I'd
704 just like to again reiterate what they have said. Quoting them exactly, "*Riverside County*
705 *Supervisors should reject a proposal to fast track revised plans for a quarry near*
706 *Temecula. This project calls for scrupulous public review, not convenient haste.*
707 *Supervisors should reject any thought of speeding (the) process for this proposal. Fast*
708 *tracking the quarry plans would inevitably look like a political end run around thorough*
709 *review issues and an attempt to restrict public input and bypass opposition to the quarry.*
710 *Taking this approach on one of the most bitterly (con-texted), contested projects in*
711 *County history would only undermine public confidence in the County's planning process*
712 *and the Supervisors' impartiality.*" Thank you very much for your time.

713 CHAIR TAVAGLIONE: Thank you very much, Mr. Chuberka. Susan
714 Miyamoto-Jurakorski.

715 SUSAN MIYAMOTO-JURKOWSKI: Jurkowski.

716 CHAIR TAVAGLIONE: Jurkowski, thank you.

717 SUSAN MIYAMOTO-JURKOWSKI: Good afternoon...

718 CHAIR TAVAGLIONE: Followed by Merle Hammatt, good afternoon.

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719 SUSAN MIYAMOTO-JURKOWSKI: Good afternoon. My name is Susan
720 Miyamoto-Jurkowski and one of the closest, if not the closest, resident to Liberty Quarry.
721 Supervisor Benoit, I think what you're trying to do here today is appalling.
722 Recklessly fast tracking a project that was originally denied because of EIR inadequacies
723 is irresponsible and will reflect poorly on Riverside County as well as the County
724 Supervisors. You have proven that you are merely a conduit for the corporate greed of
725 Granite Construction. What? I'll stand closer.

726 At the final hearing earlier this year on February 16th, it was obviously, obvious
727 that comments you made were straight out of Granite's playbook. I was very
728 disappointed that you dismissed our concerns, my family's concerns, with your
729 insensitive remarks in saying that Granite had offered to buy our house.

730 Number one, this was an offer that you, had you been in our shoes, would most
731 likely have scoffed at; and number two, and most importantly, our home is the place
732 where as a child my husband spent countless weekends with his grandparents, family,
733 and family friends. It's a place where our two sons were raised, and it's a place where
734 my oldest son hopes to raise his family someday; over 50 years and four generations of
735 Jurkowskis. How can you even suggest that mining would replace our loss. Gentlemen,
736 please do the right thing for Riverside County and reject this proposal.

737 CHAIR TAVAGLIONE: Thank you. Merle Hammatt; Miss Hammatt will be
738 followed by Kathleen Hamilton.

739 MERLE HAMMATT: Good afternoon, Gentlemen; my name is Merle Hammatt.
740 I'm a resident of Temecula. I'm going to be very brief. I just would like to concur and
741 agree with Mayor Washington, Maryann Edwards, and Mike Naggar. By approving a

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742 fast track on this issue, you will be opening a Pandora's Box and another problem with it
743 is that it bypasses the citizens' right to be heard, and the citizens that, that have expressed
744 their opinions about this matter and will continue to express their opinions about this
745 matter can be found in this article in the newspaper.

746 They include local governments, community organizations, a Native American
747 Tribal Governments, campaign organizations, environmental groups, and over 150 local
748 doctors, so for these reasons I would ask you please to vote against the proposed fast
749 track recommendation by Mr. Benoit, thank you.

750 CHAIR TAVAGLIONE: Okay, thank you Ms. Hammatt. Kathleen Hamilton
751 followed, {COUGH} excuse me, by Ann Laurie.

752 KATHLEEN HAMILTON: My name is Kathleen Hamilton. No land use is
753 more invasive than mining projects. Bill Johnson and Granite Construction may be the
754 sugar daddy of the desert, but this influence must not remove the protection needed for
755 mining projects. Do not fast track mining projects. The Riverside County Board of
756 Supervisors is not for sale. Thank you.

757 CHAIR TAVAGLIONE: Thank you, Kathleen. Ann Laure {COUGH}. Excuse
758 me. Ann Laurie. Is Ann here?

759 ANN LAURIE: Yes.

760 CHAIR TAVAGLIONE: You have six minutes, followed by Marybeth
761 Crawford.

762 ANN LAURIE: Mr. Chairman, I won't need my whole six minutes. I won't
763 repeat what others have said before me, but I would like to quote something that was said
764 early on in these proceedings today in that lovely invocation that we all heard, where God

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765 was thanked that we in this country have the freedom to meet in the open and discuss
766 issues with differing opinions, and that's really what we're all here about on this issue.
767 We want our opinions heard. We want this issue to, to be scrutinized in the light of day
768 in open public debate and not in some ugly backroom political deal, because that's sure
769 what this looks like at the moment is being attempted, and we certainly hope that that will
770 not be the decision of this Board. We urge you to deny this motion by Supervisor Benoit.

771 We've also seen during today's presentation that beautiful program about the
772 beautiful park that they just put together in Idyllwild and they talked a great deal about a
773 community coming together there for a common cause.

774 Well Gentlemen, you've got a community who's come together for a common
775 cause right here in front of you and we're all wearing ugly orange. It's not my favorite
776 color. The only reason I would ever put this color on is for this cause. I've been fighting
777 it for seven years along with SOS Hills, so have the Cities of Temecula, Murrieta, the
778 people of Rainbow, of Fallbrook, the people of Pechanga Band.

779 We are a community that is dedicated to this common cause and we're not going
780 away. No matter what happens today; whether you vote for this ridiculous amendment
781 and try to fast track this, this opposition is not going away. We will fight this for seven
782 more years, and seven more, and seven more if necessary and what will that cost
783 Riverside County? I don't think any of us need that or want that. Let's put this thing to
784 bed, Gentlemen. Turn down this amendment and turn down this stupid quarry once and
785 for all, please. Thank you.

786 CHAIR TAVAGLIONE: Thank you, Miss Laurie. Marybeth Crawford.
787 Marybeth will be followed by Douglas Dye.

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788 MARYBETH CRAWFORD: Supervisors, staff members, and other members of
789 the community, thank you for allowing me to speak this afternoon. I've been a resident
790 of Temecula Valley and specifically Murrieta for the past ten years. Like many of the
791 people throughout the Valley, I enjoy that wonderful breeze that starts midafternoon and
792 goes into the evening.

793 A couple of things I'd like to comment on; Supervisor Benoit, you indicated that
794 the Fast Track Program would only consider things that were well vetted and up to the
795 discretion of, you know, qualified people like yourself.

796 I actually applaud the Fast Track Program. My background is in finance and
797 administration and when we have economic times like this it's imperative that we can cut
798 through the processes and speed up projects when it is in our best economic interests and
799 creates jobs.

800 Unfortunately, this project, I believe, will not result in any net increase in jobs in
801 the Temecula Valley. If you consider the reduction in mileage and you consider the
802 transfers from other locations, I don't believe it will result in any net increase.

803 Secondly, it would affect the health and welfare not only of these employees that
804 would go with this facility, but all the people like myself that enjoy that afternoon breeze.

805 I was thrilled when the Planning Commission voted down the petition and then
806 again when that was reaffirmed by the Board of Supervisors. I was somewhat
807 dumbfounded when the EIR was accepted in May because sitting through most of the
808 hearings I understood that you, too, saw the faults in the Environmental Impact Report.
809 There were holes so big you could drive one of those trucks right through it.

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810 And also, as I think was pointed out by Supervisor Stone at an earlier hearing, the
811 process allows too much control of the petitioner, of the applicant. That's a flawed
812 process. They have too much to say over the selection of the vendors, the consultants,
813 and too much control over the execution of the analysis that later becomes the
814 Environmental Report. I was hoping that we would be in a position in a meeting like this
815 that that is what we would be considering as a change in the bylaws.

816 I find it interesting that it's called surface mining when you consider the depth to
817 which this mine will go to if it's placed in the hills of Temecula. Thank you.

818 CHAIR TAVAGLIONE: Thank you. Douglas Dye; Mr. Dye (will) be followed
819 by Don Swift.

820 DOUGLAS DYE: I was going to yield my time {NOT INTELLIGIBLE}
821 Robertson, but I think he's left.

822 CHAIR TAVAGLIONE: Okay, do you want to wait?

823 DOUGLAS DYE: Oh, I'll just (be brief).

824 CHAIR TAVAGLIONE: Okay.

825 DOUGLAS DYE: The thing that I don't understand is how you can separate the
826 (I-R-R); the (IRR) from the project. It's sort of like you ask a girl for a kiss and she says
827 no, but her eyes say yes. {AUDIENCE LAUGHTER}

828 I mean, what you did was you said, well, we're saying no, but we didn't really
829 mean it, try again, and that seems very inconsistent and inappropriate. Thank you.

830 {MANY BACKGROUND COMMENTS FROM THE AUDIENCE}

831 CHAIR TAVAGLIONE: Thank you, Don Swift. Mr. Swift will be followed by
832 (Marla, Marla Doresy).

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833 DON SWIFT: Gentleman, my name is Don Swift. I'm from Temecula. When I
834 spoke to you in the past I (have) presented you with facts, as have many others, but
835 apparently facts seems; they didn't make any difference. It, it (blew) your judgment,
836 apparently. It clouded your judgment. So now on how, on behalf of probably thousands
837 of people who live in Riverside County and who work in Riverside County, who pay
838 their taxes to Riverside County and spend their money in Riverside County, and
839 especially in places like Palm Springs, Corona, and Temecula of course.

840 I'm asking all of you people, all of you Supervisors, for all of the people in
841 Riverside County, not just your own little districts. We want you to be a Supervisor for
842 all of the people in Riverside County and we're asking you now to vote against any fast
843 tracking of projects, such as the Liberty Quarry.

844 I see no need to give a priority to a project that has caused so much controversy
845 due to the problems that it would cause and there are facts to prove it. The priority
846 should be for the people of Riverside County and not for the outside interests whose only
847 objective is to make profits.

848 I understand that those big dollars are very tempting, but don't forget – those big
849 dollars are not slated to show up for about eight to ten years and by that time the
850 economy will be back to a normal state.

851 I also understand that {NOT INTELLIGIBLE} have suggested that they would
852 add a small (payment to their product) and offer to, or offer the County more dollars. Is
853 this bribery? I would think so, but, so be careful how you vote. Thank you.

854 CHAIR TAVAGLIONE: Thank you, Mr. Swift. Miss Dorsey followed by Mary
855 Lee Ragland.

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856 MARELLE DORSEY: Okay, Board of Supervisors, my name is Marelle Dorsey.
857 I am the Temecula Valley real estate agent who gave you hundreds of quarry opposition
858 statements signed by area agents and brokers; 25% were brokers, during the Liberty
859 Quarry hearings.

860 I also presented each of you with a copy of this notebook. Inside can be found
861 published material and reports such as the one from the Rose Institute, the summary,
862 which Councilman Washington referred to this morning by saying that their estimate
863 would be a loss of 3.6 billion dollar to the County if Liberty Quarry went in and these are
864 very highly rated economists, not just one economist and they, and with the, the summary
865 was in, was in, is in here. {COUGH} Excuse me.

866 These reports show that the health, economic, environmental and cultural
867 arguments against the quarry should be taken very seriously. You did take the issue
868 seriously and subsequently denied the project three to two. However, if you now do the
869 bidding of Granite Construction and go along with Supervisor Benoit's fast track
870 amendment, it would be just plain wrong.

871 The whole country and world are watching you. Just Google words like 'fast
872 track' and 'mines' or check the Associated Press, NPR Reports and TV; I am certain you
873 noticed the NBC News here today.

874 Your very reputations are on the line. We're all waiting to have two questions
875 answered; can our Board of Supervisors be bought, and is Riverside County Government
876 corrupt? I implore you to tell Supervisor Benoit no and thereby prove to everyone that
877 you really are men of honor worthy of our trust.

878 CHAIR TAVAGLIONE: Marylee Ragland, followed by Stephanie Fear.

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879 MARYLEE RAGLAND: Good afternoon. I'm Marylee Ragland and I live very,
880 very close to the place where Liberty Quarry is proposed to be; about three miles or less.
881 Maybe some of you Supervisors don't realize this but some of you have the public image
882 of being owned by Granite Construction.

883 I'm sorry to say that, because we who live close to where this will be, don't even
884 like to think of Granite Construction as the name of the company because it is more like
885 Granite Destruction, and that's what will happen if it gets in place.

886 You still have the opportunity to let your constituents know that you are not for
887 sale. You; that you care for them and that you care what they think and you listen to
888 them, and you want to do for them what they need, and that is not forcing us into a fast
889 track response to a quarry we don't want.

890 Please, show that you are not dependent on large companies like Granite
891 Construction who make very generous contributions to elected officials. Please think for
892 yourself, think for us, and do what we're asking and vote no. Thank you.

893 CHAIR TAVAGLIONE: Alright, Stephanie Fear followed by Maryann; it's
894 either Byers or Syers. I'm having a tough time reading this.

895 STEPHANIE FEAR: Good afternoon, Supervisors. My name is Stephanie Fear,
896 and I'm a resident of Murrieta. First of all, I would just like to salute Supervisor Benoit
897 who demonstrates such sensitivity to local ties as he demonstrated in his opening
898 comments this morning; local ties to an area, but for some reason he thinks he knows
899 what's best for Temecula, although he's from the desert area.

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900 I don't have anything really new, so much has been said. All of it is just pretty
901 much rehashing but it's very important to reiterate and reinforce the denial of permits for
902 the quarry.

903 No project should be fast tracked if it has significant impact on the environment.
904 Supervisors formally rejected the project because of the negative effects on the area.
905 Nothing has changed. Thank you.

906 CHAIR TAVAGLIONE: Thank you. Maryann Byers, Syers?

907 MARYANN BYERS: Byers.

908 CHAIR TAVAGLIONE: Byers, thank you. Followed by Mike O'Neill.

909 MARYANN BYERS: Hello Supervisors; Supervisor John Tavaglione. It's nice
910 to stand before you today. I'm also talking, of course against; on the need to reject
911 today's amendment to fast track the, the item 384 that's before us.

912 I find it ironic that we're discussing this proposal today at, while at the same time
913 the Planning Commissioners are holding hearings on expanding our wine, Winery
914 District. They're holding hearings, they're accepting public comments, extensive public
915 comments. They're having another one in another two weeks, and here we are looking to
916 close down public comments and the public's access to projects that has a large impact
917 on our immediate environment.

918 What do you think would happen if we do, indeed, approve this fast track and if
919 indeed Liberty comes to pass? What will happen to the expansion of the Wine District;
920 Winery District? What; the Winery District is an international, but especially local
921 tourist attraction. There are a lot of people that know about it. They drive here.

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922 If we're going to have another 1300 trucks coming and going every single day,
923 there are a lot of people who will say it's a great place to go, but don't go there because
924 your nice new Beemer is going to come complete with a lot of nice cracks on the
925 windshield. So I would like to, again, quote from the Press Enterprise and, and say, and
926 state, that stated, "*Riverside County Supervisors should reject (propose), a proposal to*
927 *fast track revised plans for a quarry near Temecula. A project like this calls for*
928 *scrupulous public review, not convenient haste.*" Thank you.

929 CHAIR TAVAGLIONE: Thank you, Miss Byers. Mike O'Neill followed by
930 Linda Barts.

931 MIKE O'NEILL: Hello, Mike O'Neill with Keller Williams. I'm a realtor. I live
932 in Temecula, and I'd like to have while the proponents speak, identify where they reside,
933 as well, just for a point of reference.

934 These are letters I wrote for, in my, in my newsletter for Temeku Hills, where I
935 reside. The Liberty Quarry (Quarrel) Mike's Opinion. That's me. I don't want to call
936 the quarry proponents liars. Let's just say they're distorting the truth. Without question
937 the environment is going to be affected. Wonderful ocean breezes flow through the
938 Rainbow Gap into the Temecula Valley. These winds will also carry (criss) dangerous
939 crystalline silica dust, a known cause of respiratory disease, and mica that is more
940 dangerous to breathe than asbestos. This will be one of the largest open pit hard rock
941 mega mines in the US, exposing our community to the blasting and truck traffic
942 associated with this type of production.

943 Over 40% of this aggregate is expected to be delivered to San Diego where many
944 mine sites have been identified. San Diego doesn't want it and I don't blame them. I

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945 believe in the theory of 'not in our backyard'. I don't think it should be in anyone's
946 backyard. These mines should not be located any nearer than 25 miles to any residential
947 area. If a mine is built and they build homes near it, then shame on the builders and good
948 luck with your disclosures.

949 Finally, this will affect property values substantially. While we're already
950 experiencing devastating value declines resulting from the unethical business practices by
951 large financial institutions, so much for not needing regulation. You remember 4-5-2010;
952 the Upper Big Branch Mine; 29 dead and 4-29-2010 the big BP oil rig disaster.

953 Second, the Liberty Quarry quarrel again. A mega mine with mega money is
954 attempting to construct a mega mine in the most environmentally sensitive area in
955 Southwest Riverside County. The residents of Temecula are against it, our city council
956 against it, our Chamber of Commerce is against it, 159 local doctors are against it; the
957 Planning Commission of Riverside County is against it. Every Southwest Riverside
958 County homeowner should be against the quarry because it will affect property values
959 negatively in a currently very distressed market.

960 People from San Diego County, Orange County and LA County were moved to
961 Temecula and Murrieta because of the cool ocean breezes flowing through the Rainbow
962 Gap, resulting in clean air.

963 Don't allow this huge corporation to buy our future and contaminate a pristine,
964 pristine slice of life in our growing Wine Country. Our Southwest corner of Riverside is
965 a big part of the County economy and (shall not be); should not be sold out to special
966 interests. How about a huge waterpark which would bring jobs to (reason), and probably
967 millions of dollars in tax revenue, which has already been approved?

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968 And I guess in closing, this is a representative democracy, which means that our
969 representatives, our Supervisors, should be doing what the constituencies choose, what
970 they want, and I don't see that happening here. My, my feeling is if you're a
971 representative, a Supervisor, if you accept monies or favors from a, from a group for your
972 vote that's bribery. If you're compelled to vote a certain way to get reelected, then that is
973 extortion.

974 CHAIR TAVAGLIONE: Alright...

975 MIKE O'NEILL: If any of those apply to you...

976 CHAIR TAVAGLIONE: Thank you.

977 MIKE O'NEILL: ...I'd like to know.

978 CHAIR TAVAGLIONE: Linda Barts followed by Fred Barts.

979 LINDA BARTS: Mr. Chairman, Supervisors, my name is Linda Barts. It appears
980 that Supervisor Benoit thinks he is the self-appointed person on the Board of Supervisors
981 to decide what projects in the County should move forward on a fast track no matter
982 which Supervisor's district the project is actually located in.

983 Specifically, I am speaking of the Liberty Quarry Project, which both the
984 County's Planning Commission and the Board of Supervisors have both already denied.
985 For some reason, Supervisor Benoit is ignoring those denial decisions.

986 The People of the Temecula Valley elected Jeff Stone as the Supervisor to
987 represent us and not John Benoit. Supervisor Benoit, you are trying to demand that the
988 People of Supervisor Stone's district should endure Liberty Quarry and all of its negative
989 consequences for 50 years because for some reason you think the project should go
990 forward.

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991 Let's spread the pain around and demand that the new County jail be fast tracked
992 for Palm Springs in Supervisor Benoit's district. After all, as Supervisor Benoit thinks,
993 Temecula Valley should suffer Liberty Quarry's many negative effects, then in all
994 fairness Palm Springs residents should also have the opportunity to suffer loss in tourism
995 revenue and property values from the jail being located there.

996 Dr. Martin Luther King said the ultimate measure of a man is not where he stands
997 in moments of comfort and convenience, but where he stands at times of challenge and
998 controversy.

999 Supervisor Benoit, it's time for you to look in the mirror and assess the ultimate
1000 measure of a man that you are. Why are you going to such great lengths to help Granite
1001 Construction? Thank you.

1002 CHAIR TAVAGLIONE: Thank you, Miss Barts. Fred Barts followed by Mary
1003 Jane Gordon.

1004 FRED BARTS: Chairman Tavaglione and members of the Board of Supervisors;
1005 my name is Fred Barts. Presently the County has a defined process for the review and
1006 potential approval of a Surface Mining Permit. This process while not perfect has served
1007 the County for a number of years.

1008 Earlier today we heard Chairman Tavaglione state that the fast track process has
1009 been around for decades. I ask you to ask yourselves why did your predecessors not
1010 include surface mining when that document was drafted. Clearly, they had that
1011 opportunity and clearly they chose not to include it, so there's no reason to include it
1012 today.

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1013 The suggestion of an amendment to allow the fast track of Surface Mining Permit
1014 would in effect deny the people of Riverside County their current right of due process by
1015 shortening the process.

1016 Earlier we heard during the hearings Granite Construction claim that they had
1017 shipped hundreds of thousands of tons of aggregate from the Coachella Valley to meet
1018 the demand in San Diego County.

1019 I have to ask the question then, why is Supervisor Benoit trying to take and chase
1020 that work away? Is he in fact not selling out his own people and his own jobs simply for
1021 the benefit of Granite Construction?

1022 In the County's fast; in the County's Form 11 it states that a fast track can be
1023 approved by a majority of the Supervisors, which in this case would be three, or one
1024 single appointed County employee.

1025 I find that unconscionable that you could allow one employee, head of the EDA,
1026 to say yes, a project could be put on a fast track or not. This should be solely the
1027 responsibility of the Board of Supervisors and should in my mind include at least the
1028 Supervisor for which the district is located.

1029 Supervisor Benoit, I can't believe it's more important for you to meddle in
1030 another supervisor's district than to protect jobs in your own district. When I was a
1031 younger person, and you probably remember yourselves in Government Class, where we
1032 said government of the People, by the People, and for the People. It appears now in
1033 Riverside County we have government of John Benoit, by John Benoit, for the benefit of
1034 Granite Construction.

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1035 CHAIR TAVAGLIONE: Thank you, Fred. Next speaker is Mary Jean Gordon,
1036 followed by Kerry Bartels.

1037 MARY JEAN GORDON: Good afternoon, I'm Mary Jean Gordon. Thank you
1038 for giving me this opportunity to speak. If Supervisor Benoit succeeds in spearheading
1039 this unheard of motion to allow fast tracking for projects outside of his district, I'm sure
1040 he'll have no problem with other supervisors spearheading fast tracking on projects in his
1041 district.

1042 I really doubt that the people living in Coachella Valley are okay with that.
1043 Anyone who would support this proposal is condoning, condoning corruption.

1044 We did see a really nice video that Jeff Stone showed today and I know you all
1045 saw it. There was music in it. I'm not going to play the music {AUDIENCE
1046 LAUGHTER} and I'm not going to sing the song, but I did; I hadn't seen it before, but
1047 the words came out to me in that and I'd like to close with these words for you as you
1048 make these decisions, how do you feel at the end of the day?

1049 CHAIR TAVAGLIONE: Alright, thank you very much, Miss Gordon. Kerry
1050 Bartels. Carrie will be followed by Rebecca Ludwig.

1051 KERRY BARTELS: My name is Kerry Bartels. I counted seven times during
1052 Mr. Ashley's testimony today, he said 'business friendly'. I heard Mr. Benoit use the
1053 term five times, so Gentlemen, you will be happy to hear that my firm plans to submit a
1054 mining permit for Downtown Riverside. {AUDIENCE LAUGHTER}

1055 We're going to employ a thousand people to tear down the buildings and then the
1056 blast silica that results, we're going to take five helicopters each afternoon at three
1057 o'clock to simulate the winds in Temecula. We're going to go to an altitude of three

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1058 thousand feet and we're going to let the rotors push all the silica dust over Northern
1059 Riverside County.

1060 Gentlemen, I had a discussion a couple days ago with a man from the City of
1061 Riverside. I mentioned the motion to make the quarry a fast track item on today's agenda
1062 after the County Planning Commission had voted overwhelmingly to kill the quarry for
1063 solid health, economic, environmental, scientific, cultural and religious reasons, and the
1064 Board of Supervisors itself have voted to kill the quarry, and after a short time he looked
1065 at me and he said, what else would you expect, and I said more. I expect more.

1066 So I'll tell you a story from 30 years ago. Thirty years ago I interviewed a former
1067 congressman of the republican persuasion. He had been a US Representative for several
1068 decades and was now over 80 years of age.

1069 At one point I asked him if he had any regrets about his career. He said he was
1070 having trouble sleeping. He said he had consistently voted with Big Business and had not
1071 voted his own conscience. He said he could not point to one piece of legislation where he
1072 had voted his conscience. He said he should have stood up for the People and not Big
1073 Money. He said he should have voted for what he knew to be correct. He hadn't done
1074 so. So now, looking back on his career, he said all he had was emptiness. Yes, he said, I
1075 have regrets.

1076 So Gentlemen, there are a million places in Riverside County to blast a gaping
1077 hole in the earth that doesn't overlook and feed a wind that comes down on a quarter
1078 million people.

1079 CHAIR TAVAGLIONE: Thank you, Mr. Bartels, your time's up. Thank you.

1080 KERRY BARTELS: Find another place for the quarry.

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1081 CHAIR TAVAGLIONE: Rebecca Ludwig. Miss Ludwig will be followed by
1082 Thetis Pressley.

1083 REBECCA LUDWIG: Good afternoon, Council. I wanted to address this issue
1084 primarily because I do have relatives and friends who live in Temecula, and I know this
1085 is a hard decision and I think it's kind of unfair that everybody seems to be picking on
1086 Benoit today regarding this. Let me explain why.

1087 I've been coming here for a lot of years. I have not missed these meetings, as you
1088 very well know, and today's his job to play bad cop. Why? Mr. Stone's up for office,
1089 Mr. Buster's up for office, Mr. Tavaglione is going up for the congressional seat. We
1090 really can't afford to get involved in this, can we, at this point based on your last vote.

1091 So, when you see these people do what they do, trust me, they do it best. They
1092 know how to do it, they're polished at it, they're career politicians and it doesn't matter if
1093 there's a thousand people here opposing something or if it's just one person like me,
1094 they're going to do what they want to do. The past has shown that you do that.

1095 The daycare centers are a prime example. You put things where they don't
1096 belong just to put them in when you know it's going to be harmful in the end, and I hope
1097 I'm still alive to see what's going to happen there, seeing that they haven't been able to
1098 approve one thing or the other.

1099 I lived up in Washington, sir, and I'm telling you, it's wrong, just like what you're
1100 doing here is wrong, and you will be held accountable maybe not today, maybe not
1101 tomorrow, and maybe that one percent might get you through, Mr. Tavaglione, to the
1102 congressional seat. But with the way you've been operating here in Riverside, I really

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1103 think that would be a bad decision for anybody to vote for you at this point based on your
1104 performance here. Thank you.

1105 CHAIR TAVAGLIONE: Okay, and we now have Thetis Pressley. Thetis
1106 Pressley will be followed by Keith Pressley.

1107 THETIS PRESSLEY: Good afternoon. I'm Thetis Pressley and I'm a 19 year
1108 resident of Temecula and Supervisor Benoit wants Temecula to have a quarry and cites
1109 jobs as the reason.

1110 In fact, in every city in Riverside County that has surface mines is high, the
1111 unemployment is higher than Temecula. Temecula currently as of June has a six point or
1112 8.6 unemployment rate; Murrieta is 8.3. But where they do have, where they have mines;
1113 Indio is 13.6, Blythe is 15.1 and Palm Springs is 9.8.

1114 Adding quarries obviously does not increase employment. Fast track in my
1115 dictionary means moving under the radar and those of us who are retired have plenty of
1116 time to sit on the computer and look up where all the contributions come from, plenty of
1117 time, thank you.

1118 CHAIR TAVAGLIONE: Thank you, Miss Pressley. Keith Pressley. Mr. Keith
1119 Pressley will be followed by Ray Johnson.

1120 KEITH PRESSLEY: I'll be brief. Anyone who supports this proposal is
1121 condoning corruption. Thank you.

1122 CHAIR TAVAGLIONE: Ray Johnson is followed by Paula Johnson. {OFF
1123 MIKE} What did he say?

1124 RAY JOHNSON: Good afternoon, Chairman Tavaglione and members of the
1125 Board. I've been an urban planner for 39 years. Surface mines have one of the most

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1126 severe impacts of any land use approval. They should never be considered for fast
1127 tracking. Now, this is; Liberty Quarry is supposed to be one of the largest pit mines in
1128 the country, if not the world.

1129 Why would you want to take one of the largest pit mines in the world and make
1130 that subject to fast tracking? I mean, if you want to add fast tracking stuff in you could
1131 always include nuclear power plants or toxic waste dumps. We've got a lot of area
1132 eastern, in the Eastern County in the desert where there's lots of space to put those sorts
1133 of things with fast tracking.

1134 The bottom line is that no project should be fast tracked if it's suspected to have
1135 or known to have significant impacts on the environment. It's just impossible to analyze
1136 the complex issues of, of projects like large mines within the timeframe that's required
1137 for fast tracking. Now, you're simply going to get bad decisions.

1138 Why would this; why would a Supervisor from the other side of the mountain
1139 range want to fast track a mining project in Temecula? That's right, his bang, big
1140 campaign supporters are mining companies and equipment sellers. He gets 56, 57,000
1141 dollars since 2010 from mining companies and equipment sellers. His friends in green
1142 have given him another 16,900 dollars.

1143 It's just inappropriate in his case to, to bring this thing forward. Any project
1144 that's fast track should have the support of the supervisor whose district that it's in,
1145 because he's the one that's going to get the political liability from having this thing fast
1146 tracked. Whether he was involved in it or not, he's going to be the one that catches the
1147 political flak, so he should be on board with any fast tracking.

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1148 Fast tracking is designed to do one thing and that's to take away the ability of the
1149 public to input in a project. Supervisor Benoit is, is acting like he's still in Sacramento
1150 cutting a backroom deal to support his campaign supporters to the detriment of the
1151 People, thank you.

1152 CHAIR TAVAGLIONE: Okay, thank you Ray. Next is Paula Johnson. Paula
1153 Johnson is followed by...is Paula Johnson here?

1154 MALE SPEAKER: She's gone.

1155 CHAIR TAVAGLIONE: Okay, Scott Rue. Scott Rue is going to be followed by
1156 Stella; Stella Stevens. It's not the same Stella Stevens, but is Stella Stevens still alive?

1157 MALE SPEAKER: Yes, she is.

1158 CHAIR TAVAGLIONE: Okay.

1159 MALE SPEAKER: Who?

1160 SCOTT RUE: I'm Scott {NOT INTELLIGIBLE}.

1161 CHAIR TAVAGLIONE: I saw her on a Jerry Lewis movie the other day. Go
1162 ahead.

1163 SCOTT RUE: I'm Scott Rue. I'm a Biology-Ecology graduate, MS, from San
1164 Diego State who has the MER or Santa Margarita Reserve. Mr. Tavaglione reminded us
1165 at the beginning that this is not about Granite Quarry and all the issues, it's about agenda
1166 3.84, the fast track. However, two days ago when I found out about this fast track issue I
1167 got pissed off, angry, and I made sure that I was going to come down here.

1168 I have been observing Gary Johnson sitting up front with his Granite Company's
1169 lawyer as I have at all these other meetings. So in fact, this is about Liberty Quarry. It's
1170 the same thing. It's an interest kind of issue.

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1171 So I want to say to Mr. Benoit. I respect your years; I respect...what happened to
1172 the mike? Oh, okay. I respect your...hello?

1173 CHAIR TAVAGLIONE: You're good.

1174 SCOTT RUE: I respect your years as a California Highway Patrol Officer and
1175 your concerns about safety and just proper driving on the, the freeway. But I want to say
1176 that I observed you at the meetings and I felt like you were not connecting with the
1177 People with their concerns of health, the environment and things like that. You seemed
1178 to be kind of a little insensitive to that.

1179 I wish I could convey to you the spirit of the sun shining down on these beautiful
1180 mountains. I like to call these mountains or hills of the Southwestern Hills, the Sacred
1181 Hills. They are sacred to the Luiseño People and the Community of Temecula around the
1182 hills. They are sacred to me. They are sacred to the red hawk and the coyote and the
1183 coast live oak, and I propose if you want to fast track something, fast track a state park or
1184 a national park. That would probably be a little easier to put through.

1185 CHAIR TAVAGLIONE: Thank you, Mr. Rue. Stella Stevens followed by
1186 Vivian Warner.

1187 STELLA STEVENS: Good afternoon, Board. My name is Stella Stevens. I'm a
1188 resident of Murrieta, California. I'm here to object to the fast track notion. Fast tracking
1189 as a quarry, fast tracking a quarry, any quarry, any surface mining project will cause
1190 irreversible damage to the area and to the people, not to mention forever destroying a
1191 very sacred place of the Luiseño Indians.

1192 We all know the only reason to disregard the overwhelming evidence that has
1193 been submitted showing environmental, health, and safety issues is that it's all about; it's

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1194 only about the money and Supervisor Benoit, the cat's out of the bag now that your
1195 largest contributors are mining companies and equipment suppliers. No wonder you
1196 want fast track mining projects.

1197 Well you know what? The people of Riverside County, they should not be forced
1198 to repay Supervisor Benoit's campaign contributors, excuse me, because that stinks on
1199 ice, it stinks on ice, and on a side note, I'd really like to know what is so important that
1200 90% of the time that the people that have taken the time to come here and speak, you are,
1201 you are either texting on a cell phone, on a computer, or you're looking over at Mr.
1202 Johnson, looking for coughing cues that I had to experience sitting in front of him in the
1203 morning session. 90% of your time is looking down and not looking at the people that
1204 are addressing this issue.

1205 You brought the issue up; man up and look at your opponents because we are
1206 your opponents. That's all I have to say, thank you.

1207 CHAIR TAVAGLIONE: Thank you, Miss Stevens. Vivian Warner. Miss
1208 Warner is going to be...

1209 VIVIAN WARNER: Lady and gentlemen...

1210 CHAIR TAVAGLIONE: ...followed by George De Lallo.

1211 VIVIAN WARNER: ...I live about three minutes down river from the site as a
1212 hawk flies, but as a man drives it's about five minutes, and everything that happens on
1213 the freeway over in Rainbow or Fallbrook, it all comes down on us there. I'm on the
1214 {COUGH} west side of the river. It's one of the oldest complex there, Creekside
1215 Apartments, and for myself it doesn't matter because of my age, but the younger ones
1216 and all the children and the grownups, the young grownups and their children, your

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1217 grandchildren, you know, and Temecula keeps building. Now there's a three story
1218 building going up. Think of all the children that live there, the young people. Anyhow, I
1219 say forget about that fast track thing and thank you.

1220 CHAIR TAVAGLIONE: Thank you, Miss Warner. George De Lallo. Mr. De
1221 Lallo are you here? Alright, Mike Waksull, Wakshull. Mike will be followed by
1222 Courtney Coyle.

1223 MIKE WAKSHULL: Supervisors, fellow citizens of Riverside County, this
1224 country; when we started our presentation this morning we had a pledge of allegiance to
1225 the flag. In that pledge of allegiance it says 'to the republic'. I ask the Supervisors, do
1226 you know what a republic is?

1227 If you know what a republic is, you know that the essence of what our founding
1228 fathers said, we do not want a democracy, we want a republic. The reason is, in a
1229 republic we elect our officials and they look out for the minority.

1230 Now, those of us who live in Temecula area, we don't represent the majority of
1231 citizens of Riverside County, but you need to look for what we want. You're invading
1232 our territory with this fast track proposal.

1233 When we talk about Temecula Valley, I live in the hills east of Temecula. I can
1234 look out and I can see the entire Temecula Valley in the morning. It's a beautiful sight.
1235 You see the fog coming in over the Rainbow Pass.

1236 I don't want to see that fog filled with silica dust. I don't want to see the people
1237 who live in, in Temecula breathing that silica dust and having it fall on their heads.

1238 We're a republic. It's for your job. Our founding fathers said we do not want a
1239 democracy. Go read the Articles of Confederation and why they didn't pass. Why?

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1240 Because a democracy says you get to do what you want for the majority of the People,
1241 forget about what the minority want.

1242 Those of us who live in Supervisor Stone's district do not represent the majority
1243 of the folks who live in Riverside County, but we do represent Supervisor Stone's
1244 district. We do represent the people who will be affected by this fast track.

1245 And the essence of fast track, I'll repeat what Maryann Edwards pointed out
1246 earlier; Supervisor Benoit did not want the Salton Sea Project. Why? Because local
1247 control. Supervisor Benoit, give us local control. Give Supervisor Stone local control
1248 over his district. Stay out of our district. Thank you.

1249 CHAIR TAVAGLIONE: Thank you, Mr. Wakshull. Courtney Coyle. Courtney
1250 Coyle is going...oh, you have six minutes. You've been given time by Marcy
1251 Hernandez. She'll be followed by Dr. Theo Beam.

1252 COURTNEY COYLE: I believe it should be nine minutes. There is Marcy
1253 Hernandez and Tina Johnson. We're kind of bundled. Hopefully I won't need it, but just
1254 in case.

1255 CHAIR TAVAGLIONE: Okay, I don't have your additional, but who is the
1256 third?

1257 COURTNEY COYLE: Tina Johnson.

1258 CHAIR TAVAGLIONE: Is Tina; okay, you're here? Alright, alright.

1259 COURTNEY COYLE: Thank you.

1260 CHAIR TAVAGLIONE: Uh huh.

1261 COURTNEY COYLE: My name is Courtney Coyle. I'm outside counsel for the
1262 Band; the Pechanga Band of Luiseño Indians. Mining and the fast track don't mix. Fast

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1263 tracking mining raises significant policy concerns under federal, state, and local laws that
1264 cannot be easily reconciled.

1265 Today's action would buck the trend at the federal level where the US
1266 Environmental Protection Agency and the Army Corp have suspended fast tracking of
1267 mining projects. In the leading case the federal judge ruled that the Army Corp could not
1268 use fast track permits to circumvent its statutory obligations to thoroughly examine the
1269 environmental impacts, especially the cumulative impacts of mining.

1270 This action would also be inconsistent with the State's Surface Mining and
1271 Reclamation Act and CEQA, each of which makes certain timelines and process steps
1272 beyond the timeframe of the fast track, which is proposed for today, and which the
1273 County cannot unilaterally override.

1274 In addition, most of the applications for surface mining will require General Plan
1275 and Zoning amendments, which are processed concurrently with applications. These
1276 amendments have their own timetables. Notable among them, SB 18 requires
1277 consultation with tribes on General Plan amendments, providing for a 90 day window for
1278 tribes to accept an invitation to consult. That window alone would swallow the proposed
1279 fast track before you today.

1280 We understand Riverside County is also far below the State average in mines with
1281 updated financial assurances. Also, some mines still may not have the Reclamation
1282 Plans, let alone updated ones. How might the fast track of the extensions or renewals on
1283 these preclude agency and public review?

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1284 Given the scope of these issues, the amount of time, a mere 15 hours stated in the
1285 Form 11 for legal and staff review is completely unrealistic, far too low, and creates the
1286 false impression that there is a quick fix. There is no quick fix.

1287 Moreover, for a project that already may have a certified EIR, timelines for
1288 analysis of whether additional environmental review is required because of the passage of
1289 time, new information, changed circumstances, or a project redesign, and to allow for the
1290 public review required for a subsequent or Supplemental EIR are also beyond the fast
1291 track timelines, as they require the same notice and public review as is given a Draft EIR.

1292 In sum, a comprehensive public review of all mining proposals is both complex
1293 and essential to protect public health, safety, and welfare. Corners cannot and should not
1294 be cut in general or to help any specific project. The tail should not wag the dog. County
1295 citizens deserve no less.

1296 While today's agenda says it is about fast tracking for mining policy generally, it
1297 is clear that but for the denial of a certain project, the fast tracking proposal would not
1298 have been brought before the Board today. Because of this nexus it is relevant to
1299 understand whether a revised Fast Track Policy would or should apply to Granite's
1300 already filed reapplication. We would strongly object to pending projects in the pipeline
1301 being accommodated by a future fast track project—a future Fast Track Policy.

1302 There are significant issues of legal concern that are; that would also be raised by
1303 such application. The approval of Liberty Quarry EIR is already under a legal cloud,
1304 including is a threshold issue that the County lacked jurisdiction to approve the EIR after
1305 it denied the project.

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1306 Public Resources Code Section 21090(b-5) is an absolute non-discretionary EIR
1307 exemption for disapproved projects. It will be argued that the Board abused its discretion
1308 in approving that EIR.

1309 The so-called revised project does not reduce or otherwise change the footprint of
1310 the project from the reduced quarry footprint alternative in the EIR, therefore adverse
1311 impacts remain the same; unacceptable magnitude in key areas such as biological, and
1312 cultural resources, and groundwater hydrology.

1313 Moreover, impact reduction does not mean taking the impact below a level of
1314 significance or that it can be fully mitigated. I think you've heard testimony today that
1315 projects with significant or significant unmitigated impacts are really inappropriate for
1316 the fast track and that's true whether or not they already have a certified EIR.

1317 And areas of impact reduction are also not guaranteed; there's no mechanism in
1318 place to prevent future expansions of the quarry that would increase air, traffic, noise,
1319 operational, and other impacts to or even beyond the levels indicated in the twice rejected
1320 project design.

1321 We respectfully ask this Board not to open the door for that today. For the above
1322 reasons, we respectfully request that the Board reject the three motions as recommended
1323 in the Form 11 and take no further action to include mining in the list of fast track
1324 projects.

1325 In closing, the recommended motions do not reflect the statements by some of the
1326 Supervisors today regarding studying or discussing whether mining should be on the fast
1327 track.

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1328 The recommended motions before you are directive. They say initiate, revise,
1329 prepare. You've heard also that none of the stakeholders who were mentioned today; the
1330 Department of Conservation, the City, the Tribe, were consulted on today's action. There
1331 was only one stakeholder who was consulted on this and that apparently was Granite and
1332 its lawyers.

1333 The action before you today is not an innocent attempt to add a variety of projects
1334 to the eligibility list in order to stimulate the economy. Supervisor Benoit was clear in
1335 the press. The intent of the action today is to fast track Liberty Quarry. You,
1336 Supervisors, have the opportunity today to nip that reckless outcome in the bud. Thank
1337 you, and we will remain available for any questions.

1338 CHAIR TAVAGLIONE: {OFF MIKE} Okay, hold on. {ON MIKE} Thank you,
1339 Miss Coyle. Dr. Teo Beam, followed by Julie Waltz. {OFF MIKE} {NOT
1340 INTELLIGIBLE}

1341 DR. TEO BEAM: Hello, hello. Hi, my name is Dr. Teo Beam and I'm a resident
1342 of Temecula. I don't have a practice right now. I retired years ago due to some injuries
1343 to my shoulders, so I'm not here actually to talk about the health hazards that you all, I'm
1344 sure, are pretty aware of. Some of you actually get it, some don't.

1345 There's talk about jobs gained in this area, but nobody's talking about jobs lost. I
1346 had a business in Arizona. I moved it here. I lived in a town, it was called Sahuarita,
1347 Arizona. My business is called Ready, Set, GO Racing. I put on outdoor racing events;
1348 5Ks, 10Ks and marathons, triathlons.

1349 After living in that area for three years ASARCO Mines, Freeport-McMoRan had
1350 over doubled the amount of mines in that area. The pollution was getting horrendous.

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1351 The reports that they released said it was safe. Later on we found out that the reports
1352 were incorrect and all they had to do was pay a fine and continue with what they're
1353 doing, although the children that I started a youth track and field team for, were breathing
1354 in the dust and complaining about it.

1355 It was time to get out of Arizona. I did my research, looked here, saw that what
1356 you guys had done, turned down that mine, thought, (well) what a place to move to. Now
1357 we've got this mess in front of us. It's just; it kind of blows my mind.

1358 You heard Mayor Washington talking about the (pig) money that will be lost. I
1359 run a small business. I have four people right now; race day another ten to 20 people.
1360 Maybe those won't be here. Those are jobs lost. People coming out to do fun adventure
1361 races; they may go elsewhere.

1362 One thing I want to tell you. It's my father's fifty year pin. He was in the
1363 Cement Mason's Union for 50 years. I believe in union work but only when it's done
1364 right. My father breathed in the epoxy fumes for eons, told it was safe. He finally passed
1365 away two years ago to COPD. His lungs were a mess. The doctors at the Mayo Clinic
1366 attributed it to the epoxy that he breathed in that was safe. It's not.

1367 In closing, I would just like to share with you that although not of Pechanga and
1368 Luiseño blood, I do have Otomi and Choctaw in me and I stand with my brothers and
1369 sisters in their fight against this, thank you.

1370 CHAIR TAVAGLIONE: Thank you, Dr. Beam. Julie Waltz. Julie is going to be
1371 followed by Christopher Mueller.

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1372 JULIE WALTZ: Good afternoon, Mr. Chair and members of the Board and the
1373 public. I think everything has pretty well been covered and I really give kudos to the
1374 Town of Temecula for standing up for what they believe in and I'm backing them 100%.

1375 But I just, I'm really curious about one thing. If this amendment gets passed, this
1376 agenda item number 3.84, there's an approximate amount of 2,250 dollars for this... what
1377 is it called, this amendment to be initiated. Is Granite Construction going to pay for that,
1378 or is that, the taxpayers' going to pay for that if they, if you guys go ahead and...

1379 Mr. Benoit, I know you've taken a real big tongue lashing here today, but are we,
1380 the taxpayers, going to have to pay for the initiation of this amendment, because I oppose
1381 it.

1382 CHAIR TAVAGLIONE: Julie, this is a, this is a County initiated item at the
1383 request of Supervisor Benoit, so if it is approved, then the County would be paying for it.

1384 JULIE WALTZ: The taxpayers.

1385 CHAIR TAVAGLIONE: Correct.

1386 JULIE WALTZ: Okay, alright. That's all I wanted to know, and I just want to
1387 add one more thing. When that Sketchers Warehouse went in, it didn't employ any
1388 people in Moreno Valley. They brought all their people over from Ontario, California.

1389 So that's the same thing that's going to happen if you pass this, and these people
1390 are on it. They're not dumb, they know what's going on, the people of Temecula, and
1391 they're going to watch you guys like hawks, so I advise you not to pass this. Thank you.

1392 CHAIR TAVAGLIONE: Thank you, Julie. Christopher Mueller. Christopher
1393 Mueller will be followed by Kristen Peck. Mr. Mueller.

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1394 CHRISTOPHER MUELLER: Good afternoon, my name is Christopher Mueller
1395 and thank you for having this meeting and allowing us to speak. Mr. Benoit, in your
1396 request to amend the ordinance for fast tracking, you said this would give the Board the
1397 power to consider worthy projects at its discretion.

1398 This statement is disingenuous at its best in (a), that it bypasses the democratic
1399 process, it then bypasses the ability for any public input and (b), it's, if you look at it, it's
1400 a blatant payoff to Granite Construction. You're paying a political debt to them. They're
1401 your largest contributor. There not? Okay, they're a very large contributor, I stand
1402 corrected, thank you. They're a very large contributor to your campaign, and when you
1403 come right down to it part of it says it's for considering worthy projects.

1404 This isn't a worthy project. Everyone knows this. It's been proven over and over
1405 again. This is not a worthy project. I'm grossly insulted that you would think that you
1406 could put something over like this to the general public and that you would try to do this
1407 to your constituents.

1408 I think that because of your campaign contributions from Granite Construction
1409 you should recuse yourself from any vote on such a project. I think that to do otherwise
1410 lacks basic honesty. I would ask the Board of Supervisors to please turn down this
1411 amendment. Thank you very much.

1412 CHAIR TAVAGLIONE: Thank you, Mr. Mueller. Kristen Peck. Kristen Peck
1413 will be followed by John Smith.

1414 KRISTEN PECK: Hi, thank you for hearing me today. My name is Kristen
1415 Cowan Peck and I was born and raised in Riverside County. I've lived in Temecula since

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1416 the mid-90s and my husband and I have been following the news and watching this, this
1417 projects in its, all of its efforts over the past seven years.

1418 We're very meshed; we really don't want the fast track to go through. We're very
1419 meshed in the Temecula and Murrieta Community; work, church, schools, etcetera, and
1420 everyone that we know does not want this quarry.

1421 We're very well aware of how it will affect our neighborhoods and community at
1422 large and I'm just here to ask you to please listen to all of us who will have, have our
1423 lives with this quarry negatively affected with our air quality and our beautiful lush green
1424 mountains that open to our Rainbow Gap; our Rainbow Gap through which flows daily
1425 fresh ocean breezes and gives us clean air.

1426 Please do not dismiss the feelings, opinions and beliefs of all of us who would
1427 have to live our lives with the negative impact of this horrible project or move away.
1428 Please don't fast (prack); fast track this project, thanks.

1429 CHAIR TAVAGLIONE: Thank you, Miss Smith. John Smith, or Miss Kristen
1430 Peck, my apology. John Smith. John Smith will be followed by Robert Frost.

1431 JOHN SMITH: Good afternoon.

1432 CHAIR TAVAGLIONE: Good afternoon.

1433 JOHN SMITH: Board of Supervisors, let me first say that I have been in the
1434 construction industry since 1961 and I have been successful in that in representation of
1435 people in the construction industry. Employment; I'm only going to tell you that you
1436 know how bad it is right now in this country. We rely on good projects, good employers
1437 and our history is in the private industry. We have negotiated strong and tough
1438 agreements with the private industry.

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1439 I know that there's a lot of emotion here, but I have been walking....quarries all
1440 my life. Quarries are the life blood of aggregates that supply the entire country. I don't
1441 care if it's highways, housing, commercial, industrial; you can't find anything that
1442 doesn't deal with aggregates that come out of quarries.

1443 Is this particular quarry different? It is different because it's a quarry; and I have
1444 walked many a quarries, I have represented the blasters and, and the drillers in all the
1445 open pit quarries in Southern California.

1446 They used to have lots of problems. They don't have those problems because of
1447 technology today. I don't care what some of these people are saying. I think they're
1448 insulting. I think some of the things that they're saying are very rude and they, and there
1449 is complete misunderstanding.

1450 You cannot drive down the highway without seeing a quarry. If you go to
1451 Cabazon you're going to see a huge quarry across the street from a 26 story gambling
1452 casino. So, wherever you go; I don't care if you go over here to All American Asphalt, it
1453 is a huge quarry, six times bigger than what you're talking about here as far as this
1454 quarry.

1455 I have been in quarries most of my life, in and out, and I think what it would
1456 behoove you to do is slow down, do the right thing here in finding out the clear
1457 information about whether or not the quarry is what you believe it is as Supervisors.

1458 CHAIR TAVAGLIONE: Alright, thank you, John.

1459 JOHN SMITH: Thank you.

1460 CHAIR TAVAGLIONE: Next speaker, Robert Frost, will be followed by Laurie
1461 Stahlmaker. Is Bob Frost here? Nope? I saw him earlier. Okay, Laurie Stahlmaker. Is

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1462 Laurie here? Oke-dokey. We'll put them to the back of the line here if they show up.

1463 Great; Tony Madrio; Tony Madrio, is Tony here? Okay. How about Jeff Fellows, Jeff

1464 Fellows. Alright. Ronnie Vanderhooven. I think I'm saying that correctly. Ronnie.

1465 Okay. Todd Vaughter. Todd Vaughter. Is that you, Todd? That's not, can't, are you

1466 Todd? No, you can't be Todd.

1467 Okay. {CHUCKLE} This is in support, you're in an orange shirt. Okay, Vince

1468 Davis; Vince Davis, is Vince here? Okay, Vince. Vince will be followed by Julie

1469 Gilbard. Is Julie Gilbard here? Okay, great. So get ready to come on up, please. Vince.

1470 VINCE DAVIS: Good afternoon, I'm Vince Davis. I'm clearly not in an orange

1471 shirt. Several thoughts come to my mind. I understood we were here to determine if we

1472 were going to grant permission to review the fast track process; not to go through the

1473 entire quarry process again today.

1474 Another thought that pops to my mind is Mr. Benoit is the one gentleman who's

1475 got the most experience, probably, with a large quarry in his zone. You've got huge

1476 quarries out there and you're the gentleman that if anybody were going to recommend

1477 this consideration, you probably have the best experience at it.

1478 There's only one person here that doesn't have that experience, I believe, in your

1479 own district, and so I think you for this time. I realize you've been working on this for

1480 years, but I am in favor of this researching the ability to possibly fast track more jobs in

1481 the area, whether they be obviously this quarry, but whether they be anything else. More

1482 jobs are more important right now than almost anything in Southwest Riverside County,

1483 thank you.

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1484 CHAIR TAVAGLIONE: Thank you. Julie Gilbard. Julie Gilbard will be
1485 followed by Adele Harrison. Is Adele here? Okay.

1486 JULIE GILBARD: Good afternoon Supervisors. The founders of our nation
1487 founded it on the idea of inalienable rights, which they enshrined in the Constitution. In
1488 numerous quotes the founders stressed that the right to own private property...

1489 MALE SPEAKER: {OFF MIKE} Go ahead {NOT INTELLIGIBLE}.

1490 JULIE GILBARD:is the foundation of our freedom. Granite Construction is
1491 the owner of this quarry property, not the environmentalists, and not the Pechanga Indian
1492 Tribe; therefore, neither should be given the power to dictate this property's use. Had
1493 they wanted to dictate the use they could have bought the property, or subsequently they
1494 could have offered to buy it from Granite, but they have not done so.

1495 As you've pointed out, surface mining is one of the most highly regulated
1496 industries already in this state, and Granite has gone to great expense to fulfill every
1497 comprehensive requirement asked of them to obtain their permit. It culminated in an EIR
1498 that has now been certified by a majority of this Board.

1499 The opposition's arguments consist of fear based suppositions that are bogus. If
1500 these impacts were real they'd be in evidence at existing quarries in the County, but they
1501 aren't. Asserting that something could or might happen is supposition, not proof. This
1502 includes Mr. Jacobs saying that (emissions), that (he's) guaranteeing emissions will
1503 destroy the environment but presenting no evidence, same with Mike of Temeku Hills
1504 and in addition it has been proved many times that this is not, in fact, even close to the
1505 biggest quarry, yet they continue to repeat that.

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1506 I also want to add that my doctor's name is on the touted Doctors List against the
1507 quarry, but I know that he actually supports the quarry. How many other doctors on that
1508 list are there fraudulently? I think opponents should be required to certify all those
1509 signatures.

1510 I will just end by saying that if this Board does not approve the quarry then you
1511 have an obligation to close down every existing quarry in the County because they are
1512 doing nothing different than what Liberty would do, except that Liberty will have even
1513 less environmental impact because they are using newer cutting edge technology than the
1514 current quarries. I urge you not to make a decision on political correctness or emotion,
1515 but on the law and to do what's right and, and when the time comes to fast track Liberty's
1516 Quarry. It's been seven years. I don't think that can be called rushing. Thanks.

1517 CHAIR TAVAGLIONE: Thank you, Miss Gilbard. Next speaker is Adele
1518 Harrison and ladies and gentlemen, while I said that I would be taking the opposition
1519 first, if you came in late and submitted your card, you still have to get in the back of the
1520 line, just so you know. Go ahead, Miss Harrison.

1521 ADELE HARRISON: Thank you, good, good afternoon. I; first of all, I live in
1522 Temecula in Morgan Valley, about as close as anyone to the proposed quarry. I am in
1523 support of fast tracking the mining and I just want to thank Supervisor Benoit. Too bad
1524 he's not still here, and Supervisor Ashley and (Travaglione) for approving the EIR that
1525 shows that all of the opponents fears are unfounded.

1526 We need that quarry for jobs in Southwest Riverside County. Granite will be
1527 using the latest technology so that our air quality, traffic, and the rest will not be affected,
1528 but will actually be improved. {AUDIENCE LAUGHTER}

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1529 The city council needs to be against the quarry, too, so that they can get elected. I
1530 would also like to see the City not wasting any more tax dollars on this issue. They have
1531 wasted far too much already and we need those jobs, and just to say there are quarries in
1532 all the other districts and there are houses that are close by and they're not complaining.
1533 By the way, thank you Supervisor Benoit.

1534 CHAIR TAVAGLIONE: Adele, I; for some reason your clock wasn't set when
1535 you came up so I'm going to give you another minute, I think.

1536 FROM THE AUDIENCE DIFFERENT SPEAKERS: No!

1537 CHAIR TAVAGLIONE: Thirty sec...I don't know how much time she has, so...

1538 ADELE HARRISON: Oh.

1539 FROM THE AUDIENCE: {NOT INTELLIGIBLE}

1540 CHAIR TAVAGLIONE: I'm just; we'll give you 30 seconds. How about that?

1541 ADELE HARRISON: Okay.

1542 CHAIR TAVAGLIONE: We'll compromise here.

1543 ADELE HARRISON: Anyway, Granite Constructions does lots of other projects
1544 for the City. They've helped the; built the hospital and a lot of other things. If Granite is
1545 such a horrible company, why have they been trusted to do many other projects?

1546 CHAIR TAVAGLIONE: Okay, thank you, Adele.

1547 ADELE HARRISON: Please do vote for that proposal.

1548 CHAIR TAVAGLIONE: Stephanie Dominguez. Where's Stephanie?

1549 Stephanie's here? You came in late but apparently you have some children you want to
1550 get home, so I'm going to let you speak, okay.

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1551 STEPHANIE DOMINGUEZ: Hi, thank you. I just have two children with me.

1552 In opposition to the fast tracking; I just wanted to speak strongly against that.

1553 CHAIR TAVAGLIONE: Speak any way you want to speak.

1554 STEPHANIE DOMINGUEZ: Okay.

1555 CHAIR TAVAGLIONE: Speak in whatever your position is.

1556 STEPHANIE DOMINGUEZ: Okay, basically my husband and I just invested our
1557 money to buy a second home in Temecula after waiting, long awaiting the decision
1558 handed down. We specifically waited for that decision and we purposely did not buy in
1559 Wolf Creek for fear of this happening.

1560 We wanted to buy over there. It was close to Birdsall where our children play
1561 soccer all the time and my husband plays soccer, and just the thought of our kids playing
1562 soccer and being on those fields all the time and thinking of the mine being on the other
1563 side, it was just horrific, and we finally decided to go ahead and in this economy, go
1564 ahead and buy that other house and go up and actually try to stay in the area for the next
1565 30 years, 40 years, buy the grandparent house that we wanted and do everything here.
1566 Then now this little thing comes up and we were just sickened, just beyond that.

1567 We're also teachers in the area and when you think about Great Oak High, you
1568 think about the kids and the reputation over there at that school; kids doing band,
1569 practicing for hours on the fields, you think about the parents; do you really think that
1570 they will want their kids practicing band for hours, soccer, softball, all of that over there
1571 at Great Oak?

1572 I don't think so. I wouldn't want my kids doing that. My five year old already
1573 has asthma. When she's playing out, even out in the Wine Country just inhaling more

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1574 dust she gets asthma attacks. Now to think about this; oh my gosh, now we got to think
1575 about inhalers more and all.

1576 It's really unfortunate. We talk about the tax dollars coming in. Well, there's
1577 going to be a lot of tax dollars lost, especially in real estate, and there's no promises of
1578 where the job money is going to be spent; if it's going to be spent in Temecula or where.
1579 Thing of the long term consequence.

1580 CHAIR TAVAGLIONE: Okay, Kenneth Dixon. Kenneth Dixon will be
1581 followed by Kenny Bell. Is Kenneth here, Ken Dixon, Ken Dixon. Kenny Bell.

1582 KENNY BELL: Good afternoon, Kenny Bell. I've got a little bit of laryngitis.
1583 My says at my age I've talked too much and I probably wore my vocal cords out, but I'm,
1584 tomorrow I'll make an appointment with the voice bank and see if I can get a little loan
1585 on some more.

1586 John, as usual, Supervisor Benoit, thanks for being a good businessman and
1587 looking at something that we really need. Of course, you all know that I'm in support of
1588 this proposal. The reason it is, it's jobs. I heard people come up here and talk and hear
1589 another inaccurate statement; the lady that just left, Julie, about Sketchers.

1590 I've lived in Riverside County for 62 years and guess what? I'll die here because
1591 I like it and everyone has a right to their opinion, but to see the way that some of the
1592 people in the crowd treat other people and how some people will put people on the spot
1593 by asking the questions they ask is just totally uncalled for. Thanks for being gentlemen,
1594 most of you and you're doing a good job, John.

1595 CHAIR TAVAGLIONE: Oh, thank you. {CHUCKLE}

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1596 KENNY BELL: I'll give you a good mark. {CHUCKLE} It's not like the
1597 Planning Commission. A couple of things; the Sketcher problem is; you know, people
1598 like to throw that out, it sounds good.

1599 That's true, we didn't get any jobs out of that. I know that City of Temecula and
1600 their; some of their people from their Legal Department (was) there tried to get the City
1601 of Moreno Valley to go along with this find. It was five to zero not to go along but to
1602 support the quarry.

1603 I don't think; I don't know of many cities that took that; took a stand opposing the
1604 quarry except Temecula and if I was; I don't know what I would do if I was in Jeff
1605 Stone's spot {SOUND CUTTING IN AND OUT} {NOT INTELLIGIBLE} be handled a
1606 little different, but I'd certainly {NOT INTELLIGIBLE} still look at jobs, and if people
1607 wanted to unelect me that would be their right. Everyone has a right for their opinion.

1608 Thank you, Mr. Ashley, too. That's my supervisor from my area. I lived there
1609 for years. It's a good business decision. People need work in construction. There has
1610 not been in Riverside County, a quarry I haven't personally been on in my line of work,
1611 and I can tell you that the methods have changed.

1612 When I hear people; these, all these so called experts getting up, spewing out their
1613 hatred and they're, and they're talking to people like they were second class citizens
1614 because they disagree. It kind of irritates me.

1615 This, this thing with Granite is, you guys realize that they're on a contract with
1616 most of the unions. They will employ people at a good wage and in that mix because of
1617 the {NOT INTELLIGIBLE} programs usually comes people from that area. It's true
1618 about Sketchers, but Sketchers and Granite are two different horses.

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1619 CHAIR TAVAGLIONE: Thank you Kenny. Thank you very much.

1620 KENNY BELL: Thank you very much.

1621 CHAIR TAVAGLIONE: Appreciate it.

1622 KENNY BELL: Good job.

1623 CHAIR TAVAGLIONE: Appreciate your patience. Gregory, Mel, Mel; Gregory

1624 Melvin, Gregory Melvin here? Okay, Theresa Newman, or New...she's gone. Gary

1625 Johnson. Gary Johnson will be followed by Gary Harrison.

1626 GARY JOHNSON: Chairman and Board of Supervisors; Gary Johnson, Granite

1627 Construction Company. We did submit an application, a revised application that your

1628 staff is reviewing. My purpose today is not to talk about that application but to talk about

1629 the agenda item.

1630 We support the agenda item before the Board today, which would make surface

1631 mining projects and their reclamation plans eligible to be processed under this Fast Track

1632 Ordinance just like any other project, and it would be your discretion as to which projects

1633 would be handled like that.

1634 Mining projects are the foundation for all construction and economic

1635 sustainability in this County and provide huge economic benefits in the way of jobs,

1636 property tax and sales tax, and indirect benefits.

1637 We urge you to give yourself the flexibility for mining projects as you have with

1638 other projects to fast track them if you see the need to do that.

1639 I thank you for your time and I urge your approval to push this, this proposal

1640 forward. Thank you very much.

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1641 CHAIR TAVAGLIONE: Thank you, Gary. Gary Harrison. Gary Harrison.
1642 Gary Harrison is not here. Alright, David (Reese), David (Reese). Okay, Olden Johnson,
1643 Olden Johnson. Doug (Beloyce), Doug will be followed by Jose (Menaz), I think.
1644 Correct me or excuse me if I butchered your name; Jose (Meyaz). Doug.

1645 DOUG (BELOYCE): Good afternoon; first of off I'd like to thank you, John
1646 Tavaglione, for holding these hearings in a civil manner, unlike the Planning
1647 Commission, which was a political circus. I don't know how many of you attended, but I
1648 went as much as I could in the evenings and it was a political circus.

1649 CHAIR TAVAGLIONE: (Thank you).

1650 DOUG (BELOYCE): My point in bringing that up is I think the facts have come
1651 out in this case and I spent a little time yesterday reviewing some of the testimony from
1652 the Planning Commission, the experts back and forth, and it was my impression, my
1653 impression, and I am a registered civil engineer in this state; I have construction
1654 background.

1655 I am a 33; 33 year resident of Temecula Valley, coached Jeff's son in Little
1656 League, worked countless hours at the Boys and Girls Club, which Maryann can attest to.
1657 I am a community activist and I'm here today because I'm tired of the rhetoric.

1658 I think that you have a responsibility as politicians to fast track this issue. We've
1659 heard all the facts. All the things that people are bringing up now that are opponents are
1660 just rhetoric. I have not seen anything that contradicts the experts' testimony that was
1661 brought up, and I'd just like to say one thing, and one thing that comes to my mind, most
1662 of the people in the room left today you see have orange shirts on, well, that's because
1663 those of us with green shirts work for a living.

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1664 {DISAGREEING REMARKS FROM THE AUDIENCE}

1665 SPEAKER FROM THE AUDIENCE: Oh, come on!

1666 DOUG (BELOYCE): Most of the people that have orange shirts on in this room
1667 are retired, representatives of the City, the Tribe, or they are environmentalist wackos,
1668 and I bring that up because look at halfway across the world, what's happening in the
1669 country of India right now as we speak, half the population, 600 million people, are
1670 without electricity. Why? Because they have shut down their coal fired power plants.

1671 Now this, the point that I bring that up is, you've got to look at the facts here and
1672 the people that keep bringing this stuff up ad nauseum about all this fear mongering, let's
1673 get back to the facts. Let's conserve the taxpayers' monies. City of Temecula spent over
1674 1.5 million to date. I'm sure the County's spending money. Let's get on with it. Thank
1675 you.

1676 CHAIR TAVAGLIONE: Thank you, Mr. (Beloyce). Jose, is Jose, I'm not
1677 saying your name right, Jose. Alright, Allen Wilson, Allen Wilson. Arthur Verdugo,
1678 Arthur Verdugo. Robert Sanders?

1679 AUDIENCE MALE SPEAKER: {NOT INTELLIGIBLE} here.

1680 CHAIR TAVAGLIONE: Laura Ward. Is Laura Ward here? Ronald Neff, I saw
1681 Sam (Yu); Sam, Sam, Sam. Sam (Yu) was here. Is Sam still here? No. Donald
1682 (Kessmoe), okay, Ken Johnson, Ken Johnson.

1683 KEN JOHNSON: Yeah.

1684 CHAIR TAVAGLIONE: Oh there you are, Ken.

1685 KEN JOHNSON: (I finished my hotdog). Good afternoon Supervisors. Before I
1686 say anything I wanted to mention that an attorney just came by up out here and stopped

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1687 me and said that they wanted me to mention one thing; that every one of those signatures
1688 on the Doctor List has been verified. But you know when somebody signs something,
1689 maybe they're the kind of person that talk out of both sides of their face.

1690 Okay, Riverside County Supervisors don't let Riverside County become a wholly
1691 owned subsidiary of Granite Construction by allowing this fast track amendment, clearly
1692 intended for Granite's Liberty Quarry Project to move forward.

1693 Tell Granite Construction that the Riverside Board of Supervisors is not for sale.
1694 Vote no to keep our County government independent from companies like Granite
1695 Construction, which make large generous contributions to elected officials.

1696 You know, I heard the term 'well vetted' used up here a bit ago. That made me
1697 laugh out loud (almost), I could have been ejected. Well vetted? You mean well rejected
1698 don't you? That Liberty Quarry has been well rejected by your appointees. You should
1699 be very proud of the work they did. That was a fantastic Commission Hearing Session
1700 down there. You act like you know nothing about what was said down there whatsoever.

1701 Now, you talked, too, about compromises being the great thing on this new idea
1702 of another start on Liberty Quarry; compromises. They're total jokes; three hundred feet,
1703 fifty years. Granite gets on the ground, they get those things, you can be sure, down the
1704 line.

1705 San Diego's the answer for us. San Diego's Aggregate Supply Study shows that
1706 they would never place such a humongous quarry next to and adjacent to a very sensitive
1707 area. Isn't our area proved to be a fairly sensitive area, and if Granite's market is 70% in
1708 San Diego, why are we talking about this?

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1709 They will, San Diego will permit the quarries as they're needed. There's not a
1710 market now. They've dredged their harbor to bring in those barge loads. They can do
1711 this. They will do it, but they won't do it your way by putting a humongous quarry next
1712 to sensitive areas. They will put in a small quarry here and there that can be easily
1713 reclaimed and restored, so this is ridiculous.

1714 CHAIR TAVAGLIONE: Thank you.

1715 KEN JOHNSON: Get on, instead of business like this, get on with shaping up
1716 your Planning Department...

1717 CHAIR TAVAGLIONE: Thank...

1718 KEN JOHNSON: ...as your Commissioners suggested you should do.

1719 CHAIR TAVAGLIONE: Thank you, Ken. Jean Powell. Jean Powell will be
1720 followed by Duane Hancock. Is Duane here?

1721 AUDIENCE MALE SPEAKER: {NOT INTELLIGIBLE}

1722 JEAN POWELL: I guess I was called earlier...

1723 CHAIR TAVAGLIONE: Yeah.

1724 JEAN POWELL: ...but I was waiting for my lunch out there so I missed it.

1725 CHAIR TAVAGLIONE: That's okay, glad you waited.

1726 JEAN POWELL: My name is Jean Powell and I am here to ask you, actually to
1727 beg you to just say no to fast tracking immediately to Granite Construction's Liberty
1728 Quarry.

1729 Remember, surface mines have the most severe and longest lasting impact of any
1730 project and they should never be considered for fast tracking. This opens up the

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1731 floodgates for any project presented to the Supervisors for fast tracking. It is just wrong
1732 to set this precedent.

1733 The way this has happened appears very suspicious to all of us who have been
1734 paying attention and it raises the question, who's being rewarded to fast track this
1735 project?

1736 Let those of us who will be affected and pay the price for having a huge gravel pit
1737 in our midst vote on it. That is the democratic way to decide yea or nay, pro or con,
1738 thank you.

1739 CHAIR TAVAGLIONE: Thank you. Next Duane Hancock, is Duane here?

1740 DUANE HANCOCK: I've already had my turn.

1741 CHAIR TAVAGLIONE: You already talked? Okay, great. George De Lallo,
1742 Robert Frost. Okay, that does our speakers. Is there anyone else in the audience that has
1743 not; requested to speak? Have you spoken already sir? Please come forward. You will
1744 be our final speaker. Okay, come forward as well.

1745 WAYNE HALL: My name is Wayne Hall. I was born here. I'm Shoshone, but
1746 that's not the point. How many of you people in Riverside County have the opportunity
1747 to fly over our magnificent County? I did that for 20 years in the Marine Corp. I've got
1748 the (scars) to prove it. But you know one of the best flights I've had is flying over my
1749 own County.

1750 Do you know how many abandoned quarries that are out there? I have no clue. I
1751 was hoping the Planning Commission might some idea, but I kind of doubt it. My
1752 question is, is just after they're done or anybody's done...

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1753 Shamrock, let's give them the example. Once they left; they got closed down,
1754 what happened to the land? It was abandoned. Big hole there now; I know, I used to
1755 drive my concrete truck.

1756 Oh, I'm sorry, I used to drive a cement mixer for 12 years until I got laid off, so
1757 now I'm a loony for the environmentalists, I guess. {AUDIENCE LAUGHTER} Well,
1758 my wife says worse. {AUDIENCE LAUGHTER}

1759 My point I want to make tonight is, you know, if you fast track this, how many
1760 other holes are we going to have in Riverside... Now, I know that the average citizen
1761 does not fly over Riverside County, I count myself lucky to, but the point is, what about
1762 the holes afterwards when they walk away?

1763 I know, let's do the same thing they did over in; well, they wanted to do at, what
1764 was that place called, Eagle Mountain? Let's just stuff it full of trash from LA County.
1765 We can have a train take it all out there.

1766 Well, what are we going to do about the holes afterwards; that's my concern.
1767 What are you going to do about the holes? You're not going to fill them in. Oh, let's
1768 make lakes out of them. Nope, the land's too porous. Where are you going to get the
1769 water? Who's going to pay for the water? What are you going to do about the holes left
1770 over? Thank you.

1771 CHAIR TAVAGLIONE: Thank you. Thank you for your service to the United
1772 States Marine Corp and our country as well. Sir.

1773 JAMES REED: {NOT INTELLIGIBLE} turned in a speaker slip.

1774 CHAIR TAVAGLIONE: I apologize, I probably passed over you or called your
1775 name earlier, but go ahead.

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1776 JAMES REED: Thank you very much for having this forum and allowing us all
1777 to come up and speak our opinions on this very critical and touchy issue. My name's
1778 James Reed. I am the Executive Director for the Center for Contract Compliance. I was
1779 a general (engineer) and contractor in Southern California for over 22 years.

1780 I know how critical natural resources are in Southern California particularly.
1781 They're, they're diminishing and as a contractor I know what the costs were to transport
1782 those materials, whether it's concrete, asphalt, any other materials that have aggregates in
1783 them. And something; and I appreciate all the concerns that the people in Temecula
1784 Valley have and they're rightfully so, but the thing they didn't think about was the cost,
1785 the additional cost in their area for construction in the future, which means transporting
1786 all of those aggregates into that area at a cost far exceeding what it would cost if they had
1787 a local quarry there.

1788 I disrespect the disrespect that some of the people have shown to some of you
1789 Supervisors. It's not right. You have difficult decisions to make all the time and
1790 progress is progress.

1791 The Hoover Dam had contention. San Francisco's Golden Gate Bridge had
1792 contention. No matter where this quarry would be built there's going to be contention,
1793 whether it's Anaheim, Riverside, Buena Park. Progress is often fought for many reasons
1794 but also as Director now, the Center of Contract Compliance, I represent workers,
1795 mainly, and there will be jobs created, long term jobs created and I support this, thank
1796 you.

1797 MALE SPEAKER: Thank you.

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1798 CHAIR TAVAGLIONE: Alright thank you. That concludes our speakers. I am
1799 going to now pass it back over to Supervisor Benoit, unless there are any other speakers,
1800 any other members of my...

1801 FAYE WANDS: Supervisor? Supervisor.

1802 CHAIR TAVAGLIONE: I'm going to allow one more speaker. Do you want to
1803 speak? Have you spoken yet?

1804 FAYE WANDS: No, I have not.

1805 CHAIR TAVAGLIONE: Well then, did you put in a slip? You do have one now.
1806 No, just come forward. You will be our last speaker; final, last, final, over.

1807 FAYE WANDS: My name is Faye Wands and I am scared to death.

1808 CHAIR TAVAGLIONE: You should not be scared to death.

1809 FAYE WANDS: {CHUCKLE} I live in Murrieta.

1810 CHAIR TAVAGLIONE: Look at what went; look what went before you. Just
1811 relax.

1812 FAYE WANDS: Oh. {AUDIENCE LAUGHTER} I live in Murrieta. I've been
1813 a resident there 14 years. I am a native Californian. I am retired. I have worked and
1814 paid my taxes since I was 15 years old and I resent people saying that because I am
1815 retired I don't count.

1816 I really do oppose the fast track. I don't care who's responsible. This has gone
1817 on many more years...

1818 CHAIR TAVAGLIONE: (Do you want to say) {NOT INTELLIGIBLE}.

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1819 FAYE WANDS: ...than I knew about and it was decided once. Now, what are
1820 we going to do; if people don't like the results from this they're going to come back again
1821 and start more stuff? It's not right. It has been turned down.

1822 I, as a retiree, I am on a very fixed income. I can't afford to move and I live just
1823 north of Murrieta Hot Springs Road, if you guys are familiar with that. That wind comes
1824 right over my yard.

1825 I, too, have lung problems and that is one reason why I chose the Temecula
1826 Valley to live was because of the air quality and I fear that if this goes through regardless
1827 of what they say, if all of the silica and mica, whatever it is, comes through there it's
1828 going to be too late for me. I can't go anywhere else. I spent my life savings to move
1829 here, and then, that's it.

1830 CHAIR TAVAGLIONE: You did great, thank you. Alright, that concludes our
1831 audience speakers. We now, I'm now going to turn it over to our Counsel, Karen Watts-
1832 Bazan.

1833 COUNTY COUNSEL WATTS-BAZAN: In light of the rec...the testimony
1834 today, there are a few things I'd like to say for the record. Thank you sir; this is a request
1835 to initiate ordinance amendments and to direct staff to prepare such amendments.

1836 The reason why we have this initiation process is to avoid the time and expense of
1837 preparing ordinances that have no potential for adoption. Fast tracking allows the Board
1838 to assume the role of the planning agency for fast tracked projects. The Fast Track Policy
1839 does not require projects with EIRs to be heard within 90 days after the date of their
1840 submittal. It requires the Board to hear the application as soon as feasible. Fast track
1841 processing for projects doesn't mean individuals are not afforded due process and

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1842 specifically the right to be heard. Any action taken today does not fast track the newly
1843 submitted Liberty Quarry Project.

1844 CHAIR TAVAGLIONE: Okay, thank you, Karen; alright, Supervisor Buster.

1845 SUPERVISOR BUSTER: Just a couple of questions about, about alternate timing
1846 here. There was, there were three possibilities here if Granite wanted to come back with
1847 a revised, revised proposal. The first one's been eliminated but maybe you can give us an
1848 idea. Had the, had their EIR not been certified then, and they came back with a modified
1849 proposal approximately when would be the earliest point where this Board might, or a
1850 future Board might be considering it?

1851 That's, that's, that was possibility, one, here with the project; they could have
1852 come back, they could have had their EIR, had to do a whole new EIR. How long would
1853 that take before it got back to the Board?

1854 COUNTY COUNSEL WATTS-BAZAN: With a whole new, with a whole new
1855 EIR...

1856 SUPERVISOR BUSTER: Right.

1857 COUNTY COUNSEL WATTS-BAZAN: ...it could take upwards of a year plus
1858 to get it back to the Board with a whole new EIR.

1859 SUPERVISOR BUSTER: Alright, and, and in that original process did Granite
1860 have an option to include a fallback position; that is, something like the modified
1861 proposal that they're talking, bringing forward now? Did they have that option to have
1862 this, this bigger project that they went with, but also have a fallback alternative analyzed
1863 in that original submittal?

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1864 COUNTY COUNSEL WATTS-BAZAN: There, there were alternatives that
1865 were analyzed in the original submittal. I have not taken a look at their current
1866 application they have on file at this point. It was just submitted last week, as you know.
1867 I'm not sure to what extent Planning has had an opportunity to really take a look at it
1868 either. I doubt much time has been available for that.

1869 SUPERVISOR BUSTER: But what... again, if they, if they have to do, if it
1870 would have; would have had to, to have done a new, whole new EIR when, about how
1871 many, how many months, how many years out would, would this Board be looking at, at
1872 say, this, this revised proposal?

1873 COUNTY COUNSEL WATTS-BAZAN: A whole new EIR; again, would be,
1874 would be at least a year and, and I want to emphasize, too; I mean, I believe they
1875 submitted their application in 2005 originally, so obviously it took many, many years to
1876 get that project to the Board.

1877 SUPERVISOR BUSTER: Okay.

1878 COUNTY COUNSEL WATTS-BAZAN: And the EIR was done {NOT
1879 INTELLIGIBLE}.

1880 SUPERVISOR BUSTER: Alright, and then again approximately...without fast
1881 track but with this, the situation as it is right now before we take any action today with
1882 they're being able to use their, their original EIR, when could this modified proposal be
1883 considered by this Board?

1884 COUNTY COUNSEL WATTS-BAZAN: With using the certified EIR?

1885 SUPERVISOR BUSTER: Right, right.

1886 COUNTY COUNSEL WATTS-BAZAN: Okay.

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- 1887 SUPERVISOR BUSTER: And without fast track.
- 1888 COUNTY COUNSEL WATTS-BAZAN: You're throwing them at me now.
- 1889 {CHUCKLE}
- 1890 SUPERVISOR BUSTER: What?
- 1891 COUNTY COUNSEL WATTS-BAZAN: With the certified EIR, correct?
- 1892 SUPERVISOR BUSTER: Yes.
- 1893 COUNTY COUNSEL WATTS-BAZAN: We still have to look at the application
- 1894 that's been submitted and what further environmental documentation or studies will be
- 1895 necessary, too, for that project to move forward and we haven't done that yet.
- 1896 SUPERVISOR BUSTER: Well, what I'm, what I'm getting at is...is what
- 1897 amount of time does fast track cut from the process, from that process? How long would
- 1898 that process take at the earliest?
- 1899 COUNTY COUNSEL WATTS-BAZAN: Well, previously there were six
- 1900 Planning Commission hearings before the Board.
- 1901 SUPERVISOR BUSTER: So it's really the Planning Commission...
- 1902 COUNTY COUNSEL WATTS-BAZAN: Correct.
- 1903 SUPERVISOR BUSTER: ...the extra time the Planning Commission would
- 1904 take...
- 1905 COUNTY COUNSEL WATTS-BAZAN: Correct.
- 1906 SUPERVISOR BUSTER: ...that the fast track eliminates, is that right?
- 1907 COUNTY COUNSEL WATTS-BAZAN: Yes.
- 1908 SUPERVISOR BUSTER: And about how much time could that, at a minimum,
- 1909 if, if the, if the Planning Commission, you know, truncated its review and whatnot, when,

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1910 when would the, when would the project be back before this Board, with the Planning
1911 Commission, with the (original), with the current process in place where it does not
1912 overstep or bypass the Planning Commission?

1913 CHAIR TAVAGLIONE: You're talking, I'm sorry, Supervisor, you're talking
1914 about the fast; if...if we agreed to fast track today, whether it would be the, be back
1915 before us, the project, the Granite Quarry Project?

1916 SUPERVISOR BUSTER: Yeah, I'm trying to get, get at what...what these
1917 various alternatives...

1918 MALE SPEAKER: {OFF MIKE - NOT INTELLIGIBLE} Planning director.

1919 SUPERVISOR BUSTER:what effect they have on how long Granite and
1920 the...and the opposition have to wait before, before they get a final decision on this
1921 modified project out of this Board. How long is it without the fast track; how long, how
1922 much longer, I mean how much shorter is it with the fast track?

1923 COUNTY COUNSEL WATTS-BAZAN: It's hard for me to comment on that
1924 because I haven't seen what they've submitted, so I hate to give you a date certain...

1925 SUPERVISOR BUSTER: Well...

1926 COUNTY COUNSEL WATTS-BAZAN: However, however, I mean, certainly,
1927 certainly if, if this project were not fast tracked then, then and if we could, if we could set
1928 forth some procedures at Planning Commission that would allow this to be expedited
1929 through Planning Commission in an efficient manner we could certainly get it to the
1930 Board within the next...several months, I would think, assuming there's no further
1931 environmental documentation necessary.

1932 SUPERVISOR BUSTER: And so fast track...

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1933 COUNTY COUNSEL WATTS-BAZAN: (I hate to throw out) qualifications on
1934 that, but...

1935 SUPERVISOR BUSTER: ...knocks how many months off that?

1936 COUNTY COUNSEL WATTS-BAZAN: Say that again, I'm sorry.

1937 SUPERVISOR BUSTER: What, I mean, we're, we're all here to consider fast
1938 track, what does it (do), and the main, the main reason we're being told is it gets, gets the
1939 project going and gets jobs going faster. How much faster? {NOT INTELLIGIBLE}

1940 COUNTY COUNSEL WATTS-BAZAN: It depends on a case by case basis.

1941 SUPERVISOR BUSTER: Alright, well, let me go back here. I mean, that's; we
1942 had some of the proponents, a couple of them, I think Mr. Smith told us to go slowly here
1943 when we consider fast track, and that's kind of interesting. We're being told we need to
1944 speed this project up. At the same time we're being told, look, the Board if it even
1945 approves fast tracking it can exercise its discretion to approve on a specific case by case
1946 basis whether to authorize fast track.

1947 Well, here's our first, first...first time we can exercise discretion and on, on what
1948 basis do we exercise it? You can't even tell me what this does.

1949 COUNTY COUNSEL WATTS-BAZAN: Well, you're going to, you're going to
1950 exercise your discretion on fast tracking Liberty Quarry specifically once we bring back
1951 ordinance {NOT INTELLIGIBLE}...

1952 SUPERVISOR BUSTER: We don't, we don't have any requests from any other
1953 mining interests for this process, do we? {AUDIENCE LAUGHTER} I mean, {NOT
1954 INTELLIGIBLE}.

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1955 COUNTY COUNSEL WATTS-BAZAN: No, we don't; the only fast track
1956 authorization we, request we have today is the one that Liberty Quarry has submitted,
1957 you're correct.

1958 SUPERVISOR BUSTER: Okay and I have mines in my district, some of which
1959 are undergoing revised permits and my folks read the newspapers and they, they (don't
1960 call me), nobody's called me. Nobody said, hey, I think this is a great idea where; or in
1961 the past fast track could have really helped us out in this way, or can't you do some
1962 modified form of fast track? And I have, I have literally hundreds of millions of dollars
1963 in mining interests in the Temescal Valley in my district right now but I've not heard
1964 from them.

1965 Now maybe they'll call me up tonight or tomorrow, I don't know, but we're being
1966 told we can exercise discretion. What is the information that a future Board would have
1967 to be able to properly, intelligently exercise its discretion as to which projects; you know,
1968 when, get, get the gold ring and go forward with fast track and which ones, sorry guys,
1969 you're, you just don't qualify for fast track in my estimation. How, what, what is our
1970 basis for using our discretion...

1971 COUNTY COUNSEL WATTS-BAZAN: Well, but...

1972 SUPERVISOR BUSTER: ...in the future, particularly when we haven't done any
1973 studies when we're authorizing fast track. We don't even have any analysis, competent
1974 analysis before us of the project; and here today when we're being asked to even start the
1975 process. Our own staff can't tell us what that process does in the key, in the most key
1976 aspect of speeding up the process, of speeding up the project.

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1977 COUNTY COUNSEL WATTS-BAZAN: Well, getting back to eligibility and
1978 criteria; that is set forth in, in your Fast Track Policy. There, there is specific eligibility
1979 criteria that is spelled out for, for...

1980 SUPERVISOR BUSTER: It's, it's, it's mainly economic, though, isn't it, not...

1981 COUNTY COUNSEL WATTS-BAZAN: Yes, absolutely, for commercial
1982 industrial projects.

1983 SUPERVISOR BUSTER: ...(we need some, there is) some threshold. Now,
1984 suppose you have two projects that meet those, or three projects that meet those
1985 thresholds. Is it still automatic that a Board member or a Board majority would have to
1986 fast track, or do, does a Board majority have some discretion even though they meet these
1987 thresh, economic thresholds; so many jobs, so many millions of dollars; that for other
1988 reasons we could say, oh, this really needs a closer examination, we don't want you to
1989 skip, or we think you ought to have some fast track, but, and you should have some
1990 additional studying. Does the Board or Board majority would still have that ability?

1991 COUNTY COUNSEL WATTS-BAZAN: I believe the Board would have that
1992 ability, yes.

1993 SUPERVISOR BUSTER: Alright.

1994 CHAIR TAVAGLIONE: But if I could just clarify, Bob, and you, most
1995 everybody other than perhaps Supervisor Benoit, when the economy was good and we
1996 fast tracked a number of projects that fell within the current ordinance that allows us to
1997 do that; it was to fast track within a 90 day period, correct, that was the time limit to
1998 allow us to fast track within 90 days?

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1999 COUNTY COUNSEL WATTS-BAZAN: We bring it back to the Board within a
2000 90 day period unless the project's (affiliated), has an affiliated EIR with it.

2001 CHAIR TAVAGLIONE: Right, and...

2002 SUPERVISOR BUSTER: So, if, if you fast track this, this; start this Fast Track
2003 Process, get it developed and it's approved, and this revised proposal from Granite gets
2004 on the fast track, when could; when could this Board be considering that project again?

2005 COUNTY COUNSEL WATTS-BAZAN: Okay, so best case scenario if we're
2006 talking actual dates, we could bring back amendments to introduce, introduce and adopt
2007 on August 28th, and then adopt on September 11th. The amendments to those ordinances
2008 will go into effect on October 11th.

2009 As early as October 16th the Board could approve or deny fast, fast track
2010 authorization for Liberty Quarry, and then within that; after they receive that, we would
2011 have to bring a project back to the Board within 90 days.

2012 SUPERVISOR BUSTER: Alright, so as early as the middle of October the Board
2013 could (consider) this project?

2014 COUNTY COUNSEL WATTS-BAZAN: The Board could consider fast track
2015 authorization for Liberty Quarry.

2016 SUPERVISOR BUSTER: And then, and then this project could come back
2017 within, within 90s.

2018 COUNTY COUNSEL WATTS-BAZAN: Within 90 days.

2019 SUPERVISOR BUSTER: After the middle October, so it could come back, what,
2020 30 days later, 60 days?

2021 COUNTY COUNSEL WATTS-BAZAN: Potentially, potentially, yes.

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2022 SUPERVISOR BUSTER: And up to 90 days later.

2023 COUNTY COUNSEL WATTS-BAZAN: Yes.

2024 SUPERVISOR BUSTER: Okay.

2025 COUNTY COUNSEL WATTS-BAZAN: We'll have to review the application.

2026 SUPERVISOR BUSTER: Alright, I, I just wanted to make sure people

2027 understood what...what was going on here in the way of timing because this is essential,

2028 too, and I think it is interesting that we're; I have not experienced in the past calls for fast

2029 tracking with the other mining operations in my district.

2030 You know, I, I, you know, {NOT INTELLIGIBLE} they're long term projects.

2031 Here this one's being cutback 50 years from 75 years. They go on and on for a long, long

2032 time and everybody's made the point about their complexity and then their importance

2033 and so forth. So, the, the...

2034 This, this applicant already and, in fact, got a major consideration with timing and

2035 cost, for that matter. They already have a modified fast track, and that is the approval of

2036 their, their original EIR. That, that takes them back here a lot faster than would have

2037 otherwise been the case with this, with this new proposal.

2038 So I am not; I don't see the, the reasoning behind; or the need for giving this

2039 applicant; that's all we're talking about right here, there's no others that are pressing for

2040 this at this point, several extra months what it turns out to be; maybe as many as six

2041 months with a fast track. It's not that much.

2042 I don't think it makes or breaks our economy, particularly when you're talking

2043 about a 50 year, 50 year project, and, and when, when a project is so important,

2044 supposedly, that we've got to, we've got to short circuit the normal planning processes

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2045 that have been in place for a long, long time and that allow people to have their say and,
2046 and particularly with Planning, Planning Commission, is a very valuable step in this
2047 process. I want to see some overwhelming need for that; not just one applicant, not, but,
2048 but some really... a major basis for making that leap and, and I don't see that today.
2049 Maybe, maybe my other Board members' other arguments will, will show me what that
2050 is, but I don't see it to; that there is a need to change our processes around here and this,
2051 this applicant already, as I pointed, already has a significant advantage in being able to
2052 bring back their revised proposal already.

2053 CHAIR TAVAGLIONE: Thank you for your comments, Supervisor Buster; any
2054 other members? Supervisor Stone.

2055 SUPERVISOR STONE: Thank you, Mr. Chair. There was a speaker that had
2056 mentioned that we have a number of elections going on right now, including my own.
2057 I'm very grateful that the, the citizens of the Third District elected me in the primary. I, I
2058 made it clear in my campaign statement that this is going to be my last term on the Board
2059 of Supervisors, so that gives me a lot of liberty to, to speak my mind a little bit more
2060 without fear of political retaliations.

2061 Today's a very unfortunate day in the County of Riverside. This ill-conceived
2062 agenda item is nothing more than an end run to rewrite Ordinance 555, the County's
2063 Surface Mining Ordinance, not for fast tracking mining operations in another district, but
2064 to stifle opportunities for our constituents in the First and Third Districts to attend and
2065 express their concerns via the public hearing process on a specific project, a near (mirror)
2066 image of a project already heard and denied by a majority of this Board, namely the
2067 Liberty Quarry.

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2068 Ordinance 555 was written specifically for mining permits because of the
2069 controversy, impacts, and potential health hazards they may create without the
2070 appropriate mitigations.

2071 All the Supervisors need to understand that this is going to open Pandora's Box
2072 and will allow mines that are shut down or mines that are, could be proposed in areas that
2073 are not totally appropriate to get a fast track status countywide, so we all have skin on this
2074 game.

2075 The ordinance was not developed to make the process easy, but comprehensive in
2076 order to protect the health, and welfare, and safety of the residents we collectively
2077 represent. I think Supervisor Buster has made it very clear that we can go down this path
2078 of getting a fast track process defined; including surface mining permits, and then have a
2079 hearing to decide whether Granite Construction should be considered, although I think
2080 that decision's already been made.

2081 This ordinance mentions the word 'Planning Commission' twelve times. It
2082 mentions the word 'Planning Director' thirty times, emphasizing the dominant role the
2083 Planning Commission and the Planning Director have in navigating a project to either an
2084 approval or a denial based on objective data, not political influence.

2085 The only mention of the Board of Supervisors in Ordinance 555 is to act as an
2086 appeal body if the decision by the Planning Commission is challenged by the opponents
2087 or proponents of a mining project.

2088 Again, Supervisor Buster made it very clear that going through this process is
2089 going to equate to allowing the Planning Commission to have their hand in evaluating
2090 this project. We're not shaving any time off, and if the Planning Commission feels that

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2091 this new revised permit is one that they could support I would welcome that debate here
2092 at the Board of Supervisors where I'm sure there will be an appeal.

2093 Stripping the Planning Commission of these responsibilities would be derelict in
2094 our responsibilities to our constituents that depend on us to make the right decisions on
2095 behalf of them. Continuing the practice of allowing our Planning Commission to review
2096 and decide these application, applications is in the best interest of our citizens.

2097 I'm sure that my colleague from the Fourth District will claim that this is about
2098 jobs. Is the risk of approving a flawed project with a multitude of dangerous sequelae it
2099 could cause be worth a questionable 65 jobs the project may create? I don't think so.

2100 The Planning Commission is now finally hearing my Wine Country Expansion
2101 Project, which has been in the works now for a few years. This project promises to create
2102 over two thousand jobs at build out, yet I chose purposefully not to fast track it, although
2103 it certainly would have qualified for it, I think you would agree.

2104 But why didn't I fast track it? Because there would be many unforeseen
2105 consequences that must take; that we must take a serious look at; formulate mitigation
2106 measures to protect my many constituents that call the Wine Country their home, and not
2107 turn a blind eye to the County's economic development plans on their quality of life.

2108 Please don't be swayed by the financial sharing facets of this new plan that will
2109 come at a greater expense to my constituents' quality of life codified by hundreds of
2110 physicians inside and outside the Temecula Valley.

2111 My friend and colleague, Supervisor Tavaglione, you appropriately voted to deny
2112 the Liberty Quarry Project, but you supported the approval of their EIR hoping that all
2113 parties involved would attempt to work together on a potential compromise.

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2114 However, my friend, I'm told by SOS, Cal State San Diego, Pechanga, and the
2115 City of Temecula that there has been no outreach before submitting their plans as you had
2116 hoped, but instead have slightly modified their project, but it's like lipstick on a pig.
2117 {AUDIENCE LAUGHTER} It's still a pig. Now, as a result, we are here today creating
2118 a mechanism to abbreviate this disastrous project and attempt to ramrod this project down
2119 our throats without a blink of an eye.

2120 Supervisors, my constituents are tired. I'm tired. We have spent thousands of
2121 hours advocating; that is our, the opponents to the project, about their grave concerns that
2122 this project will have. My constituents have suffered through much anxiety and many
2123 that are not retired have lost significant wages coming to the numerous public hearings
2124 and here we are again on the doorsteps of this hall that they own and is the closest pillar
2125 of democracy where voices can in fact be heard. Taking this right away would not only
2126 be unconscionable, but unconstitutionally taking their First Amendment rights away from
2127 them.

2128 Finally, I've not witnessed an issue that has so divided this Board as much as this
2129 project has. Again, Supervisor Tavaglione, you were the swing vote to approve the EIR
2130 of this project which has resulted in this hearing and many more contentious ones to
2131 come. The least, the least we can do is play by the rules; let the project be traditionally
2132 reviewed by our Planning staff, Planning Commission, and by us, the Board of
2133 Supervisors, when, not if, the project is appealed.

2134 To approve this fast track would give the appearance of a backroom deal in the
2135 making. Let's continue our transparency and not alter countywide ordinances for the

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2136 sake of one applicant and keep those questioning our motives and ethics off the front
2137 page of newspapers dominated by another county.

2138 Miss Coyle raises legal precedence as to why we cannot fast track mines. As a
2139 County, what has been our recent track record in defending CEQA lawsuits? Not very
2140 good; we just paid, one of the speakers today, Mr. Johnson, 85,000 dollars in legal fees
2141 over a CEQA issue. Lewis Operating Systems, Nuevo Project, their EIR was shot down.
2142 Millions will be paid by the developer that's indemnified this County because that EIR
2143 has been shot down.

2144 We've got to stop fighting the system and let's do the right thing. Liberty
2145 Quarry's prior approved EIR has been legally challenged. We will soon bring a new
2146 ordinance making the County the lead in choosing EIR consultants in the future, not the
2147 applicants, should the Board choose to support this agenda item, I'm going to bring
2148 forward. We cannot have the fox guarding that henhouse with applicants dictating the
2149 outcomes.

2150 We have a time honored tradition here that we respect district lines. I am the one
2151 that takes responsibility for the outcomes in my portion of the district, as you do in your
2152 respective districts. Please, fellow Board members, let me deal with issues in my district,
2153 as I respect your oversight in your districts.

2154 I also want to mention that I believe that the EIR is flawed in that the data in it is
2155 over three years old. If we're going to review this project we should demand a new EIR
2156 with more recent data so that our Planning Commission, so this Board, can make an
2157 intelligent decision about this project.

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2158 I regret the many contentious comments we've had to endure here today, but,
2159 however, this is the chaos that will be created countywide with abandoning our time
2160 honored tradition of respecting district lines. Who knows better our districts than the
2161 Supervisor in his or her respective district?

2162 This fast track is opposed by most local government entities within the Third
2163 District; the City of Temecula, the City of Murrieta, the City of Canyon Lake, the City of
2164 Menifee, the Pechanga Tribe, Cal State San Marcos, the realtors, the Chamber of
2165 Commerce. There's significant opposition to this.

2166 Property rights were mentioned by Miss Gilbard. The right to have a planning
2167 permit is a discretionary permit, not an entitlement. Heaven help us if people can
2168 develop their property any way they wish in Riverside County.

2169 Miss Harrison says we need the jobs the quarry will create. She fails to mention
2170 that she'll be a direct beneficiary of the mine being approved in that the Teachers Union
2171 Fund stirs will be required by law to be paid by Granite based on the tonnage extracted
2172 from this mine.

2173 Finally, my fellow colleagues, my fellow constituents, I'm a resident of Riverside
2174 County now for 30 years. I live downwind from the proposed quarry. I enjoy the
2175 beautiful afternoon breezes every afternoon cleaning our air daily. Please do the right
2176 thing and stop this fast track that will open mining opportunities countywide jeopardizing
2177 the health, safety, and welfare of all of our citizens that will be handicapped in their
2178 ability to have due process to fight such projects in the future. Please don't support this
2179 fast track.

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2180 CHAIR TAVAGLIONE: Thank you, Supervisor Stone. Alright, I have no
2181 further speakers. Supervisor Benoit.

2182 SUPERVISOR BENOIT: Thank you, Mr. Chairman, and I have to say it's been a
2183 day filled with emotion, obviously; emotion on both sides, very emotional comments.
2184 That's understandable, particularly from the folks who live near this proposed project.
2185 It's been emotional for me to hear some of the things that were said about me.

2186 Frankly, I've been surprised by the hurtful largely unsubstantiated personal
2187 attacks questioning my moral character, repeatedly impugning my reputation, calling me
2188 disingenuous and corrupt so many times I can't even count, and it's been repeated over
2189 and over again that Granite was my largest contributor. That last statement is factually
2190 incorrect.

2191 Since 2009 Granite has made approximately eight relatively modest contributions
2192 totaling 6100 dollars, which sounds like a lot of money to a lot of people, but it's a very
2193 small amount of a total support that I've had from a lot of people who believe I do the job
2194 for the right reasons, and I do, and it's very hurtful to hear people say otherwise.

2195 I've had many, many supporters along the way; (my revenue is) solar industry.
2196 Their support didn't prevent me from raising concern when proposals from that industry
2197 to blanket Eastern Riverside County with hundreds of square miles of solar projects and
2198 very little or no benefit coming to the County or to local government, caused me to bring
2199 forward a very controversial proposal because it was the right thing to do. It does not
2200 matter and to hear that repeated so often was, well, there's a lot of emotion and I
2201 understand people using emotion instead of facts.

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2202 But I'd like to set the record straight about why I supported the original
2203 application and I clearly stated those conclusions the last full day of the hearings before
2204 this Board, but I'd like to review them now.

2205 First, Granite has been a good neighbor. Granite has been a good major employer
2206 in Riverside County for many decades. I have had and do have many personal friends
2207 who have worked for Granite in all capacities from the line to the management. These go
2208 back to the soccer fields with my young kids, from church and school; relationships that
2209 long predate my involvement in politics. Granite is a great employer in the minds of
2210 many who have survived and raised their families working for Granite.

2211 Secondly, I know many, many people who have lived very close to many
2212 quarries; some owned by Granite, not all of them. There are 17 quarries in the Fourth
2213 Supervisorial District. I have never observed, nor have I ever heard anyone else
2214 complain of dust or material emanating from these quarries.

2215 Some of these are 20 and 30 years old. One owned by Granite is less than a mile
2216 from a large number of homes nearby and they don't incorporate the most modern
2217 technology the proponents have been required to include in this proposal, which would
2218 have far more safeguards, and testing, and required monitoring than anything currently
2219 operating, and that's why I question the emotional pleas about harm to be done to our
2220 kids; and...and believe me, that is of major concern to me. Of course I'm concerned
2221 about health effects on kids; I'm concerned about the health effects on all of our kids
2222 throughout the region.

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2223 One of the things that caused me to take a real hard look at this proposal was the
2224 fact that it would remove 1,217 trucks daily from Interstate 15. It would eliminate over
2225 16 million miles driven by gravel hauling trucks from our freeways annually.

2226 As a former Highway Patrolman and someone who drives our freeways and
2227 doesn't particularly like being behind a gravel truck, removing 16 million miles of truck
2228 travel from our highways and reducing pollution and, and congestion to that extent has
2229 some value I think and should be considered, and all of the trucks using this quarry
2230 admittedly far, driving far fewer miles on our Inland Empire highways than if we allow
2231 the status quo to continue, but the remaining trucks that would be using this quarry would
2232 all be much cleaner than the average truck in the fleet today because the proponents were
2233 required to require that and once a major quarry moves in the direction that trucks using
2234 that quarry have to meet the latest standards, it will cause the entire industry to take note
2235 and many to change those latest standards ahead of when they might otherwise.

2236 All of these changes would dramatically improve air quality not just in the
2237 Temecula area but throughout the region. It's estimated these changes will reduce air
2238 emissions by over 216 tons annually.

2239 Jobs are an important component. I believe some significant jobs would be
2240 created. There are dozens of people working at each of the quarries in our district today.

2241 And the cost of road base; ladies and gentlemen this drives the cost of every
2242 construction project higher when you have to import road base to an area. As Chairman
2243 of the Riverside County Transportation Commission it concerns me that we don't do as
2244 good a job as we could to insure that we use every taxpayer dollar as effectively as
2245 possible.

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2246 Having a quarry in Southwest Riverside County would save taxpayers
2247 countywide; not just in one district but countywide, millions of dollars that could be
2248 productively applied to many other projects that won't be built because we're spending
2249 this money unnecessarily.

2250 I'd like to address a theme that's been repeated over and over again that somehow
2251 fast tracking would limit public input and that this project would somehow be slid under
2252 the carpet or 90 days and, you know, and the impression that, oh, this is going to going to
2253 be such a horrible undercutting of public process.

2254 My friends, this pro; this project has had more public input and more public
2255 comment than any other project that has ever come before this Board of Supervisors in
2256 history. If I'm wrong on that, someone please point out the difference, but I think that
2257 this is absolutely the case and if this...

2258 OFF MIKE MALE SPEAKER: {NOT INTELLIGIBLE} Eagle Mountain.

2259 SUPERVISOR BENOIT: ...this fast tracking was approved, despite the fast track
2260 it would require that we go through the hearings we had in front of this Board all over
2261 again, so a process that's already the longest in history would be half again as long and
2262 all of that is about public comment and input. So to say that this project or this proposal
2263 somehow limits public input, doesn't allow for the vetting of this process, is wrong.

2264 I don't look forward to the day and I don't like the idea of sitting through four
2265 more days of hearings or five more days of hearings on this project, but for the reasons
2266 I've articulated, not because of any relationship I have with the proponents, but because I
2267 believe it's the best interest of Riverside County residents in general, I believe that it
2268 would make sense for us to allow this exception. Not fast track every project; this one is

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2269 different, it has had a complete Environmental Impact Report; it has had complete vetting
2270 beyond anything we've ever seen.

2271 I believe this proponent should have the opportunity to come back in front of the
2272 public hearings again for a fair hearing on the revised proposal and to make that possible
2273 I believe that this Board should authorize staff to begin the process of developing for our
2274 consideration necessary amendments to allow fast tracking of surface mining before this
2275 Board.

2276 CHAIR TAVAGLIONE: Okay, for those of us that around during Eagle
2277 Mountain and the El Sobrante Landfill, I think this one tops the chart, but Supervisor
2278 Stone, you're next.

2279 SUPERVISOR STONE: Yeah, thanks again, Mr. Chair. I didn't know that we
2280 were going to get into an in-depth discussion about the Liberty Quarry Project, but since
2281 Supervisor Benoit wants to bring up his reasons for supporting it I'm going to share my
2282 reasons for denying it, and one of them is that 70% of that aggregate is going to San
2283 Diego, it's not going to Riverside County, and there's not been any proof that there's an
2284 aggregate shortage in Riverside County and that jobs figure is a bunch of BS. It's just a
2285 redistribution of the jobs. It's just a redistribution of the sales tax.

2286 So, you know, the Planning Commission gets into the minutia of a project. While
2287 Supervisor Benoit says we haven't had a project that's had more review than this, he's
2288 absolutely right. The problem is that that project was denied. It doesn't exist anymore,
2289 so now we have a de novo project, a de novo, which means they start from scratch where
2290 our Planning Department will do the appropriate analysis.

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2291 We should let the Planning Commission do the appropriate in depth review of the
2292 technical studies, something the Board of Supervisors relies on the Planning Commission
2293 to do. Why would abbreviate that? Why would we eliminate the Planning Commission
2294 and six hearings to find the technical data on this new project, and maybe there is some
2295 great new data that would enlighten this whole Board that may even a majority of this
2296 Board to say, hey, you know what, we've reviewed it in depth and you know what, we
2297 think it might be in the best interest of the County of Riverside to approve it.

2298 SUPERVISOR BUSTER {OFF MIKE / BACKGROUND CONVERSATION}:
2299 I think it came back to us twice, didn't it? {NOT INTELLIGIBLE} and so did El
2300 Sobrante. {NOT INTELLIGIBLE}

2301 SUPERVISOR STONE: But you know what, I don't see why we should short cut
2302 the process when we're really not shortcutting the process. I believe if you have the
2303 Planning Commission reviews, we're probably going to get to the Board of Supervisors
2304 probably about the same time and there's nothing wrong with having five sets of eyes
2305 with each one of us having appointed Planning Commission to review.

2306 And also, let's not rush into a decision. Let's let County Counsel hire outside
2307 counsel with mining law to make sure that we're going down the right path and that
2308 we're not going to get sued and waste more taxpayer money.

2309 AUDIENCE MALE SPEAKER: Amen!

2310 SUPERVISOR STONE: Let's not take shortcuts, because that ends up costing
2311 the taxpayers twice as much. This is a new project, it needs to be reevaluated. It should
2312 go before the Planning Commission.

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2313 We should reserve fast tracks for projects that are going to create hundreds and
2314 thousands of jobs, where it's as simple as fast tracking their application to get their tenant
2315 improvements done, to get their land entitlements done, so we can get those jobs and
2316 reduce our unemployment in Riverside County.

2317 I promise you, my friends, this project will not reduce unemployment numbers in
2318 Riverside County by 1/1000th of 1%. This is all smoke and mirrors, so again I urge the
2319 Board to do the right thing, and the right thing is to not fast track this project.

2320 I respect Granite's right to have due process in submitting another plan. They're
2321 entitled to do that because of the approval of their EIR, but let's review it prudently,
2322 responsibly, so there's no appearance of even a perceived impropriety because if this
2323 Board approves this fast track, there are many that are going to think that there's a
2324 backroom deal that's been done. We should avoid all, even potential inferences of
2325 impropriety on this Board.

2326 I pride myself on being a member of Riverside's County Board of Supervisors for
2327 the past eight years, and I want to pride myself of being on here with my respected
2328 colleagues for the next four, but I don't want to take over the headlines that another
2329 county has, has done. We need to keep the process clean, we need the process honest,
2330 and we need to give an honest evaluation of this project through the traditional means of
2331 Planning Commission. It will get to the Board of Supervisors just as fast and we will not
2332 open Pandora's Box countywide.

2333 Who knows what applications exist in Supervisor Tavaglione's district? Who
2334 knows what opportunities exist in Supervisor Ashley's district? Somebody mentioned a
2335 rock quarry in...in Aguanga. It was abandoned. The hole's there. We should let

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2336 Shamrock Mines happen. This is going to be the largest hole, manmade hole, a mining
2337 operation, in the country. We need to review that reclamation plan and make sure that it
2338 is appropriate with the State mining codes and making sure that we get a buyoff on our
2339 plan by the State before we rush into anything.

2340 There's no urgency in approving this except if you want to cater to one special
2341 interest in this County that has a project in the pipeline that wants to get it approved as
2342 quickly as they possibly can because they understand political timetables are at risk here
2343 for their project. We cannot sacrifice the health and welfare of this, of this County by
2344 abbreviating this process. It's irresponsible.

2345 CHAIR TAVAGLIONE: Supervisor Stone, could you expand upon political
2346 timetables, your comment?

2347 SUPERVISOR STONE: Yes, Supervisor Tavaglione. I support you for, for US
2348 Congress and I believe that there are those that believe that you're going to get elected
2349 and I hope that you do get elected because I think you'll be a great Congressman in
2350 Washington, DC. But there are those that believe that you may be a swing vote to
2351 approving a quarry project, but your successor, should you be elected to Congress, which
2352 I hope you are, will probably be a left leaning person because the Governor will be
2353 making that appointment and I don't believe that the proponents of this project believe
2354 that their best interests will be served by having that Governor's appointee make a
2355 decision on this project.

2356 CHAIR TAVAGLIONE: Okay, thank you. I'll, I'll respond to that after the rest
2357 of my colleagues speak. Supervisor Buster.

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2358 SUPERVISOR BUSTER: Well, I just, if memory serves and at this late hour of
2359 the day it may, it may not be, but both El Sobrante; I remember we, we interrupted our
2360 whole hearing process for a long time because they had a... separate FBI investigation
2361 going on, then it was, came back to us again for more hearing so much time had passed.

2362 Eagle Mountain, didn't we have two rounds at that after there was an initial legal,
2363 legal problem it had and, and finally, here today the world, the trash world, the landfill
2364 world shifted and there probably will never be an Eagle Mountain, Eagle Mountain
2365 Project.

2366 So these long term projects where there are a lot of promises and a lot of hoopla
2367 about, about the effect on the economy have to be scrutinized very, very closely. They,
2368 they, once they're in you really, really committed yourself and the public agencies, as
2369 well as the; as well as any...any private investment is, is heavily sunk, literally, into the
2370 ground.

2371 So, normally, and you look at our agenda today, there's 16, the 15s, the 16 items
2372 are land use items. We don't have as many of them as we used to because the economy
2373 is still kind of down, but usually we get through them rather quickly because our
2374 Planning Commission helps point us to the remaining issues or the applicant has a
2375 problem, some specific three or four issues that, that they disagree with the Planning
2376 Commission's decision so they appeal it to us.

2377 So it...overall it helps to really hone the process, point the process, and I think
2378 overall to expedite the process for, for most if not all applicants, so I don't see the current
2379 process that we have for, for mines, given their complexity, given their importance, their
2380 long term nature; I don't see this specific reapplication being harmed by going through

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2381 the ordinary process. In fact, this Board knows how to expedite hearings, so does the
2382 Planning, Planning Commission and I think all that should be in our, in our; you know,
2383 there should be a weight, a very weighty showing to fundamentally alter for all, all
2384 categories; you know, all categories of mines at this time to change that process, to short
2385 circuit the process, to change it around; and again, I don't think that bar has been met
2386 here with this application.

2387 CHAIR TAVAGLIONE: Okay, any comments by members, other, other
2388 colleagues? Supervisor Ashley, no comments?

2389 Let me just, let me just say as it relates to Supervisor Stone's comments. First and
2390 foremost the, the Board when they select their Chairman every year, give that Chairman
2391 the opportunity to set the agenda and it's at the Board's, it's at the Chairman's discretion.
2392 Obviously we do it with input from, or the Chairman does it with input from his
2393 colleagues.

2394 Whatever way it goes here today, and you know, I'll tell you about my thoughts
2395 in a moment, I'll be damned if I'm going to let this become an election issue. Will I
2396 allow this to becoming before the Board either on Election Day or before Election Day if
2397 it goes forward? It's, it's; there's some that are trying to make it that.

2398 There were some that are, were trying to make it that even before the Board to
2399 action to deny the quarry in whenever it was, May. I won't tell you what threats were
2400 received, but there were threats.

2401 There have been some of you, including an individual who, who I have put a lot
2402 of faith in and trusted, a colleague of mine, Maryann Edwards, who I think was out of,
2403 out of order today by her comments to colleagues that she works with, inappropriate.

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2404 We, we agree to disagree on issues in many, many public opinion, or public
2405 decisions that we make, but you've been there and I think it was very unfortunate.

2406 There was an article in the Press Enterprise that said that, and of course the Press
2407 Enterprise doesn't always do their research like they should, that says I've received...
2408 We've all received contributions from both sides of the issue here, people, we have, trust
2409 me, just for those of you that have the time and said that you have looked, look.

2410 I received, actually, more contributions from the opposition, the Press Enterprise
2411 was not correct. Having said that, I don't care who I receive contributions from; if you
2412 think that any one of us up here are going to make decisions based on what we've
2413 received life's too short. Life's too short.

2414 We're not like our county to the north in some of the issues that are going on
2415 there, and I find it appalling and embarrassing that some of you would think that. It's
2416 very unfortunate.

2417 There's no interest on my part to rush this part, to rush this process through, but I
2418 will tell you that if we could fast track every project in today's economy, then I would
2419 support that. We are thirteen point something percent countywide and in need of jobs.

2420 And, and as was; I think it's embarrassing that this project took too long, seven
2421 years. EIR only takes about 18 months max. That's what we've, that's what we've seen
2422 over the years, 18 months, and I'm a proponent of fast tracking. I have been from day
2423 one since I was elected to this Board in November of 1994 and we put this item back on
2424 the agenda in, I think it was March of 1995, to fast track projects and if you think; I think
2425 Supervisor Benoit said, if you think we want to sit through more days of this, you're

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2426 crazy. I know you don't. We don't either, but that's our, that's our responsibility as
2427 elected officials, and we're responsible to be fair as much as we can.

2428 That's why you heard me this morning and this is true, I came out, I came out of;
2429 I came into this boardroom this morning believing in my own mind that I just couldn't
2430 justify supporting the, the manager raises for the, for the Sheriff, for those of you that
2431 were here and I know many of you were for the Sheriff and the DA, just didn't think it
2432 was the right time, but after hearing the arguments and the issues and understanding the
2433 difference between the at will employees who basically could be fired on the spot any
2434 time and, and the need that these individuals are, are relatively young and not going to be
2435 replaced with a senior people if they leave, I made the decision in my own mind and heart
2436 that it was the right thing to do to give those two constitutional officers the ability to
2437 provide increases to those two groups.

2438 It's no different, and some of you were here, when I was a member of LAFCO,
2439 this goes back many years; I haven't sat on LAFCO for two years and I think it's been,
2440 well, this process has been going for seven years, the City of Temecula came before
2441 LAFCO and wanted to annex the property or excuse me, annex that area into the City. I
2442 made it very clear then, let's go back; please, try to go back and work this out, didn't
2443 happen. I subsequently left LAFCO and I will be, you know.

2444 When this; well, I sat through four days of hearings in May, as everybody did, my
2445 colleagues, and yes, I knew going into this thing, at least I felt pretty confident going into
2446 this thing back in May that I was going to be the swing vote, but I didn't know where I
2447 was going, just like this morning when I came in to talk about the management raises.

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2448 But I made the decision on; in May that it could have gone either way. I'm just
2449 telling you. Everybody else has talked, I'm going to talk. I could have gone either way.
2450 I made that comment at the hearings when we got to the final decision.

2451 I didn't have a problem with the environmental issues, I really didn't. As I
2452 mentioned, I had issues, I have quarries in my district along the 15 Freeway. Most of
2453 them are in Supervisor Buster's, but I have some in my district. They've never caused a
2454 problem, ever.

2455 In the end because I could have gone any way; I could have gone for or against
2456 the quarry, I decided to side, I decided to side with my colleague and colleagues,
2457 Supervisors Buster and Stone, whose area the closest part was.

2458 Then it came back two months later for the Findings, and the Appeal asked us;
2459 initial Appeal asked us to certify the EIR. Again, I never had any problems in May with
2460 the EIR, go back and listen to the tapes, and so knowing after 18 years on this Board how
2461 long, how expensive, and how difficult it is to get an EIR through, I felt at least, and since
2462 I never had a problem with the EIR, at least give the applicant the ability if they want to
2463 reapply someday to bring it back without having to go through all the expense and time,
2464 and what I heard was just a circus of hearings through the Planning Commission.

2465 And boy did the friends change from the Temecula area. Oh, God, the praise I
2466 got between May and July from the Temecula folks, amazing, thank you so much. Boy,
2467 did that turn very quickly. How unfortunate. And boy, some people even said I don't
2468 want to support you financially anymore, Tavaglione. I don't care. That's not why I do
2469 this.

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2470 Fast track any project that we can is my opinion and when I; I'd like to hear
2471 Supervisor Benoit's motion, but what I will agree to do is if Supervisor Benoit is willing
2472 to do it, is adopt an Order to Consider Initiating Any Project for the Fast Track Process,
2473 bring back with study and, and within the time period that's been requested on...on
2474 Ordinance 480 and also 555, because I believe the most important thing to this region
2475 today; anyone want to correct me, is jobs, the economy. The most important things is
2476 jobs and the economy because our economy is in the tank and it's not coming back any
2477 time soon, ladies and gentlemen, so we better be opening our eyes and doing everything
2478 we can to turn this economy around.

2479 So with that, I've said enough. You can tell this is emotional for everybody but
2480 no one deserves; no one, I don't care what your opinion is, deserves threats, deserves
2481 someone coming to you and saying they're going to do everything they can to defeat you.
2482 No one deserves the accusations that you're only doing this for the money, because if you
2483 think that we can do that; if you think that's what we're doing this for, you're all a bunch
2484 of uneducated folks. {GAVEL BANGING}

2485 OFF MIKE MALE SPEAKER: {NOT INTELLIGIBLE} Whoever wants to talk.

2486 CHAIR TAVAGLIONE: Whoever wants to talk, may.

2487 SUPERVISOR BENOIT: Well, if there's no one else, I'm ready to make a
2488 motion.

2489 SUPERVISOR STONE: Well, I'll take another shot.

2490 CHAIR TAVAGLIONE: Supervisor Stone.

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2491 SUPERVISOR STONE: Yeah, thank you, Supervisor and, and I agree with you
2492 the personal attacks on any member of the Board are something that we all are very
2493 sensitive to and we have to agree to disagree on this Board.

2494 But I cannot support an open ended let's fast track anything that comes before this
2495 Board. I'm not going to support a dump, I'm not going to support an airport, I'm not
2496 going to support a nuclear power plant. I'm not going to just support anything at a fast
2497 track until I understand what the financial and, and job benefits are to this County.

2498 The whole purpose of fast tracking is to deliver jobs, and I'm; when I look at jobs
2499 I'm looking at creating 100, 200, 300, 400, a thousand jobs, then I think it's, it's worth
2500 streamlining the process, abbreviating the process, as long as it doesn't jeopardize the
2501 health and safety of residents by abbreviating the review.

2502 So I would like to support your motion, if that's the motion that Supervisor Benoit
2503 is going to make. I'm sorry, I can't support it only because I know there are some uses in
2504 this County that it would be inappropriate to fast track, although I want to make it very
2505 clear for the record I want jobs in this County, and I believe the Wine Country Plan is
2506 going to deliver thousands of jobs, and I believe there are other businesses that are
2507 hopefully looking to relocate back to California that we can court that are going to be
2508 high paying jobs in the bio, biomedical fields in Southwest Riverside County.
2509 Agriculture is doing very well in Southwest Riverside County.

2510 Anywhere we can help streamline through red tape getting businesses open and
2511 getting people back to work I strongly support, but I just can't support an open endless
2512 fast track anything that comes before our desk.

2513 SUPERVISOR (?): Okay.

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2514 SUPERVISOR ASHLEY: Mr. Chairman, I'd just like to...

2515 CHAIR TAVAGLIONE: Okay

2516 SUPERVISOR ASHLEY:Say something.

2517 CHAIR TAVAGLIONE: I was, I was daydreaming and now I see all these lights
2518 above me, Supervisor Ashley.

2519 SUPERVISOR ASHLEY: I'm sorry, okay, because I understand your zeal, you
2520 know, to help, help with jobs. We all feel that, all five of us. I think if Supervisor Benoit
2521 make's a motion to fast track, it ought to be to ask the staff to look into see where there
2522 was a possibility we can enhance the Fast Track Process, not just make it open ended.

2523 CHAIR TAVAGLIONE: Okay {NOT INTELLIGIBLE}.

2524 {TOO MANY PEOPLE SPEAKING AT ONCE - NOT INTELLIGIBLE}

2525 SUPERVISOR ASHLEY: ...see what other projects, how you can make it to
2526 reach it out further than the way it is now; you know, to make it, the fast track more
2527 accessible to more projects but don't make it open ended.

2528 CHAIR TAVAGLIONE: But I think, I think one that needs to be clear, you; we
2529 can't; there's no project, correct me if I'm wrong, they're still projects that are subject to
2530 CEQA that are going to have to be dealt with, with EIRs.

2531 SUPERVISOR ASHLEY: Well, that's true.

2532 CHAIR TAVAGLIONE: This just happens to be one that came back and there
2533 are others that could, could move forward as well under a fast track if we wanted to
2534 bypass the Planning Commission, correct, Madam Counsel?

2535 COUNTY COUNSEL WATTS-BAZAN: Yes, you're correct.

2536 CHAIR TAVAGLIONE: Okay, thank you. Did you wish to talk some more?

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2537 SUPERVISOR BUSTER: Mister, Mr. Chair?

2538 CHAIR TAVAGLIONE: Supervisor Buster followed by Supervisor Ashley,
2539 followed by Supervisor Stone.

2540 SUPERVISOR BUSTER: The County has had a fast track and during the boom
2541 years of course we all know we were the fastest growing county. I think Phoenix area
2542 rivaled us but certainly one of the fastest growing in the nation and not just residential but
2543 all forms of development were being processed through the County and, you know, so
2544 when, when I; I got very few complaints from any, any investors about stumbling blocks
2545 on the County and when we, when we heard about, heard about any they were usually
2546 individual in nature and not, not systemic. I mean, the proof was in the pudding; the
2547 County was growing very rapidly. People were getting through our process and things
2548 were working.

2549 So here in the recession it's easy, easy to, to make a claim that the thing that's
2550 standing between us and, and prosperity is, is a governmental process here and if we just
2551 fast track it that's...that's going to be the solution to our problems.

2552 Well, I'm, I'm sorry Mister; Mr. Chair, I think that's a red herring and I think
2553 you're diverting us off here from the issue here, because it's not, it's not the problem and
2554 it's not going to release any more project and it....it poses even more of a problem to our
2555 economy with the, with the area mining and its long term impacts on, on other properties,
2556 on other economic potential.

2557 So there has to be a real judicious weighing here, and that's what Temecula's
2558 saying; look, he said we've got Wine Country, we got; we got jobs in that. We don't
2559 want to ruin the perception of the beauty of our area. That's, that's an economic value,

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2560 too. So that's what a careful weighing of alternatives and which takes place through
2561 hearings and a lot of the other issues.

2562 At least you have a two-step process here in the County and that's important,
2563 because you don't, you don't always think of things; the applicant and the opponents, and
2564 a lot of decisions makers; we don't always think of all the, all the potential issues and the
2565 answers to them just through one stage. That's the reason why we have this possibility of
2566 appeal and then on certain cases there's automatic hearings by this Board, and that two
2567 stage process, may I submit, has served us very well over many, many years.

2568 It's not just in place in the County; it's in cities, as well, and so here today what
2569 you have, is you have a call to eliminate that process for the very types of projects where
2570 it's probably the most needed, just a blanket potential elimination subject to future
2571 discretion on the part of future Board majorities or the Board member of the, of the
2572 district, and, again, I go back.

2573 I don't think there's been a showing either economically, process wise, time wise,
2574 that there is a need to make that change here today and so, so this County has been well
2575 served by its processes and we don't have a flaw, any major systemic flaw that I see and
2576 we should not be; we should not be blaming our economic ills here on; in this case on not
2577 fast tracking everything in sight here in this County. It's not going to change our
2578 underlying economic problems.

2579 CHAIR TAVAGLIONE: I think the burden of our state government and the
2580 regulations we have to put up here with California as opposed to a state like Texas
2581 dramatically does, in fact, impact our jobs and we should be doing everything we can to
2582 streamline it rather than just become comfortable with it.

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Order Initiating an Amendment to Ordinance No. 348 Relating to Zoning; and Ordinance No. 555
Implementing the Surface Mining Act of 1975.

2583 SUPERVISOR (?): Supervisor {NOT INTELLIGIBLE}.

2584 CHAIR TAVAGLIONE: My apologies; Supervisor Benoit followed by
2585 Supervisor Stone.

2586 SUPERVISOR BENOIT: I'm...

2587 CHAIR TAVAGLIONE: Yeah, Supervisor Benoit followed by Supervisor Stone.

2588 SUPERVISOR BENOIT: Thank you, Mr. Chairman. I appreciate all my
2589 colleagues' comments. I would ask a question of County Counsel. The; as I understand
2590 it, the recommended motion by staff, I have the ability to make some minor changes in
2591 the recommended direction.

2592 COUNTY COUNSEL WATTS-BAZAN: Yes, you can.

2593 SUPERVISOR BENOIT: And...and in light of the comments that were made, I
2594 would note, also, that, you know, anything that; our...our Fast Track Policy as it is today
2595 is somewhat ambiguous. Anything that involves a CUP already is eligible by virtue of
2596 that for the fast track, while other things like this application, which has been fully vetted
2597 and has a complete EIR already done, is not.

2598 My purpose was to allow us the flexibility in a case like this one and others that
2599 we deem appropriate in the future to use the fast track process, and I would like to make
2600 the motion that we modify the staff recommendation to explore and bring back to this
2601 Board a recommendation how more generally to allow for more discretion at the Board to
2602 utilize the fast track process when we deem it appropriate, and I make that as a motion.

2603 SUPERVISOR ASHLEY: Okay, I'll second that.

2604 CHAIR TAVAGLIONE: Alright, we, we have a motion and a second.

2605 SUPERVISOR STONE: Mr. Chair?

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2606 CHAIR TAVAGLIONE: Go ahead, I'm sorry, Supervisor Stone, my apology.

2607 SUPERVISOR STONE: No, that's okay. You know, I believe that the five of us;
2608 five of us, are, are business savvy guys and you've got a bona fide economic interest
2609 coming into this County that's going to generate property taxes, sales taxes, and jobs, the
2610 five of us are going to band together and we're going to fast track it.

2611 The process already exists. It's worked well historically in this County. Let's just
2612 call this what it is. Let's not muddy the waters, okay? This is a fast track for Granite's
2613 project. Let's at least just admit that's what it is and let's vote for it, but let's not make it
2614 open ended and, and muddy the waters and have smoke filled rooms here.

2615 We understand the dynamics that are going on here today and it's okay; we can
2616 agree to disagree, but let's not leave it open ended, let's go with the original motion that
2617 Supervisor Benoit offered. The intent is to fast track Granite. It appears they have the
2618 votes to do that. I'm sure we'll see everybody in a very spirited way coming back and
2619 having the opportunity to voice their opinions, but let's not muddy the waters.

2620 Let's just go with the original motion and if there's anything that we're missing in
2621 the Fast Track Process that needs to be reevaluated, either individual Supervisors or staff,
2622 bring it back to us. Hey, we're missing the boat; we have a manufacturing company that
2623 doesn't qualify for a fast track because of this, it's going to create a thousand jobs.

2624 We did this in the City of Temecula when I was there. We had a matrix, and that
2625 matrix was; we looked at property tax revenue, sales tax revenue, and jobs, and that
2626 would dictate whether or not we as a city would pay incentives to bring that business to
2627 Temecula.

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2628 Rancho Stamp and Graphics, I believe, was the name of one of the companies we
2629 recruited I think from; I think Corona. We recruited a lot of businesses that brought jobs
2630 and revenue to our, our City, and we tied it to this formula.

2631 We should be doing the same thing in the County of Riverside. If we're missing
2632 the boat on things that should be fast tracked that aren't subject to CEQA that we can fast
2633 track, cut red tape, we should do it. But I; let's just vote for what, why we've been here
2634 all day.

2635 What's the real reason why we're here? We're here because there is a majority of
2636 the Board that wants to support a fast track for Granite. I see the votes. Let's be
2637 transparent, let's be honest; let's have nothing to do with any other businesses because
2638 we never had any contentiousness over any other businesses having to be fast tracked in
2639 the County. So let's vote on what the real issue is, let's vote to fast track Granite Mine
2640 and let's, let's be honest with the constituents and let's just vote on it.

2641 SUPERVISOR BENOIT: Supervisor...

2642 CHAIR TAVAGLIONE: Supervisor Benoit.

2643 SUPERVISOR BENOIT: Thank you, Mr. Chairman. I believe that this is a
2644 project that is worthy of re—a second look, particularly as, as resubmitted. It there was;
2645 if it was allowable under our current ordinances to do that without amending the
2646 ordinances, I would have simply brought that motion.

2647 SUPERVISOR STONE: I accept that.

2648 SUPERVISOR BENOIT: It is not. We have to amend the ordinances, according
2649 to County Counsel...

2650 SUPERVISOR STONE: {NOT INTELLIGIBLE} for this.

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2651 SUPERVISOR BENOIT: And...and I believe that there may be other
2652 opportunities, too, but clearly Granite is on our minds as we have this opportunity, so I
2653 reiterate my motion and only add that I would ask that we try to bring this back by
2654 August the 28th, I believe, is the next...

2655 COUNTY COUNSEL WATTS-BAZAN: That is our next Board meeting.

2656 SUPERVISOR STONE: Mr. Chair one more; the last thing and I promise will be
2657 my last comment.

2658 CHAIR TAVAGLIONE: {CHUCKLE}

2659 MALE SPEAKER: {OFF MIKE} Don't believe you.

2660 SUPERVISOR STONE: I am going to be out of state. As you know, my, my
2661 wife has got some significant disabilities. We are seeing a specialist in Dallas, Texas...

2662 MALE SPEAKER: Excuse me, please...

2663 SUPERVISOR STONE: ...and I would appreciate.

2664 CHAIR TAVAGLIONE: No, your time's up.

2665 SUPERVISOR STONE: I would...

2666 MALE SPEAKER: I just want to say something.

2667 CHAIR TAVAGLIONE: No, you cannot speak.

2668 MALE SPEAKER: Sir, this is out of respect to you...

2669 CHAIR TAVAGLIONE: I would; you're not, I'm sorry, your {NOT
2670 INTELLIGIBLE}.

2671 MALE SPEAKER: You called all of us punks.

2672 MALE SPEAKER: Well, he acted like it.

2673 MALE SPEAKER: {NOT INTELLIGIBLE} if I don't cooperate with you....

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2674 SUPERVISOR STONE: Mr. Chair...

2675 MALE SPEAKER: (I'm going to have to take you out).

2676 MALE SPEAKER: ...you'll take me out. (I just) ask you that you hear me out
2677 because...

2678 SUPERVISOR STONE: Mr. Chair...

2679 CHAIR TAVAGLIONE: Supervisor Stone.

2680 SUPERVISOR STONE: I apologize for the outburst.

2681 CHAIR TAVAGLIONE: {CHUCKLE}

2682 SUPERVISOR STONE: I would just like to be here at a time when this comes
2683 back if I could, but I do have to take my wife to a clinic in Dallas, Texas and it's going to
2684 be a while before I'm back, so if it's possible to move this when I'm going to be back to
2685 hear it, it would be greatly appreciated. If you can't accommodate it, you can't
2686 accommodate it but...

2687 CHAIR TAVAGLIONE: Supervisor Stone, if you think that we would bring this
2688 back without you here; I would not... {CHUCKLING ON THE BOARD}

2689 SUPERVISOR STONE: Okay.

2690 CHAIR TAVAGLIONE: If we have to go through it, you're going through it.

2691 SUPERVISOR STONE: Okay.

2692 {GENERAL LAUGHTER}

2693 COUNTY COUNSEL WATTS-BAZAN: {NOT INTELLIGIBLE}

2694 SUPERVISOR (?): And so I won't be here August 21st, if you're picking on that
2695 date, so.

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2696 CHAIR TAVAGLIONE: Well, some of us; I mean, I don't know when we're all
2697 here, but I just want, want to reiterate that we...we have a very limited schedule between
2698 now and the end of the year.

2699 {BACKGROUND CONVERSATION ON POSSIBLE DATES}

2700 CHAIR TAVAGLIONE: We have a very limited schedule between now and the
2701 end of the, end of the year due to Christmas, Thanksgiving...Labor Day.

2702 COUNTY COUNSEL WATTS-BAZAN: So the next feasible Board date was
2703 the 25th for introduction and August (second) for adoption.

2704 SUPERVISOR (?): {NOT INTELLIGIBLE}

2705 CHAIR TAVAGLIONE: Well, before we even get there, I'd like Supervisor
2706 Benoit to repeat the motion, please.

2707 {BACKGROUND CONVERSATION ON POSSIBLE DATES}

2708 SUPERVISOR BENOIT: I would move...

2709 SUPERVISOR (?): Just do it next week.

2710 SUPERVISOR BENOIT: I would move staff's recommendation with the
2711 exception that I would ask that they broaden the approach to include flexibility for other
2712 projects and not limit it to only surface mining at the discretion of the Board when
2713 appropriate and that we bring it back as soon as feasible with deference to Supervisor
2714 Stone.

2715 SUPERVISOR STONE: Thank you.

2716 SUPERVISOR ASHLEY: Okay, I'll second that.

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2717 CHAIR TAVAGLIONE: And, and Supervisor Benoit, just to be clear, this is not
2718 specific then to Surface Mining Permits; this is a, this is a request to the feasibility of fast
2719 tracking any projects at the discretion of the Board.

2720 SUPERVISOR BENOIT: And, and I believe there's at least one ordinance that's
2721 specific to surface mining that would have to be amended in order to allow this to move
2722 forward, so that one would be Surface Mining; the other one more general.

2723 CHAIR TAVAGLIONE: Are there any other ordinances that we're not thinking
2724 of, Madam Counsel, outside of 555 and (480).

2725 SUPERVISOR BENOIT(?): (We're going to) need to amend 752, Madam
2726 County Counsel.

2727 COUNTY COUNSEL WATTS-BAZAN: Well, that's our, I believe our PAR
2728 Ordinance and we'll take a look at that.

2729 CHAIR TAVAGLIONE: That's what I would ask that you include, that we look
2730 at everything...

2731 MALE SPEAKER: All {NOT INTELLIGIBLE}.

2732 CHAIR TAVAGLIONE: ...so it doesn't look like we're just doing this on behalf
2733 of Granite.

2734 {VOICES FROM THE AUDIENCE - YOU ARE}

2735 SUPERVISOR BENOIT: I would suggest that we do a look at all of the
2736 necessary ordinances that would allow us to consider Granite or other projects that at our
2737 discretion we believe deserve to be fast tracked.

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- 2738 CHAIR TAVAGLIONE: Okay, very good. We have a motion and a second.
- 2739 Any further comments? Please vote. As expected, motion is 3-2. This will be coming
- 2740 back then, again, August...
- 2741 COUNTY COUNSEL WATTS-BAZAN: No.
- 2742 CHAIR TAVAGLIONE: Whenever.
- 2743 SUPERVISOR BENOIT(?): {NOT INTELLIGIBLE} We have to set a Special
- 2744 Meeting, probably.
- 2745 COUNTY COUNSEL WATTS-BAZAN: Sir, Mr. Chairman.
- 2746 {OUTBURST FROM THE AUDIENCE – NOT INTELLIGIBLE}
- 2747 CHAIR TAVAGLIONE: Okay, we have additional items here; land use items.
- 2748 {NOT INTELLIGIBLE} We'll give it a couple of minutes to clear out.
- 2749 {END OF AGENDA ITEM 3.84 / SOUND FILE 2 OF 2.MP3 02:57:29}

I, Noelle Blouin, attest under penalty of perjury that this transcript of the July 31, 2012 Board of Supervisors Meeting Agenda Item 3.8 is a true rendition.



*** FAX TX REPORT ***

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**Pechanga Tribal Government
Office of the General Counsel**



FACSIMILE

To: Hon. John Tavaglione, Chairman
Board of Supervisors

From: Marcy Hernandez

Fax: (951) 955-2362

Date: September 10, 2012

Phone:

Phone:

Re: In re: BOS Agenda Item 3.64, Revision
to Board Policy A-32

Pages (Including Cover) 3

Urgent For Review Please Comment Please Reply Please Recycle

Please see attached letter dated September 10, 2012. Thank you.



PECHANGA INDIAN RESERVATION
Temecula Band of Luiseño Mission Indians

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September 10, 2012

VIA FACSIMILE

(951) 955-2362

Hon. John Tavaglione, Chairman
Board of Supervisors
County of Riverside
4080 Lemon Street
P.O. Box 1646
Riverside, CA 92502-1646

**Re: Pechanga Tribe Concerns re: County Board of Supervisors Agenda Item 3.64,
Revision to Board Policy A-32, Procedures for Fast Track Processing**

Dear Chairman Tavaglione and Honorable Supervisors:

This letter is sent on behalf of the Pechanga Band of Luiseño Indians to express our concerns with certain aspects of Agenda Item 3.64. The Tribe's concerns regarding the proposed fast tracking of surface mining projects will be provided under separate cover when that item is docketed.

While the Tribe, the second largest employer in Riverside County, certainly supports job creation and economic development; the Tribe is also concerned about the proper consideration and treatment of the Tribe's cultural resources and maintaining the Tribe's involvement in consultation and collaboration with the County with regard to development projects that could affect tribal interests.

As you know, the Tribe has continuing cultural ties to a good portion of the land known today as Riverside County that is an essential element of its government and sovereignty. Because most of our cultural resources and sacred places are located on non-reservation properties, the California Environmental Quality Act (CEQA) is most often the primary process the Tribe utilizes to submit their knowledge and concerns in order to protect important and significant cultural resources.

Hon. John Tavaglione, Chairman
Board of Supervisors
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If Item 3.64 were to be approved, the Tribe would like assurances from the County that a revised Fast Track Process, which will add additional projects eligible for Fast Track, will not eliminate or impair tribal consultation. Whether this tribal consultation or analysis of cultural resources is required or a best practice, it is a vital component to properly assess a proposed project's potential impacts to cultural resources that are of vital importance to not only the Tribe, but also the interests of the County in protecting its unique and valuable resources.

Through actual practice and hands on experience the Tribe has learned that the only way to ensure that tribal interests are adequately addressed in these situations is through individual project specific environmental assessments of cultural resources, sacred sites and the tribal communities impacted. This includes identification, adequate and thorough assessment of impacts (direct, indirect and cumulative) and culturally appropriate mitigation. In order to accomplish this, an actual survey assessment of the property at issue must be completed along with meaningful consultation with culturally affiliated tribes on all aspects of the project that will impact tribal resources - there is no substitution of other streamlined processes, projection modeling or methodologies that can supplant this type of a process.

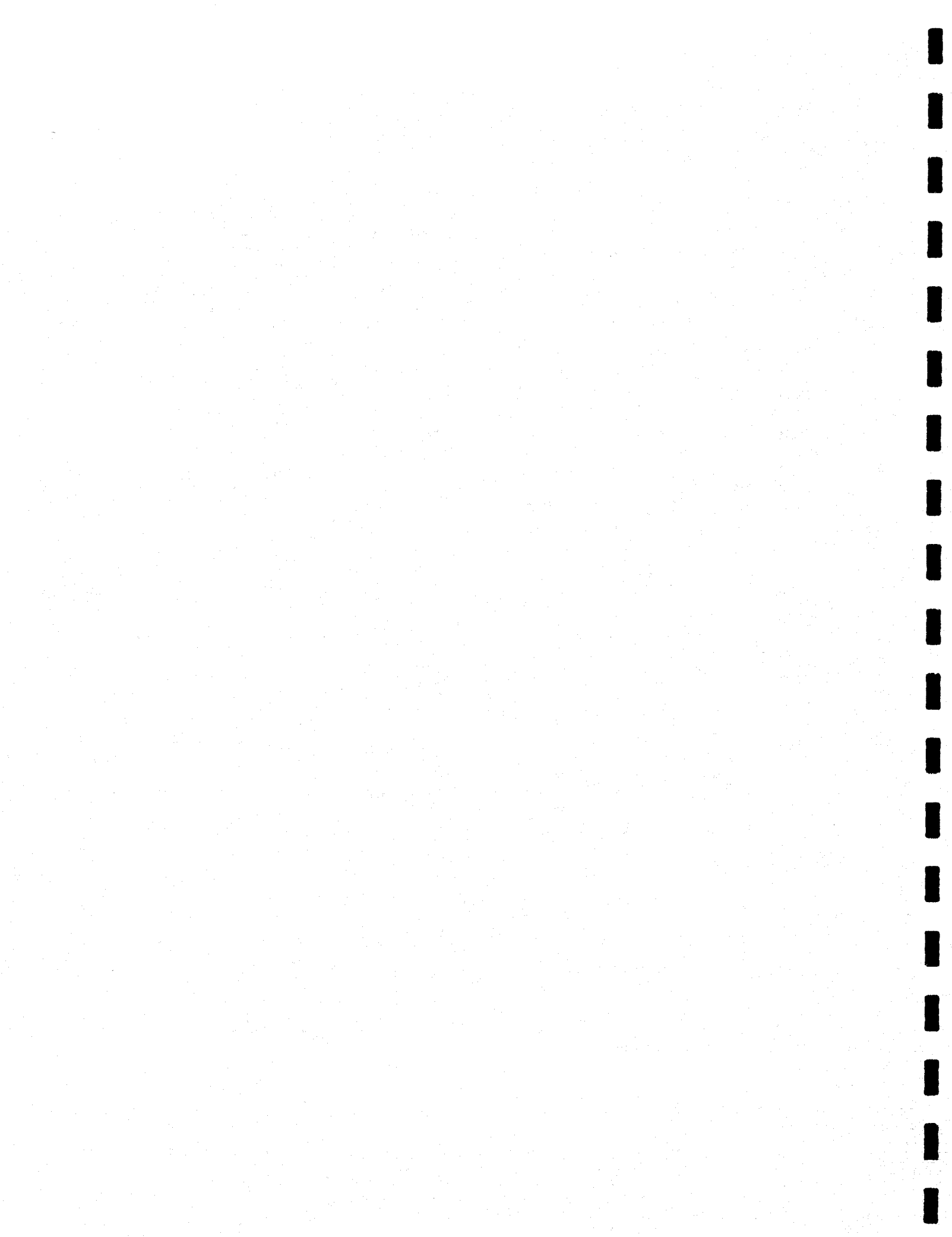
Moreover, the Tribe is concerned that the County may not have the subject matter expertise on its professional staff to assist the Board and project applicant in understanding when resources of tribal concern may be at issue and how to avoid or otherwise mitigate such issues. This is of particular concern at present, as we understand the County is without a County Archaeologist or Tribal Liaison.

The Tribe would be happy to work with the County on ways to address the Tribe's concerns that would still meet the goals of the County to expedite projects and foster job creation.

Sincerely,



Michele Fahley



1 {*SOME NAMES ARE SPELLED 'BEST GUESS'*}

2 CHAIR TAVAGLIONE: Alright, thank you Supervisor Benoit; and speakers on items
3 3.64; first I'm going to call on Ginetta Giovinco, followed by Sam Davis, who will be followed
4 by Paul Jacobs.

5 GINETTA GIOVINCO: Thank you very much. Good morning honorable Chairman and
6 members of the Board of Supervisors. I'll be very brief. I'm here on behalf of the City of
7 Temecula. We have submitted a letter by the city attorney, Peter Thorson, which I believe was
8 distributed by email last night and I've also provided hard copies this morning.

9 Just like to first state that the City of Temecula supports the effort of the Board of
10 Supervisors to generate jobs within Riverside County.

11 We would also like to confirm what is our understanding that the current item before the
12 Board does not pertain to either Surface Mining Permits or Liberty Quarry and that any effort to
13 apply any revisions to the Fast Track Policy, to the Surface Mining Permits; to Surface Mining
14 Permits or to Liberty Quarry specifically could not occur unless and until County Ordinance
15 Numbers 348 and 555 are duly amended, and then finally we'd like to, again, renew our
16 objections to the placement of surface mines and Liberty Quarry into the Fast Track Policy, but
17 if my first assumption is correct we obviously will be back to speak to that at an appropriate time
18 as well. Thank you very.

19 CHAIR TAVAGLIONE: I'll, I'll; thank you and I'll let counsel respond, but this, this is
20 not related to the Liberty Quarry. This is related to (a) complete issues related to fast track of
21 commercial projects that are going to create jobs for veterans and those that are with preference
22 to unemployed; currently unemployed and veterans.

23 COUNTY COUNSEL WALLS: That is true. This is only; this is not impacting Liberty
24 Quarry as counsel has confirmed and the Chairman has confirmed.

25 CHAIR TAVAGLIONE: Alright, thank you, Pam. Next speaker is Sam Davis. Sam
26 will be followed by Paul Jacobs. Hello Dr. Davis, good to see you.

27 SAM DAVIS: Thank you Chairman and members of the Board. My name is Sam Davis.
28 I'm a board member for RCC. I'm a trustee member, but that's not why I'm here. I'm here to
29 talk about the veterans. But before I get to that point, let me tell you that our Tigers, RCC
30 Football Team, is ranked number seven in the nation.

31 MALE SPEAKER: Ooh, really, good for you.

32 SAM DAVIS: Now, there are 110 community college districts in California. I don't
33 know how many community college districts there are across America, but I think it's
34 phenomenal, our football team is ranked number seven in the nation.

35 CHAIR TAVAGLIONE: That's, that's quite a feat and it goes along with the celebration
36 of last week where we had at, at RCC, Tyler Clarey, one, another one of our local athletes,
37 athletes...

38 SAM DAVIS: That's right.

39 CHAIR TAVAGLIONE: ...honored, our gold medalist.

40 SAM DAVIS: That's right.

41 CHAIR TAVAGLIONE: And by the way, Santiago High School in Corona, their band
42 was just honored; it will be; they were chosen to be in the; the lead band in the, in the...

43 SAM DAVIS: I didn't know that.

44 CHAIR TAVAGLIONE: 2000; 2013 Rose Parade, so.

45 SAM DAVIS: That's great.

46 CHAIR TAVAGLIONE: Good things for Riverside County kids and students.

47 SAM DAVIS: Good things. But to continue less than 10% of the people in uniform are
48 a...less than 10% of the people in the Nation of America are in uniform, yet more than 40% of
49 the veterans are homeless, and with the returning veterans coming from Iraq and Afghanistan,
50 we're seeing an increasing number of unemployed veterans.

51 I have beside me Les, who is a contractor, who's making a sincere effort to employ
52 veterans. I'd like to introduce Les to the Board.

53 CHAIR TAVAGLIONE: Great, hi Les.

54 LES CAMPBELL: Hello and how are you guys doing today.

55 CHAIR TAVAGLIONE: Fine, thank you.

56 LES CAMPBELL: Good. My name is Les Campbell and with Campbell Construction
57 and what we are doing is we are hiring the veterans from US Vets who came home from Iraq and
58 Afghanistan to this economy and couldn't find work. We're employing them in green energy
59 technologies and using the various rebate programs offered through the states and utility
60 companies to do this.

61 By using these programs we, we can provide these services for free for the customers
62 while employing these veterans at the same time. I would like to get on your guys' Approved
63 Vendors List to, to obtain more work for, for our veterans and to see what it would take for
64 Campbell Construction to provide this free green energy services to entire, to entire cities using
65 these rebate programs.

66 We can provide the services for free and save the cities tens of thousands of dollars a year
67 to put where you guys deem necessary and in the process we're going to be able to put a lot of
68 people to work, namely these veterans, by doing this and so I see it as a win-win solution.

69 CHAIR TAVAGLIONE: Well, thank you, Les. Appreciate your comments. This;
70 again, this is an item that we hope will incentivize those that are, are wanting to bring new
71 projects into our county unrelated to surface mining. This is not covered under the surface
72 mining concern. This is just; this is an amendment to our existing Fast Track Policy that will
73 give preference to veterans; most importantly, returning veterans, and currently unemployed or
74 those that have been on the unemployment rolls for, for an extended period of time and also local
75 companies.

76 Recognizing that sometimes it's difficult to do under public code in every single case but
77 with that appreciate your comments, Dr. Davis and Les.

78 SAM DAVIS: So who, who should he talk to as a contact person?

79 CHAIR TAVAGLIONE: If you will contact my office upstairs, talk to John Field, we'll
80 put you in touch with the right person on how to get on a preferred list; or not a preferred list but
81 just get on that Selected Vendors List.

82 LES CAMPBELL: Very well.

83 SAM DAVIS: Thank you very much.

84 LES CAMPBELL: Thank you.

85 CHAIR TAVAGLIONE: Okay, Supervisor Benoit, you had some comments. Do you
86 want to go after the speakers?

87 SUPERVISOR BENOIT: Will this be {NOT INTELLIGIBLE}?

88 CHAIR TAVAGLIONE: Sure, yes. You want to go after all the speakers?

89 SUPERVISOR BENOIT: Yeah.

90 CHAIR TAVAGLIONE: Okay, let's wait. We have, we have more speakers. Marelle, I
91 believe that's Dorsey. Is that correct, Marelle Dorsey?

92 MARELLE DORSEY: Thank you, good morning.

93 CHAIR TAVAGLIONE: Over here; I'm sorry, to your left, or to your right, I'm sorry.

94 MARELLE DORSEY: {CHUCKLE} Thank you. I said good morning Supervisors and
95 Chairman. I was slightly mistaken by the Fast Track what you were after, but I'd like to just
96 address in general the types of businesses that you would consider and with the; with the fact that
97 you did a lovely presentation for September 11th today, and of course we're all reminded about
98 how short life is. Do we want to leave behind good things for those who follow us?

99 I was a teacher. You have seen me in front of you representing the Temecula Valley Real
100 Estate Agents and other, other real estate agents that have joined us against Liberty Quarry, so,
101 you know, and you know, we've been fighting a very long time, since 2005 to try to leave
102 something good behind.

103 What I did want to share with you is that it's something that came up with 9-11, which is
104 air quality, because we know that with the best of intentions people made mistakes about having
105 proper, you know, equipment and a lot of people are suffering that helped at 9-11. They're still
106 suffering. I think there's quite a bit of cancer cases and I don't think this was done in any mean
107 way, but a lot of people's lives are being hurt.

108 And so that brings up this; I don't think of you really want to do anything bad to people
109 that follow and the American Lung Association you; I know you had a letter from them, and I
110 just wanted to give a little background on that.

111 It was Granite; the Granite Construction Company that first contacted the American Lung
112 Association to take a look at what... They, the presented their case. They went to the Board
113 Meeting and they presented their case that they would make better air quality in Riverside
114 County with less trucks; that whole argument, and we came along six months later and just asked

115 them to just please look at the EIR because our experts and laymen reading it really came to
116 believe that it was really bad; that it was a layman could read that the studies were done very
117 poorly and that like some of the pollutants for the stationary plant were seven times what was
118 recommended and they had to buy all kinds of credits.

119 CHAIR TAVAGLIONE: Thank you, thank you Ms. Dorsey. Your time is up. I think
120 we understand your concern, but this; again, this is, this is not; this item is not related to Surface
121 Mining Permits.

122 MARELLE DORSEY: Well, okay.

123 CHAIR TAVAGLIONE: And in fact it's encouraging projects that of, our leads approve;
124 meaning the environmental; all the environmental building products that go into the product; and
125 clean energy and otherwise, at the time but it giving preference to local contractors and veterans.

126 MARELLE DORSEY: (I did); I just don't think that the quarry should be one of those
127 projects, thank you.

128 CHAIR TAVAGLIONE: And I think we made that very clear that that's not a part of
129 this policy. Alright Fred Barts. Fred you have six minutes, three given by Marianne Byers.
130 Morning, I think, yes, so.

131 FRED BARTS: Mr. Chairman, fellow Supervisors, my name is Fred Bards. First of all,
132 I want to start out by applauding the effort of the, of Chairman Tavaglione to bring forward any
133 effort that brings real full time jobs. I understand the need for jobs for construction workers and
134 for certainly our veterans. I'm involved in a group in San Diego County, which deals with some
135 of the issues down there and it's a very situation with our returning veterans attempting to make
136 this transition from warriors to now meaningful workers.

137 Also, as the head of a homeowners association in Temecula with 845 homes I see every
138 home foreclosure documents before they happen and I'm actually finding some of these now are
139 actually happening to some of our veterans who came here, moved back, got out of the military
140 hoping to find a job in Riverside County and now are having to lose their home (on top of that).
141 I only ask that we make sure that these are real jobs.

142 I've seen some of the activities in other parts; not in the County, but in the cities of
143 Riverside where; not cities, excuse me, cities within Riverside County, rather, not City of
144 Riverside where the estimate for jobs have been very significant; talking about so many jobs per
145 a thousand square feet only to find; one, the jobs are coming from outside or from other areas.
146 So I also ask that when you review these projects going forward that there will be some; we'll
147 call it policing that this happens.

148 I think the biggest reason I'm here today is when I looked at the document that came out;
149 actually I was very pleased with it was because to me very simple, but it talked in the document
150 that was put out in the agenda about preferencing jobs and if you haven't seen today's Press
151 Enterprise there is an article that says that the County would be requiring these jobs, and I think
152 that's where some of the confusion that started and when you read further in article; yes, by the
153 way, the reporter has brought up the subject of Liberty Quarry.

154 I don't see the connection but I think that's the problem with the media and I would hope
155 that Supervisor Tavaglione that you would maybe clarify that, as you've already said that this is
156 about preferencing jobs and about bringing more jobs to the County. I thank you for your time.

157 CHAIR TAVAGLIONE: Thank you Fred. Yes, that's exactly what it's for. I wish I
158 could control everything the press writes, but I can't. But as a matter of fact this is, this is
159 strictly; I'll state again, this has nothing to do with Liberty Quarry or, or Surface Mining Permits;

160 this has solely to do with amending the Fast Track Policy to give preference to veterans, those
161 that are currently; and not only just veterans but those that are currently non veterans but have
162 been on the unemployment rolls and encouraging local companies to hire those individuals as
163 part of the Fast Track process. Okay, Rebecca Ludwig.

164 REBECCA LUDWIG: Good morning Council, my name is Rebecca Ludwig and I
165 oppose any form of Fast Tracking and here is why; in my opinion and the way I understand it
166 and how I've seen it work, it eliminates a proper crosschecking of said projects. It will eliminate
167 public participation, making it more difficult in holding responsible parties accountable should
168 they not abide by the rules. It will not allow proper transparency to the public, us the taxpayers,
169 it eliminates the proper bidding process and or selection of its bidders for projects and the key
170 word here is 'whenever possible'.

171 You can't even be specific as to where the EDA Fast Tracking Meetings are going to be
172 held. At the Board of Supervisors Meeting on August 28th I questioned agenda item 3.34 and
173 why the EDA obtained 33 firms and what projects would be involved.

174 Well, Supervisors, today it became clear that you knew all along the seven pages to the
175 agenda item 3.64 states daycare centers, house storage centers, and child development centers,
176 commercial and or industrial development, residential development, and renewable energy
177 projects.

178 The only plus here is that the developer is required to hire veterans who will be, who
179 have been unemployed for six or more months due to economic conditions.

180 The downside is that the Supervisors and EDA have not always been truthful with the
181 public about previous projects. Even the City of Jurupa Valley rejected many of the County-
182 slash-EDA projects. This is only one of many reasons the RDA has been eliminated by

183 Sacramento and has always denied any requests by the County-slash-EDA's request for
184 reconsideration to continue on may projects. The County also has a record for showing
185 favoritism on many projects to certain firms.

186 In closing I know that all of you will pass this agenda item like you always do, and many
187 individuals are aware of your favoritism with who you choose to work with on your projects; and
188 Supervisor Tavaglione, with all due respect, you have tried so hard to discredit me every time I
189 try to hold you accountable and bring awareness of serious problems in District Two and in
190 Riverside. So let me reiterate once again that I am only the messenger and the People are paying
191 attention. Thank you.

192 CHAIR TAVAGLIONE: Thank you, Rebecca, and let me just comment, I do not intend
193 to try to discredit anyone. I just try to correct when the information is inaccurate and your
194 information today is inaccurate.

195 You had mentioned that, that there will not be bidding on these projects. First and
196 foremost, these are not public projects that are covered under this Fast Track Policy.

197 REBECCA LUDWIG: I understand that.

198 CHAIR TAVAGLIONE: These are private projects, in which whoever qualifies for the
199 fast track project will be responsible for their own bidding and their own cost. They will just
200 have to adhere to certain policy in order to obtain (fast track)...

201 REBECCA LUDWIG: That's what I was referring to; excuse me, that's what I was
202 referring to here on agenda item 3.34 on the last meeting where it had...

203 CHAIR TAVAGLIONE: Okay, well, we're talking about 3.64 today, not 3.34.

204 REBECCA LUDWIG: Yes.

205 CHAIR TAVAGLIONE: Okay.

206 REBECCA LUDWIG: But I believe they're both connected and that's why you
207 streamlined these. No?

208 CHAIR TAVAGLIONE: No, they're not.

209 REBECCA LUDWIG: Okay, then I stand corrected on that. Thank you very much.

210 CHAIR TAVAGLIONE: Thank you, you're very welcome, thank you. All right, our
211 next speaker is Bob Frost, Robert Frost.

212 ROBERT FROST: Mr. Chairman, County Supervisors; my name is Bob Frost, I live in
213 Riverside. This fast tracking, we have been over the years fighting for projects for five years
214 now. I can say that on January one, we finally started our first project that put about, about 150
215 guys to work and they're still out there working on those projects.

216 I work with the electricians. We finally got the first solar project started out at Desert
217 Center. I can say to date we have 400 electricians out there that are starting to regain their
218 homes, their families, and their livelihood back to where when they came to our picnic on
219 Saturday we had 900 people show up and they were thrilled about the progress that is taking
220 place in our County, and that comes from several plane flights to fight for these projects with you
221 in partnership and we continue to fight for those projects.

222 This fast tracking can only help the County grow. We need to bring stimulus back to the
223 County. We need to put these projects back on track. We can no longer deal with five year
224 delays on projects; we need to get this going.

225 And to put the veterans to work, the Helmets to Hardhats Program through the building
226 trades in Riverside County have been a large influx of good, quality workers for every one of our
227 trades. Matter of fact, for the last five years our top graduating students had been through the
228 Helmets to Hardhats Program, so we appreciate that.

229 If you are available we're doing a job fair in Indio on the 13th. It's a very important issue
230 and the veterans are putting on a program in October that we'll be out there working on and we
231 appreciate all your assistance on helping us get the veterans out there and get them back working
232 in society, and the different is, is we give them a career pathway, not just a job. So thank you for
233 your hard work.

234 CHAIR TAVAGLIONE: Thank you, Bob, appreciate you coming today and I also
235 wanted just to compliment you on the, the Labor's Helmets to Hardhats. That's just a
236 tremendous program and we appreciate that you, that you structured that and put that forward,
237 because for those that don't know this is taking returning veterans and, and retraining them, and
238 putting them to work in some type of a construction labor trade.

239 And I think; I just wanted to, before I go to Supervisor Benoit, because I know he has
240 some comments; I want to add to something that Fred Barts mentioned. You know, not only are
241 we dealing with, because of five years, longer than five years of an economic downturn, are we
242 dealing with a number of veterans that are returning and finding themselves unemployed for (an)
243 extended period of time, so then what Fred mentioned in his homeowners associations where
244 you'd have these veterans not; so they're unemployed and then they find themselves out of, are
245 going into default on their homes and that's just very, very unfortunate. But that's, that's just the
246 way it is right now and we need to do what we can to try to help them. Supervisor Benoit,
247 followed by Supervisor Ashley.

248 SUPERVISOR BENOIT: Thank you Supervisor Tavaglione and Chairman, for bringing
249 this item forward. I think it's an appropriate and a positive step, particularly having to do with
250 our veterans, our (unemployed), long term unemployed, and the green products area. Anything
251 we can do to move through the process, mindful that we have to meet all the minimum legal

252 requirements in, in there that fast track does not mean no public input or no opportunity for
253 comment. It absolutely does require that still and, and in some cases it would be here in front of
254 the Board instead of other places, but it's, it's still available for that.

255 So I want to say if full, full heartedly support your, your initiative with one concern and
256 that is we have a, kind of a duplication here (in) item number five, and it's not explained in
257 detail, but it says renewable energy projects. They are already covered under County Ordinance
258 348 for fast track to some degree and we do have litigation as a result of our B29 Policy, so I
259 think it might be confusing and a problem to include that one item.

260 I would love to move approval with the exception of striking five and renumbering as
261 necessary for the six and seven be moved up, because I think everything else in here is absolutely
262 appropriate but I would worry about the confusion and potential impacts it might have on our
263 legal process if we were to include item number five on this particular motion.

264 CHAIR TAVAGLIONE: Thank you Supervisor Benoit. I'll second your motion. I
265 would like clarification on your concern on the replication.

266 COUNTY COUNSEL WALLS: We, excuse me Chairman and Supervisor Benoit; we do
267 have, this is a policy. We could have it included in the ordinance and also reflected on the
268 policy. That would not be inconsistent.

269 CHAIR TAVAGLIONE: And either way it still has to come back before; each project
270 has to come back before the Board of Supervisors....

271 COUNTY COUNSEL WALLS: Right.

272 CHAIR TAVAGLIONE: For up or down fast track approval. So what's, what's your
273 recommendation (?) ?

274 COUNTY COUNSEL WALLS: I would just recommend to leave it...

275 CHAIR TAVAGLIONE: Just leave it in.

276 COUNTY COUNSEL WALLS: Leave it in. It's in the policy; it's also in the ordinance.

277 We're going to be coming back I believe with ordinances; amendments on 555 at a later time...

278 CHAIR TAVAGLIONE: And 348?

279 COUNTY COUNSEL WALLS: Right, and 348. It's consistent to go ahead and have it
280 in the policy and the ordinance.

281 SUPERVISOR BENOIT: Okay, I was under the impression that there were concerns
282 from County Counsel with regard to that. If there are not, I would move approval with the item
283 as proposed.

284 CHAIR TAVAGLIONE: I'm going to second your motion, but just to clarify that you
285 mentioned 555 and that's surface mines. This is not part of 555.

286 SUPERVISOR BENOIT: This is not 555.

287 CHAIR TAVAGLIONE: I want to make, make that perfectly clear, and then also before
288 I go to Supervisor Ashley, I want to make sure to mention in the record that we did receive a
289 Letter of Concern from Chairman Macarro of the Pechanga Indian Reservation expressing his
290 concern, but primarily related to Liberty Quarry issues and, and the, the concerns of, of
291 addressing through CEQA tribal lands and sacred, sacred lands, okay. So that will be submitted
292 into the record. Supervisor Ashley.

293 SUPERVISOR ASHLEY: Okay. Thank you, and again I want to applaud you for
294 bringing this forward. You know, this is, particularly you look at those job statistics; we're
295 lagging the State of California in creating jobs. This will help speed up some projects and get
296 jobs to us faster, and also and it helps vets, and helps local companies get the work.

297 And we have seen too many of these projects approved and then suddenly here's some
298 contractor from Long Beach or somewhere doing the work, bringing their workers, and it would
299 be better to make the effort here as we have a lot of unemployed people here that have the skills.

300 I think another important thing is this is addressing the process and making the process
301 leaner and cleaner, (in) that regard; you know, to have the; it's coming directly to the Board and
302 eventually we have to approve everything anyway, so we are the decision maker.

303 But what this is, is doing, and I think it's addressing something that the whole state and
304 we all have to overcome, and I call it the California Disease, where the overregulation; and the
305 perceived overregulation; some of the regulation is good; we want, we all want clean air and
306 clean water and so forth. So I think this is really good and I strongly support it.

307 CHAIR TAVAGLIONE: Okay, thank you Supervisor Ashley. Alright we do have a;
308 any others wishing to speak on item 3.64. Before we go to a vote I know counsel would like to
309 make one minor correction of a paragraph number.

310 COUNTY COUNSEL WALL: Yes, thank you. On page 3 under Authorization, before
311 the Board votes on this I'd just like to reflect an additional revision. The paragraph reference
312 should not be five; it should be seven. Thank you.

313 CHAIR TAVAGLIONE: Okay; with that we have a motion and a second (on), 3.64,
314 please vote. Motion is unanimous. That concludes our Policy Calendar. Now we go into our
315 9:30 Public, Public Hearings at 10 after 12.

316 **AGENDA ITEM 3.64 – END OF DISCUSSION**

I attest under penalty of perjury that this transcript excerpt is a true rendition of the September 11th, 2012 Riverside County Board of Supervisors Meeting on item 3.64 as transcribed by me, Noelle Blouin, on September 21, 2012.

1 CHAIR TAVAGLIONE: Okay, thank you Ms. Hodge. Paul Jacobs?

2 PAUL JACOBS: Good afternoon Chairman Tavaglione and Supervisors, staff and
3 citizens and I'm actually speaking on item 3.64 because I got fast tracked past when I put in
4 my....

5 CHAIR TAVAGLIONE: Yes, Paul, you did and I apologize.

6 PAUL JACOBS: That's okay.

7 CHAIR TAVAGLIONE: I thought you were tied to one of the three minute things.

8 PAUL JACOBS: You were eager to fast track...

9 CHAIR TAVAGLIONE: Yeah.

10 PAUL JACOBS: so I understand. {CHUCKLE} The desire to take measures and
11 stimulate the economy is commendable but not at the expense of due diligence, and planning,
12 and the public hearing process.

13 If you want to know why Riverside; the Riverside County economy is in the pits with the
14 worst unemployment in 31 years, it is because of policies that short change the planning process.
15 Move your family to Riverside County and a blasting quarry or some other undesirable product;
16 project will come to a neighborhood near you soon. Your Fast Track Policy will be the fast pack
17 reason for families and small businesses to flee this County.

18 It is honorable to institute policies to encourage hiring veterans and giving preference to
19 businesses that will provide local employment, but mindless fast tracking is not the answer.
20 Quality in any endeavor requires time and planning. Rushing projects through the approval
21 process is the recipe for disaster.

22 There are many measures available to stimulate the local economy without bypassing the
23 public process. You can support small business rather than exclusively representing the

24 development and building industry. Residents of this County deserve better than a future of
25 gravel pits and warehouses.

26 Supervisors, you are supposed to represent the will of the People rather than catering to
27 Special Interests. It is misrepresentation to slip fast track project into communities by skipping
28 proper planning and the public, public hearing process, but this policy serves, serves to subvert
29 the Liberty's local communities. The proposal before you is a backtrack on democracy and I
30 suggest that you slow track for better planning. Thank you and have a good afternoon.

31 CHAIR TAVAGLIONE: Paul, I have a question for you.

32 PAUL JACOBS: Sure.

33 CHAIR TAVAGLIONE: The Fast Track Policy 3.64, was related to development
34 projects, as you know, and you know that we, when, when a business comes into the County;
35 could be (I don't know, let me think) of a; you know, there's no longer a (business); Block
36 Buster Video, they wanted to join; go into one of the shopping centers, they don't have to go
37 through the planning process but yet they do have to go through the building permit process to
38 do their TI's and so on; Tenant Improvements.

39 If they were to guarantee us that they would hire so many veterans or current recently
40 unemployed, would you agree to fast track that? Would you support that?

41 PAUL JACOBS: Yeah, an existing retail.

42 CHAIR TAVAGLIONE: What's the difference?

43 PAUL JACOBS: The difference is the, the Fast Track Policy (has been) used to fast
44 track a military training; a private military training camp in an area that was zoned rural
45 agricultural.

46 CHAIR TAVAGLIONE: Okay.

47 PAUL JACOBS: And that's an inappropriate use of fast track. If, if you restrict it to
48 certain uses, that makes sense, but what's happened in this County is inappropriate projects get
49 fast tracked.

50 CHAIR TAVAGLIONE: As a city; as a city council candidate for Temecula, would you
51 support fast track?

52 PAUL JACOBS: I would curtail it to certain benefits to where it wouldn't disturb
53 existing communities; where like projects would go next to other projects, not incompatible
54 projects.

55 CHAIR TAVAGLIONE: Okay, thank you.

56 OFF MIKE SPEAKER: {NOT INTELLIGIBLE}

57 COUNTY COUNCIL WALLS: Yeah, Chairman, if I might just...

58 CHAIR TAVAGLIONE: Sure.

59 COUNTY COUNCIL WALLS: We, we didn't ask for a reconsideration of 3.64 and I'm
60 not sure if Chairman and the Board would like to entertain one. I was handed a note from a staff
61 member; and Mr. Benoit, Supervisor Benoit was correct, the request to exclude Solar from
62 Renewable Energy and the policy emanated from our office and the feeling was because of
63 pending litigation there's really a need to, to bring that before the Planning Commission and vet
64 these on an individual basis there before bringing them to the Board.

65 So if the Board would like to entertain a reconsidered; a reconsideration motion to go
66 ahead and revise that policy accordingly and to also consider the public speaker's comments that
67 would be appropriate.

68 MALE SPEAKER: {NOT INTELLIGIBLE}

69 CHAIR TAVAGLIONE: Sure, Supervisor Beniot.

70 SUPERVISOR BENOIT: Yeah, Mr. Chairman, I would appreciate and recognize the
71 comments that have been made since by people who during public comment also spoke on this
72 issue and all the comments that were made; I would, on the basis of the presentation that was just
73 made by County's counsel would go back to my original motion, which was to approve every
74 part of that Fast Track Initiative that dealt with green projects, veterans, unemployed; but to, to;
75 for the purpose of avoiding confusion during litigation and that fact that there already is existing
76 fast track in the area of renewable energy, just simply delete that one item; that one line from that
77 process and I would move that we reconsider that for that purpose.

78 CHAIR TAVAGLIONE: Second. Let me ask, let me ask; only as it relates to litigation?
79 Because I want to be; and only as it relates to solar? We have; we have wind energy. Now, we
80 haven't seen any; much, much, much of them recently, but there potentially could be wind
81 energy projects. Are we saying we don't want to...

82 SUPERVISOR BENOIT: Or it can be fast tracked. I believe that there's existing policy
83 that allows for some of that, I'm not sure about all of it, but I think that it should be taken as a
84 separate issue from your other well intended changes because of the possible conflicts.

85 CHAIR TAVAGLIONE: Okay, I guess that's what I'm trying to clarify...

86 MALE SPEAKER: What about the legal issues and the court case.

87 CHAIR TAVAGLIONE: Yeah, if it's, if it's related to a legal issue I can understand. I
88 just want to be clear that the policy that was adopted today; unless it is being legally challenged,
89 is, is appropriate for a fast track.

90 COUNTY COUNCIL WALLS: I think that the; and Tiffany, if you might want to come
91 in and address this. Apparently you've had the discussions.

92 CHAIR TAVAGLIONE: Well, we haven't vote to reconsider yet.

93 COUNTY COUNCIL WALLS: Yeah.

94 CHAIR TAVAGLIONE: Well, let's take that vote to reconsider. We have a motion;
95 Supervisor Benoit, I'll second the motion. Please vote.

96 SUPERVISOR BENOIT: Thank you.

97 CHAIR TAVAGLIONE: Motion to reconsider consider 3.64...

98 TIFFANY: Good morning Supervisors...

99 CHAIR TAVAGLIONE: Go ahead Tiffany.

100 TIFFANY: The fast track process that's already in place; the policy that's already in
101 place, and the ordinance provisions that are in place do; the eligibility criteria number two; I
102 believe that most renewable energy projects are going to fall within that eligibility criteria
103 because of the capital investment that they're putting in the County. So they would be eligible to
104 apply for fast track processing under that.

105 The concern is as Pam had mentioned, that with, because that, that provision's in place
106 we didn't think that you need to add another provision that says renewable energy projects, so.

107 CHAIR TAVAGLIONE: Okay, would you say that again?

108 TIFFANY: Because the eligibility criteria number two is already there and due to the
109 existing litigation, we did not think that it's necessary to add another eligibility for renewable
110 energy projects in the policy as number five.

111 MALE SPEAKER: Renewable energy, complete, everything...

112 TIFFANY: Yeah. well....

113 MALE SPEAKER: ...in general it's redundant.

114 TIFFANY: Uh huh.

115 CHAIR TAVAGLIONE: Okay, as long as it's covered.

116 TIFFANY: Well at the eligibility criteria number two it's quite broad and it talks about
117 and it talks about a commercial and or development project that meets at least one of the criteria,
118 and it will create forty new permanent full time jobs or it has a capital investment of at least five
119 million; and I think most of the wind energy projects would fit into that criteria.

120 CHAIR TAVAGLIONE: Okay.

121 TIFFANY: Okay?

122 CHAIR TAVAGLIONE: Alright.

123 TIFFANY: Thank you.

124 CHAIR TAVAGLIONE: Good. And with that clarification we; I'll move approval of
125 the item with that clarification.

126 SUPERVISOR BENOIT: And with removal of item number five as we talked earlier.

127 CHAIR TAVAGLIONE: Five to seven, right? Paragraph five to seven?

128 COUNTY COUNCIL WALLS: Yeah.

129 SUPERVISOR BENOIT: Just to take out five and renumber the remainder, just as you
130 originally suggested.

131 COUNTY COUNCIL WALLS: It would be, number five would be removed and then it
132 would be renumbered up to six and then an authorization that paragraph would change from to a
133 number six with the renumbering.

134 CHAIR TAVAGLIONE: I'm glad you have that for the record. So with that, with that...

135 SUPERVISOR BENOIT: Yeah, I'll second that motion, if that's accurate.

136 CHAIR TAVAGLIONE: Alright, we have a motion and a second. Please vote. Motion
137 is unanimous. Thank you, alright.

138

I attest under penalty of perjury that this transcript excerpt is a true rendition of the September 11th, 2012 Riverside County Board of Supervisors Meeting of the sound file between 3:43:00 to 3:52:26 as transcribed by me, Noelle Blouin, on September 24, 2012.



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PLANNING COMMISSION
COUNTY OF RIVERSIDE

IN THE MATTER OF CHANGE OF ZONE NO. 7508, SURFACE MINING PERMIT NO. 213, AND
NOISE ORDINANCE EXCEPTION NO. 2
DENIAL FINDINGS AND CONCLUSIONS

The County of Riverside Planning Commission (the "Commission") heard the above-referenced matters (the "Project") in regular and special sessions assembled on April 26, 2011, May 3, 2011, June 22, 2011, July 18, 2011, August 15, 2011, and August 31, 2011, after giving the required notice. The County of Riverside Planning Department (the "Planning Department") made a presentation before the Commission and recommended certification of the Environmental Impact Report (EIR) and recommended approval of the Project subject to the conditions of approval. Granite Construction (the "applicant") and the applicant's representatives gave oral testimony, as did members of the public. Following the presentation and oral testimony, the Commission tentatively denied the project and directed the Planning Department and Office of County Counsel to prepare the following findings. Surface Mining Permit No. 213, Change of Zone Case No. 7508, and Noise Ordinance Exception No. 2 constitute the Project (Project). The Commission has reviewed the findings and hereby denies the Project based thereon.

A. Factual and Procedural History

1. As proposed in the application, Surface Mining Permit No. 213 would, if approved, permit the construction and operation of a mine on 414 acres located in southwest Riverside County. The 414 acre site would include 155 acres to be used for the quarry and associated support operations, 9 acres would be used for the access road and lower utility pad, and the remaining 250 acres would serve as a buffer area intended for permanent conservation.
2. As proposed in the application, Change of Zone No. 7508 would, if approved, change the zone from Rural Residential (R-R) to Mineral Resources and Related Manufacturing (M-R-A) on 14 parcels consisting of 110 acres near the center of the site where the processing plant would be located, the application proposes no change to the rest of the site. The Change of Zone is not required for the Surface Mining Permit to be approved. It would make ancillary uses, contemplated under the mining permit, permitted without requiring a conditional use permit.
3. As proposed in the application, Noise Ordinance Exception No. 2 would, if approved, provide an exception from County Ordinance No. 847 to address the existing ambient noise levels resulting from noise levels related to the I-15 Interstate Highway.
4. The Project site is designated Rural: Rural Mountainous (R:RM) on the Southwest Area Plan which is part of the Riverside County General Plan.
5. The proposed use, surface mining and related activities, are conditionally permitted uses in the Rural: Rural Mountainous (R:RM) designation which specifically explains "limited recreational uses, compatible resource development (which may include the extraction of mineral resources with approval of a surface mining permit) and associated uses, and governmental uses are also allowed within this designation."
6. The Project site is surrounded by properties which have General Plan designations of Open Space (OS) by the City of Temecula to the north and west, Community Development: Light Industrial (CD:LI) to the east by the County of Riverside, and Multiple Rural Use by the County of San Diego to the south
7. The City of Temecula on November 10, 2010, annexed the surrounding property to the north and west of the Project site, which is also part of the Santa Margarita Ecological Reserve ("SMER").

- 1 8. The zoning for the Project site is Rural Residential (R-R).
- 2 9. The proposed use, surface mining and related activities, is a permitted use, per section 5.1a(15)
- 3 of Article V, of Ordinance No. 348, in the Rural Residential (R-R) zone.
- 4 10. A 2.5-acre portion of the Project site located in San Diego County is zoned as A-70. Surface
- 5 mining operations, and related facilities and activities are permitted in this zoning district,
- 6 subject to a San Diego County approved Major Grading Permit.
- 7 11. The Project site is surrounded by properties which are zoned Open Space-Conservation-Santa
- 8 Margarita (OS-C-SM) by the City of Temecula to the north and west, Rural Residential (R-R)
- 9 to the east by the County of Riverside, and A-70 by the County of San Diego to the south.
- 10 12. The Project is consistent with the Multi-Species Habitat Conservation Plan (MSHCP).
- 11 13. This Project is not located within a Criteria Area of the MSHCP.
- 12 14. The Project is located in a Special Linkage Area (SLA) of the MSHCP.
- 13 15. The Project site is located adjacent to the San Diego State University's SMER on the west and
- 14 north.
- 15 16. There are a number of residential subdivisions within one half mile of the Project site, such as
- 16 the community of Red Hawk, consisting of approximately 3,000 homes. Single family homes,
- 17 generally on lots over one half acre in size, are located to the south, north and east of the
- 18 Project site.
- 19 17. Five public hearings were held on the Project in Temecula, California, in order to be close to
- 20 the Project site and facilitate community input on the Project. In addition to the hearings, one
- 21 public meeting for Commissioners' deliberations was held in Riverside, California.
- 22 18. In total, the public hearings lasted approximately 51.5 hours
- 23 19. In addition to comments received on the Project's Environmental Impact Report No. 475
- 24 ("EIR"), the Planning Department received 55 letters in support of the project, 14 letters that
- 25 were neutral, and 77 letters in opposition.
- 26 20. The EIR evaluates four project alternatives, a no project alternative, a reduced quarry footprint
- 27 alternative, a reduced annual production alternative, and a Double Butte alternative location.
- 28 At the first public hearing, the Planning Department recommended approval of the reduced
- footprint alternative as presented in the Project's EIR which would reduce the mine site from
- 155 acres to 135 acres, eliminate a settling pond, which created a buffer to the south, create an
- additional 250 acres of conservation and create a 400 foot buffer to the north of the Project
- site.
21. On July 18, 2011, after taking testimony from all members of the public who submitted a
- speaker card, the Planning Commission closed the public hearing to further public testimony.
- The public hearing was left open for all other purposes.
22. Those not present at the hearing made their opposition known in other ways such as submitting
- email, letters, petitions, and aerial photos showing groups of people arranged to spell out anti
- quarry sentiments.
23. A petition with signatures of many residents of the Red Hawk Community was submitted to
- the Commission in opposition to the Project.
24. Project supporters also submitted letters and attended the public hearings; however, the
- majority of those in attendance at the hearings expressed opposition to the Project.
25. During the applicant's rebuttal, the Commission asked questions of the applicant, the
- applicant's representative, the Planning Department and members of the public. The applicant
- was given an opportunity to respond to the answers provided to these questions.
26. Many residents of nearby neighborhoods, users of the neighboring SMER, elected officials
- and representatives from the City of Temecula and the Pechanga Band of Luiseno Indians
- ("Pechanga") presented written and oral testimony at the hearings and expressed concerns

1 regarding impacts including air quality, traffic, noise, blasting, rock fall, biological resources,
2 cultural resources, and impacts to the Temecula Valley Wine Country.

- 3 27. The City of Temecula, which borders the Project to the north and west, approved a resolution
4 on March 8, 2011 opposing the Project.
- 5 28. Representatives of the San Diego State University opposed the Project citing several potential
6 impacts to the SMER, which is an open space research area that borders the Project to the
7 north and west.
- 8 29. The EIR studied the Project's potential environmental impacts. The EIR is divided by areas of
9 environmental study such as geological impacts, cultural impacts, air quality impacts, etc.
10 The EIR concluded that there are six (6) categories (12 specific impacts) that remained
11 significant, even after mitigation was analyzed. These six (6) significant and unavoidable
12 impacts are direct impacts to both Air Quality and Traffic as well as Cumulative impacts to
13 Air, Biological Resources, Traffic, and Utilities (water).

14 B. Applicable Statutes, Regulations and Ordinances

- 15 1. Section 15093(a) of the California Environmental Quality Act ("CEQA") Guidelines
16 requires the decision making agency to balance, as applicable, the economic, legal, social,
17 technological, or other benefits, of the project against its unavoidable environmental risks
18 when determining whether to approve the project. If the benefits outweigh the unavoidable
19 adverse environmental effects, the adverse environmental effects may be considered
20 acceptable.
- 21 2. Public Resources Code Section 21082.2(c) provides that "statements in an environmental
22 impact report and comments with respect to an environmental impact report shall not be
23 deemed determinative of whether the project may have a significant effect on the
24 environment."
- 25 3. Additionally, CEQA Guidelines Section 15002(h)(5) provides, in pertinent part, when an
26 [environmental impact report] shows that a project could cause substantial adverse changes
27 in the environment, the governmental agency must respond to the information by one of
28 several listed methods, including disapproving the project.
- 29 4. According to Section 7(b) of Riverside County Ordinance No. 555, an application for a
30 permit shall not be granted unless that permit is expressly subject to such conditions as are
31 necessary to protect the health, safety or general welfare of the community.

32 C. Project Benefits as determined by the Planning Commission

- 33 1. The Project would mine a significant economic mineral resource, provide a portion of the
34 local and some of the regional demand for aggregate for Western Riverside County.
- 35 2. The Project would also create employment opportunities.
- 36 3. Additionally, the Project site is not as visible to large population areas as alternative
37 locations as presented in the EIR.
- 38 4. The Project would produce new sales tax revenue and new property taxes and fees for the
39 County of Riverside over the life of the Project.
- 40 5. The Project would also produce tax revenue for the State of California.

1 D. Environmental Impacts

2 I. Air Quality

3 a. EIR Information

4 Air Quality EIR Background

5 Potential air quality impacts generally occur when the emissions of a project result in a
6 violation of an air quality standard, conflict with an applicable air quality plan, expose
7 sensitive receptors to significant levels of toxic air contaminants, or allow regional
8 exposure to significant levels of sulfate and nitrate deposition.

9 Section 3.2 of the EIR summarized project specific research contained mainly in the
10 Project's Air Quality Impact Assessment (AQIA), which was conducted consistent
11 with the SCAQMD Air Quality CEQA Handbook (SCAQMD, 1993). Criteria for
12 determining both the construction and operation impacts associated with air quality
13 have been developed in accordance with Appendix G of the CEQA Guidelines,
14 SCAQMD Air Quality Thresholds, and a set of thresholds established to determine
15 impacts to greenhouse gas emissions.

16 Design Features That Assist in Mitigation

17 The Project design for the operation of the quarry includes the following design
18 features, which were included in the air quality modeling and assessment. These
19 features assist in mitigating the air quality impacts and were considered by the
20 Commission.

- 21 • Installation of baghouse emission control on crushers and screens with the
22 potential for emissions. This reduces PM10 emissions by estimated 97.5 percent.
- 23 • Installation of baghouse emission controls on transfer points with the potential for
24 emissions that are associated with the screens and crushers. This reduces emissions
25 by estimated 97.5 percent.
- 26 • Pavement around the entire aggregate, asphalt, concrete, and electrical generation
27 plant sites. Only on-site haul roads will be unpaved, and those will be chemically
28 stabilized and/or routinely watered.
- Installation of an ultra-efficient material loading system to minimize the amount of
product delivery trucks idling time.
- Utilization of material load-out chutes to minimize the potential for dust
generation during product loading.
- Purchase and use of all new off-road equipment (such as off-road quarry haul
trucks, loaders, graders, etc.) that meet required, stringent emission controls.
- Installation of emission controls on drilling equipment to minimize dust
generation.
- Utilization of only natural gas fuels and installation of a 3-way oxidation catalyst
on the engines driving the on-site electrical generators.
- Implementation of a "blue smoke" program and other nationally accepted practices
that reduce the potential for odor from asphaltic concrete (conventional, recycled
asphalt products, and rubberized) production, including mixing the asphalt at as
low a temperature as feasible.

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- Establishment of a conservation easement over undeveloped land within the Project site at an effective ratio of 2 to 1 compared to impacted land, which will result in protecting habitat that would offset greenhouse gas emissions in perpetuity.

4 Conditions of Approval Considered During Hearings That Assist in Mitigation

5 In addition, during the public hearings additional conditions of approval were
6 proposed by County staff. One required all on-road heavy duty diesel trucks serving
7 the facility to comply with EPA2007 on-road emission standards for PM-10 and NOx
(0.01g/bhp-hr and at least 1.2 g/bhp-hr respectively). Annual reports would assure
8 compliance. The second required solar panels over parking areas and on all office
9 rooftops.

10 Mitigation Measures

11 In addition to the design features listed above, numerous mitigation measures were
12 applied to the Project to further reduce impacts, a full list of mitigation is provided in
13 Table ES-1 of the FEIR.

14 Significant and Unavoidable Air Quality Impacts

15 Even after the design features and mitigation measures were taken into account, the
16 EIR determined that the Project would have the following significant and unavoidable
17 impacts to Air Quality in two categories:

18 • Direct Air Impacts:

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- Impact AQ-2 from the EIR analyzed if, "*construction-related air emissions from the Proposed Project could result in construction-related emissions that exceed any of the South Coast Air Quality Management District (SCAQMD) thresholds of significance in [DEIR] Table 3.2-8 (SCAQMD Thresholds for Construction Emissions).*" The EIR identified that the impacts would be significant but temporary, approximately 2 years. According to EIR Table 3.2-15, particulate matter less than 10 microns in size (PM10) and Sulfur Dioxide (SO2) emissions would be below the South Coast Air Quality Management District (SCAQMD) thresholds. However, emissions of Nitrogen Oxides (NOx), Organic Gases (ROG), Carbon Monoxide (CO), and particulate matter less than 2.5 microns in size (PM2.5) would exceed SCAQMD daily emission thresholds for construction and would be considered a potentially significant impact. These impacts are related to construction only and would, therefore, be temporary in nature.
 - Impact AQ-3 from the EIR analyzed if, "*operational emissions from the Proposed Project could exceed any of the SCAQMD thresholds of significance in [DEIR] Table 3.2-10 (SCAQMD Thresholds for Operational Emissions).*" According to EIR Table 3.2-20, after mitigation, the emissions of ROG, PM10, and PM2.5 are expected to be reduced to less than their SCAQMD CEQA operation emission significance thresholds. However, NOx and CO emissions are expected to remain above their SCAQMD CEQA operation significance thresholds and would be considered a potentially significant impact.

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- o Impact AQ-5 from the EIR analyzed if, "construction from the Proposed Project could result in off site ambient air pollutant concentrations that exceed the SCAQMD thresholds of significance in [DEIR] Table 3.2-9 (SCAQMD Thresholds for Ambient Air Quality Concentrations Associated with Proposed Project Construction)." Construction impacts are short term (approximately 2 years), and there are no residential or worker receptors (i.e., no human exposure) at the point of maximum impact, which is at the Project boundary. According to EIR Table 3.2-24, modeled air quality concentrations for construction activities all remain below the SCAQMD air quality impact thresholds, except the 24-hour and annual PM10 concentrations. Therefore, the EIR determined that off-site air pollutant concentrations due to Project construction would be significant for PM10. These impacts are related to construction only and would, therefore, be temporary in nature.

- o Impact AQ-6 from the EIR analyzed if, "Proposed Project operations could result in off site ambient air pollutant concentrations that exceed a SCAQMD threshold of significance in [DEIR] Table 3.2-11 (SCAQMD Thresholds for Ambient Air Quality Concentrations Associated with Proposed Project Operations)." According to EIR Table 3.2-25, the off site ambient concentration impacts associated with the Projects operation would be less than significant for NO2, SO2, CO, and annual PM2.5. However, the EIR concludes that the maximum off-site ambient pollutant concentrations of 24-hour PM10, annual PM10, and 24-hour PM2.5 associated with operations would be significant as compared to the SCAQMD incremental thresholds.

- **Cumulative Air Impacts:**

- o Impact AQ-8 from the EIR analyzed if, "the Proposed Project could result in GHG [greenhouse gas] emissions that would hinder or delay the state's ability to meet the reduction targets contained in [Assembly Bill] AB 32." The Project is still anticipated to generate approximately 80,000 (30,000 with truck displacement) tons per year of CO2e even with mitigation applied. Additionally, Section 5.4.2 of the EIR analyzes cumulative effects and explains that although there are regional benefits to air from the Project, the analysis takes the most conservative approach and concludes that any new source of pollution that contributes to a cumulative exceedance of daily operational emissions thresholds or contributes to a cumulative net increase GHG emissions is significant. Beyond the Project level measures identified in Section 3.2 of the EIR, there are no additional feasible mitigations available. As such, the Project's air quality impacts related to criteria pollutants and GHG are cumulatively considerable, significant and unavoidable. However, the EIR also concluded that even though the environmental documents conservatively determine the impacts to be significant and unavoidable, given the EIR analysis, it is unlikely that the Project would hinder or delay the State's ability to meet the reduction targets of AB 32.

1 • Impacts to Surrounding Communities

- 2 ○ *The SMER.* The EIR explained that PM10 and NO2 impacts are of primary
3 interest in evaluating air quality impacts on the SMER because the other pollutant
4 impacts are equally as small. The increases in these particulates were far less than
5 the most stringent annual federal and California ambient air quality standard
6 threshold for PM10 and NO2 and far under the SCAQMD annual threshold for a
7 project-related increase. Therefore, the EIR determined that the potential air
8 quality impacts at the SMER are less than significant.

9 The EIR also provides that the levels of sulfate and nitrate deposition are less
10 than levels associated with vegetative injury as discussed in Section 3.2.3 and
11 Table 3.2-31 of the EIR. Consequently, the EIR concluded that when considering
12 existing and future research projects that analyze deposition rates and effects on
13 soils and vegetation, the Project would result in a less than significant impact
14 from sulfate and nitrate deposition. Additionally, questionnaire responses
15 indicated that approximately ten research projects were related to air quality, four
16 of which were assessing nitrogen deposition impacts to vegetation that could be
17 affected by nitrate and dust deposition. According to the EIR, since deposition is
18 less than the thresholds, it is not expected that the incremental increases in nitrate
19 deposition would affect the ongoing vegetation research within the SMER.
20 Similarly for dust deposition, the anticipated deposition rate at the point of
21 maximum impact would be less than 10 percent of the minimum amount that has
22 been shown in published literature to have an adverse effect on vegetation.

23 The EIR also studied the cancer risk from exposure to hexavalent chromium,
24 diesel exhaust, and crystalline silica. Because the cancer risk is below the
25 SCAQMD threshold of 10 in a million, the EIR determined that the Project would
26 result in less than significant health risk impacts to researchers working near the
27 property boundary and on research projects that would be conducted within the
28 SMER.

The SMER also maintains a network of data acquisition sensors and towers
throughout the SMER. According to the EIR, the Project would not affect these
sensors and their ability to collect data. With implementation of recommended
mitigation measures, the EIR concluded that direct and indirect project specific
emissions would not significantly impact research projects within the SMER
related to air quality or to other biological resources affected by air emissions
deposition.

- *City of Temecula, Rainbow, De Luz and Fallbrook.* Regarding air quality
impacts to the City of Temecula and communities of Rainbow, De Luz and
Fallbrook, the EIR explained that PM10 and NO2 impacts are of primary interest
in evaluating air quality impacts on the SMER because the other pollutant
impacts are equally as small. The increases in these particulates were far less than
the most stringent annual federal and California ambient air quality standard
threshold for PM10 and NO2 and far under the SCAQMD annual threshold for a
project-related increase. Therefore, the EIR concluded that potential air quality
impacts to the surrounding cities and communities are less than significant.

1 The EIR studied the cancer risk from exposure to hexavalent chromium, diesel
2 exhaust, and crystalline silica. Because the cancer risk, as modeled at receptor
3 locations near the communities, were below the SCAQMD threshold of 10 in a
4 million, the EIR concluded that the Project would result in less than significant
5 health risk impacts to residences in the surrounding cities and communities.

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b. Public Testimony

- During the public hearings several experts testified in opposition with regard to Air Quality Impacts. In particular, Paul Weir, Senior Engineer for Sage Environmental Consulting.
- Mr. Weir explained that air quality emission factors, used by the EIR, are specifically discouraged by the EPA for hard rock blast modeling. He also explained that because the particulate levels for PM10 in the EIR were 98% of the AQMD requirements, small changes to the emission factors could result in important changes to the significance determination.
- Additionally, Mr. Weir indicated that higher emission factors contribute to higher concentrations of toxic dust contaminants.
- Mr. Weir also commented that the Project site has lower moisture content than the air quality model indicates.
- Several area doctors also testified that the Project would create detrimental health impacts to the community.

c. Air Quality Conclusions Made by the Planning Commission

1. Based on the public's testimony, the Project presents health risks to the surrounding communities. These risks include air quality impacts in the form of silica dust. While these impacts would be small and have minimal impacts in the short term, the level of impact in the long term imposes a danger to the public's health and safety.
2. Additionally, the air quality impacts resulting from the Project would reduce the number of researchers and research projects willing to use the SMER because researchers may perceive the operating mine as an impediment to their research.
3. Despite mitigation measures, the Project would also increase emissions from truck activities creating incremental adverse impacts to air quality.
4. In light of the public's testimony, the Project would cause air quality impacts and result in unavoidable environmental risks that are not outweighed by the Project's benefits set forth above. Therefore, the air quality impacts are not acceptable.
5. Additionally, the unavoidable environmental effects listed above are detrimental to the public's health, safety and general welfare.

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2. Aesthetics and Light

a. EIR Information-

Aesthetics and Light EIR Background

Aesthetics, or visual resources, are the natural and cultural features of the landscape that can be seen and contribute to the public's appreciative enjoyment of the environment. Visual resource or aesthetic impacts are generally defined in terms of a project's physical characteristics and potential visibility, and the extent to which the project's presence would change the perceived visual character and quality of the environment in which it would be located.

Section 3.1 of the EIR summarized project specific research contained mainly in the following reports prepared by CH2M HILL which were reviewed to assess the potential nighttime light impacts and are included as Appendix M (Lighting Plan for the Proposed Liberty Quarry [Lighting Plan] [CH2M HILL, 2007a]) and Appendix M-1 (An Analysis of Potential Light Impacts for the Proposed Liberty Quarry [Light Impact Technical Report] [CH2M HILL, 2007b]). The Lighting Plan was reviewed by the Riverside County Environmental Programs Division for consistency with the County's MSHCP in September 2007. In addition, the analysis of potential light impacts was reviewed by Palomar Observatory in 2007. Criteria for determining both the construction and operation impacts associated with the aesthetics and light have been developed in accordance with Appendix G of the CEQA Guidelines.

Summary of EIR Evaluation and General Methodology for Aesthetics

For aesthetics, the EIR included a comparison of the "before" photographs with the simulations of the Project as it would appear during its operational phase. This provided the basis for determining Project impacts on views and visual quality. Two to three images were included for each specific vantage point as follows: a view toward the site under existing conditions; a view toward the site as it would appear without full mitigation; and, a view toward the site with mitigation measures incorporated. The EIR concluded that all potentially significant impacts for aesthetics were reduced with mitigation to a level of less than significant.

Summary of EIR Evaluation and General Methodology for Light Impact

In regards to lighting, The EIR determined that with implementation of the applicable County Ordinances, potentially significant impacts from lighting would be less than significant. The EIR's analysis of the Project's potential light-related impacts, found that in terms of the standards for determining the significance, the Project would not create a significant impact because of the following:

- It would not result in light spilling onto off site areas creating light trespass and changes in ambient lighting conditions. In particular, the EIR found that the Project would have no effect on the ambient lighting conditions in the adjacent SMER or on residential properties in the Project vicinity;
- it would not result in substantial adverse alteration of nighttime views; and
- it would not create substantial daytime or nighttime glare.

The County of Riverside has not established specific assessment criteria or thresholds for evaluating the significance of a project's light impacts in terms of effects on sky

1 glow. Riverside and San Diego Counties, however, have adopted ordinances whose
2 objectives include limiting sky glow to protect visibility of the nighttime skies from
3 the Palomar Observatory. As a result, the EIR states that a reasonable standard for
4 assessing a project's sky glow impact is the extent to which a project is in
5 conformance with these ordinances. The EIR concludes that the use of low wattage
6 lighting, low pressure sodium lamps, shielding, pointing all lights downward, and full
7 cutoff fixtures specified by these ordinances will prevent direct transmission of light
8 up into the atmosphere, and will minimize the amount of light that is cast onto the
9 surface of the quarry and then reflected upwards. Therefore, the EIR determined that
10 the Project's net contribution to the skyglow conditions will be minimized.

11 Mitigation Measures

12 The EIR includes numerous mitigation measures for the Project to further reduce
13 impacts, a full list of mitigation is provided in Table ES-1 of the FEIR.

14 Impacts to Surrounding Communities

15 The EIR also specifically analyzed the impacts to surrounding communities.

- 16 • *Tribal lands.* The area of the Tribal lands east of the Project site and I-15 is
17 vacant, mostly undisturbed rocky hills and ridges similar to much of the open
18 space mountains in the area. There are no homes or marked trails in the area,
19 therefore, the EIR determined that few if any viewers would be affected by
20 views of the Project which results in low viewer sensitivity. While the site
21 would be seen from this area, due to the fact that there are no permanent
22 receptors and infrequent hikers and even less potential viewers at night, the
23 EIR concluded that visual impacts from this area are considered less than
24 significant. Nighttime lighting of the process plants, mining, and street lights
25 along the access road, however, would be visible.
- 26 • *Luiseno Ancestral Origin Landscape.* With respect to the two potential
27 traditional cultural properties (TCP) identified in the EIR, the EIR concludes
28 that the Project would not result in changes to the ambient lighting conditions
north and west of the Project site. The EIR addresses potential project light
impacts in and around the asserted Luiseno Ancestral Origin Landscape and, as
noted above, concluded that with the application of mitigation the Project
would not result in the spilling or trespass of light onto adjacent properties or
increase ambient nighttime lighting conditions.
- *The SMER.* The SMER borders the site on its north and west boundary. Views
from adjacent higher elevations in SMER, would be able to see the Project
quarry. Views from SMER areas to the west of the site would be able to see the
hills and ridges within the property boundary. The Project ridgeline would
reduce most direct views of the quarry and plants from the central and western
portions of SMER including the North and South Stations. The site would not
be visible from anywhere along the Santa Margarita River because of the
canyon depth and intervening ridges. The remaining areas of potential
visibility are 3.5 or more miles from the site on higher elevation areas where
viewers are few.

1 The EIR provided that to the extent that there are any human nighttime viewers
2 in the SMER, their views toward lighting associated with the Project quarry
3 would be very limited. From this area, the lighting at the aggregate processing
4 area and asphalt plant would be visible in the distance. The EIR emphasized
5 that although the Project lighting might be visible as distant points of light
6 visible from limited areas in the SMER, this lighting would have no effect on
7 ambient lighting conditions within the SMER's boundaries.

8 The EIR provided that from most other portions of the area north and west of
9 the site, the Project's lighting would not be visible. The only exception is that
10 lighting from the processing area and asphalt plant has the potential to be seen
11 from the upper portions of the ridgeline located immediately to the west of the
12 SMER's western boundary and from some small higher elevation areas located
13 north of the SMER's northwest corner. The EIR determined that new light
14 sources would be minimal areas of illumination seen at a distance of more than
15 3 miles, the overall effect on the views from these areas would be low. Night
16 lighting at the quarry site was of concern to potential influence on bat behavior
17 and conflict with SMER research programs striving to understand bat feeding
18 behavior in natural environments. According to the EIR, the extent to which
19 additional regional lighting may influence bat behavior, if at all, is uncertain.

20 According to the EIR, two SMER researchers currently utilize lights to attract
21 species for collection, one at the North and South Stations and one throughout
22 the SMER. Small mammals and crickets sensitive to light are studied near the
23 North Station and South Station, nearly 2 miles from the Project's light sources
24 and blocked from view by intervening ridges. Additionally, another researcher
25 records wildlife movement along I-15 where vehicle lights and the border
26 patrol checkpoint create substantial lighting. The EIR concluded that lighting
27 at the site would not be discernable from the I-15 corridor.

28 The EIR determined that it is not expected that Project lighting would affect
the SMER, SMER projects, or wildlife within the SMER due to
implementation of design and mitigation measures, distance between light
sources and SMER, and topography that blocks Project lighting.

- *The City of Temecula.* The Temecula vantage points used for the EIR's analysis included the entire area located to the northeast and east of the site beyond the I-15 corridor. Ridgelines as high as 2,350 feet in elevation separate the Temecula Valley from the site and would obstruct most views from the north-northeast. Based on topographic maps, portions of the high ridge tops impacted by the Project would be visible from some limited locations in Temecula, where it would be seen at distances ranging from 3.5 to over 6 miles. A representative location within the Temecula Valley from which the Project could be visible, located approximately 6 miles northeast of the site near Highway 79 and Anza Road, would not be substantially altered by the Project. Therefore, the EIR determined that there would be no substantial alteration of the existing character of the view. The EIR did provide that a small area of the distant ridgeline would appear slightly reduced, but the visual quality of the view would remain average.

1 The EIR's lighting visibility analyses prepared in conducting the lighting
2 impact assessment establish that none of the Project lighting, including lighting
3 associated with the Project access road, would be visible from Temecula.
4 Therefore, the EIR concluded that the Project would have little to no effect on
5 views with project design measures and mitigation, and no light would be
6 visible from Temecula.

- 7 • *The Community of De Luz.* De Luz is located north of the SMER, which
8 borders the site on its north and west boundary. In this area, the Project would
9 have little to no effect on views seen by any substantial numbers of viewers.
10 Areas of potential visibility in De Luz are 3.5 or more miles from the site on
11 higher elevation areas where viewers are also few. The EIR provided that the
12 views toward lighting associated with the proposed quarry from nighttime
13 viewers in De Luz would be very limited. Because the new light sources would
14 be small limited areas of illumination seen at a distance of more than 3 miles,
15 the overall effect on the views from these areas would be low.
- 16 • *The Community of Rainbow.* The unincorporated Community of Rainbow is
17 located approximately 0.5 mile southeast of the site in San Diego County. Most
18 locations within Rainbow have unobstructed views of the prominent peaks and
19 ridges on the southeast portion of the site. These peaks and ridges would not be
20 developed as part of the Project, and would block views of the quarry and
21 plants from some points in the Rainbow Landscape Unit. The proposed access
22 road would be visible in unobstructed views from Rainbow Valley Boulevard
23 and from many locations in Rainbow depending on line of site.

24 Two typical vantage points within Rainbow, approximately 1.5 miles south of
25 the site, were included in the EIR to represent relatively unobstructed views of
26 the site. The existing character of this view is that of a somewhat intensively
27 developed rural residential setting, and the overall visual quality is average. The
28 views from these locations show the effects of the access road cuts on the
distant hills. Although clearly visible from this location, the EIR determined
that the presence of these cuts would not substantially alter the character of the
view from this developed rural residential setting.

According to the EIR, none of the lights in the quarry's operational areas would
be visible from the portion of Rainbow located on the valley floor, and the only
lighting that would have the potential to be seen would be the roadway lights
and vehicle lights associated with the Project's access road. At many locations
in Rainbow, views toward the access road are blocked to some degree by
structures and vegetation. The EIR provided that since these lights would be
small, distant features in the landscape and would be seen in the context of
views that include lighting associated with residences and other land uses in the
foreground, the change in the overall visual character and quality of the
nighttime view would be low.

From the area of low density and highly dispersed rural residential development
located in the hills that border Rainbow to the east, more of the proposed

1 quarry's lighting would be visible than from the valley floor. According to the
2 EIR, the lighting at the quarry's working face would be visible from some
3 locations at the higher elevations, as well as the lighting at the maintenance and
4 employee facilities, the aggregate processing area, the asphalt plant, and the
5 roadway lighting and vehicle lights along the quarry's access road. From these
6 areas, the lighting associated with the Project access road would have a limited
7 effect on the visual character and quality of the view because it would be 1.7
8 miles or more in the distance and would be seen in the context of the similar
9 light fixtures and vehicle lights at the Rainbow Valley Boulevard weigh station,
10 which are already visible in these views. The EIR determined that the Project
11 would have a less than significant effect on views with mitigation, and the
12 effects of lighting would be moderated by other visible existing freeway and
13 community lighting as well as by project design measures.

- 14 • *The Community of Fallbrook.* Fallbrook is an unincorporated community in
15 San Diego County that is located approximately 3 to 6 miles to the southwest of
16 the site. The EIR provided that the Project would have relatively little effect on
17 views in Fallbrook, because in many areas, views toward the site are screened
18 by intervening structures and vegetation. Changes associated with the Project
19 (such as alterations of ridgelines or permanently visible cut slopes) that are
20 visible from the Fallbrook area (viewing distances range from 3 to 8 miles)
21 would appear as small and distant elements in the view. Although Project-
22 related changes might be detectable in some views from Fallbrook, they have
23 little potential to be visually dominant elements that would substantially alter
24 the character or quality of the view. Furthermore, the Reduced Quarry Footprint
25 Alternative would eliminate the settling pond from the southwest portion of the
26 Quarry Area, eliminating this potential visual impact.

27 Consequently, although the Project could result in minor impact to some views
28 from Fallbrook, the EIR determined that these impacts would not be substantial.
The lighting visibility analyses prepared in conducting the lighting impact
assessment indicate that for the most part, the lighting proposed at the site
would not be visible from Fallbrook. The only exception is that in a small area
of Fallbrook located 5.5 miles and farther from the site, lighting associated with
the aggregate processing and loading area and the asphalt plant has the potential
to be visible. Because of the great distance of this lighting in the view, its
potential to be screened by structures and trees in the foreground, and because it
would be seen in the context of lighting at residences and other land uses in the
foreground, this lighting has little potential to have a substantial effect on the
overall character and quality of nighttime views from these areas of Fallbrook.
Because the new light sources would be small, limited areas of illumination
seen at a distance of more than 3 to 8 miles, the overall effect on the views from
these areas would be low.

26 b. Public Testimony

27 During the public hearings, many speakers testified to concerns related to aesthetics,
28 light and the potential impacts to biology. These concerns are further discussed in
Section D.3.b. herein.

1 c. Aesthetics and Light Conclusions Made by the Planning Commission-

- 2
- 3 1. Based on public testimony, the Project's light impacts would reduce the
- 4 number of researchers and research projects willing to use the SMER because
- 5 researchers may perceive the operating mine as an impediment to their
- 6 research.
- 7 2. Additionally, despite proposed mitigation, the scenic resources for the site
- 8 would be impacted by the line of trucks using the access road. These trucks
- 9 would be visible at all hours of the day and night from the surrounding
- 10 communities.
- 11 3. The public's testimony also indicated that the Project's light would refract in
- 12 the air moisture creating a night glow that would be visibly and aesthetically
- 13 detrimental to the surrounding communities.
- 14 4. Acsthetic impacts of an open pit quarry would remain even after project
- 15 reclamation.
- 16 5. In light of the public's testimony, the Project would result in unavoidable
- 17 aesthetic and light impacts to the surrounding communities. These impacts are
- 18 not outweighed by the Project's benefits. Therefore, these unavoidable
- 19 environmental effects are not acceptable.

20 3. Biology

21 a. EIR Information

22 Biology EIR Background

23 Biological resources generally include vegetation and habitat, wildlife, and biological

24 connectivity. Potential impacts to biological resources mainly occur when a project

25 has a substantial adverse effect on candidate, sensitive, or special-status species; has a

26 substantial adverse effect on sensitive habitat, including federally protected wetlands;

27 interferes substantially with the movement of migratory fish or wildlife; conflicts with

28 any local policies or ordinances protecting biological resources; or conflicts with the

provisions of an approved conservation plan.

Section 3.3 of the EIR summarized Project specific research including, a Biological

Technical Report (Appendix D), a Summary of Supplemental Biological Services

(Appendix D-1), a Determination of Biologically Equivalent or Superior Preservation

(Appendix D-2), and an MSHCP Consistency Analysis (Appendix E). Criteria for

determining both the construction and operation impacts associated with biology have

been developed in accordance with Appendix G of the CEQA Guidelines.

Summary of Biological Impact Evaluation

Upon review of potential impacts to biological resources, in particular to sensitive

species not covered in the Western Riverside County MSHCP, the EIR determined

that there would be less than significant impacts after mitigation.

Summary of the EIR Evaluation of the MSHCP

The EIR determined that the Project was consistent with the Multi Species Habitat

Conservation Plan ("MSHCP") and was not in any criteria cells. The Project is within

1 a Special Linkage Area (SLA). The EIR explains that designation of the SLA within
2 the Western Riverside County MSHCP was facilitated by the County in response to
3 comments received on the draft MSHCP related to the Santa Ana-Palomar Mountain
4 (SAPM) Linkage plan, which was released during the preparation of the MSHCP. The
5 EIR provided that the SLA does not stand alone and, instead, is intended to contribute
6 to the much larger Santa Ana-Palomar Mountains Linkage (SAPM) Linkage Area.
7 This SLA will contribute to the assembly of a portion of the SAPM for the benefit of
8 Covered Species. The SLA includes an approximately four (4) square mile area and is
9 bisected by Interstate 15 and Old US 395. Uses within the SLA currently include,
10 commercial, residential and light industrial uses particularly along the Old US 395
11 corridor. The EIR provided that, although proposed projects in the SLA are required
12 to undergo environmental review pursuant to CEQA, the SLA does not preclude
13 development from occurring provided that the appropriate environmental studies are
14 completed and mitigation measures are applied, if necessary and feasible.

15 Mitigation Measures

16 The EIR included numerous mitigation measures for the Project to further reduce
17 impacts, including the application of one of the project alternatives which suggested a
18 reduced footprint for the site that would provide additional open space. A full list of
19 mitigation measures is provided in Table ES-1 of the FEIR.

20 Significant and Unavoidable Biological Impacts

21 However, even with the reduced footprint and mitigation measures taken into account,
22 the EIR determined that the Project would have the following cumulative significant
23 and unavoidable impact to biology:

24 Cumulative biological impacts were assessed in Section 5.4.3 in the DEIR. The
25 biological function of the SAPM linkage area and the Pechanga Corridor is
26 currently substantially impaired by the eight-lane I-15, existing urban
27 development in north San Diego County (Community of Rainbow, Old US 395,
28 and CHP truck weigh station) and in southwest Riverside County (Border Patrol
checkpoint, CHP truck weigh Station, Temecula, and surrounding development).
Despite implementation of the MSIICP and recommended mitigation measures,
the projects in the cumulative list shown in DEIR/FEIR Table 5-1 would
contribute to cumulative effects to wildlife movement in the vicinity of the
Project. As no additional, feasible mitigation measures are available, the
Project's cumulative effects on wildlife movement remain significant and
unavoidable.

29 Impacts to Surrounding Communities

30 The EIR also analyzed the Biological impacts to surrounding communities. The EIR
31 did not find any potential biological impacts to surrounding residential communities,
32 only potential impacts to the neighboring SMER.

33 Regarding biological impacts specifically related to the SMER, the EIR explained
34 that the Project is immediately adjacent to open space lands that are dedicated to
35 long-term habitat conservation (i.e., SMER located to the north and west margins of
36 the site). Biological research projects identified through questionnaire responses
37 totaled over 44 and represent the prime resource area studied within the SMER.
38

1 According to the EIR, Project activities have the potential to result in adverse impacts
2 to the SMER research area and projects in several ways, as discussed below pursuant
3 to the MSIICP Urban/Wildlands Interface Guidelines.

4 *Drainage.* Drainage water would not be discharged to the MSHCP Conservation
5 Area. Drainage water would be collected and treated on site at the southern end of the
6 Plant Area and near the bottom of the access road. Drainage water would not be
7 allowed to enter into the watershed of the drainage feature located at the western
8 portion of the site, which is tributary to the Santa Margarita River, or into the
9 watersheds of any other off site drainages. As required under state and federal water
10 quality control laws, the applicant would prepare Storm Water Pollution Prevention
11 Plans (SWPPP) to demonstrate the collection and treatment of site drainage water.
12 With the implementation of the SWPPPs, the EIR determined that the Project would
13 not affect research projects related to the watershed downstream of the project within
14 the SMER. Therefore, impacts would be less than significant

15 *Wildlife Movement Corridor.* In total, the disturbed area from the Project is estimated
16 to be about 164 acres, or about 6 percent of the 2,560-acre SLA identified in the
17 MSHCP. Even after application of mitigation measures including increasing the
18 distance between the quarry area and the known crossings north of the site,
19 establishment of 250 acres of conservation easements and providing a 400-ft buffer
20 to the north any incremental increase in impacts would be a cumulatively
21 considerable impact that cannot be mitigated to a less than significant level.

22 *Toxics.* The EIR provided that the mining operation would transport petroleum
23 products and asphalt oil on public roads, and use and store asphalt oil, petroleum
24 products, and used oils within the developed quarry area. These products would be
25 stored and used well away from the MSHCP Conservation Area and in accordance
26 with applicable Riverside County regulations. The drainage measures approved in the
27 SWPPP would also prevent accidental spills within the quarry area and elsewhere on
28 the site from draining potentially toxic materials onto the MSHCP Conservation
Area. With the appropriate design features and implementation of the SWPPPs, the
EIR concluded that impacts to the research projects within the SMER would be less
than significant.

Lighting. The EIR provided that night lighting shall be directed away from the
MSHCP Conservation Area to protect species within the conservation area from
direct night lighting. By compliance with County ordinances, the EIR determined
that impacts to biological resources at the SMER would be less than significant. Also
see Section D.2. of this document.

Noise. The EIR included mitigation measures to ensure the Project's operational
noise levels within the SMER comply with the Riverside County residential noise
standards. Such mitigation measures include that all mining operations would be
setback at least 400 feet from the north site boundary; mining activities would be
restricted between Riverside County-defined noise nighttime hours of 10 p.m. and 7
a.m., and the concrete truck filling operations associated with the concrete plant
would be enclosed by placing those operations in a tunnel-like structure so that the
sides of the truck and its engine are shielded by the walls of the tunnel.

1 *Invasives.* The EIR provided that Riverside County and State Mining and Geology
2 Board approval of landscape maintenance and revegetation plans would ensure that
3 the Project would avoid the use of potentially invasive species adjacent to the
4 MSHCP Conservation Area. For this reason, the EIR concluded that impacts would
5 be less than significant.

6 *Barriers.* The applicant is proposing to manage the site as an active mining project,
7 with access strictly limited by gates and fencing surrounding the developed area.
8 According to the EIR, with special signage installed, the Project would minimize
9 unwanted access to the SMER. For this reason, the EIR determined that impacts
10 would be less than significant.

11 *Grading.* The Project is designed such that earthwork on the site shall not affect or
12 extend off site. Grading, grubbing, and earthwork in general would only be
13 conducted within the approved mining area. Berms constructed to reduce project-
14 related visual and noise effects would be located on applicant-owned property and
15 the minimum 400-foot setback from Project boundaries with the SMER would ensure
16 no earthworks (e.g., slopes) extend onto adjacent MSHCP Conservation Area lands.
17 According to the EIR, with these features, the Project would meet the requirements
18 of the MSHCP and avoid grading impacts to the adjacent SMER. For these reasons,
19 the EIR determined that the impacts would be less than significant.

20 According to the EIR, with implementation of recommended mitigation measures,
21 direct and indirect project specific impacts to biological resources and research
22 projects within the SMER and wildlife corridors can be reduced to levels less than
23 significant.

24 b. Public Testimony

25 During the public hearings many speakers raised concerns regarding biological
26 impacts. Many were experts from, or representing, SDSU, the City of Temecula, and
27 Pechanga.

- 28 • Dr. Matt Rahn, Director for Development and Research with the San Diego State University Field Stations Program, testified in opposition regarding the Project's impact to the SMER. He explained that the SMER is used by researchers today because of its low noise levels and pristine conditions.
- Dr. Rahn indicated that mining activities can and will impact the level of research and researchers willing to use the SMER in the future based on impacts from the mine.
- Dr. Rahn indicated there are large volumes of study on vibration and noise impacts on biology. These impacts include behavioral impacts that result from stress levels impairing an animal's ability to find food, sleep, communicate and reproduce. Additionally, Dr. Rahn explained that any amount of light will impact and impede wildlife movement
- Dr. Rahn also provided that that an urban presence of species is not an indication of an animal's ability to adapt to urban environments. Often such animals are those with already significantly impacted behaviors

- 1 • Dr. Rahn also explained that Least Bell's Vireo, which was studied in the EIR,
2 is not the best threshold candidate to test vibration impacts to biology near the
3 SMER, because it can be urban associated.
- 4 • Mr. Ruben Ramirez, a speaker who indicated he had 17 years of expertise on
5 radio tracking species, and Dr. Rahn indicated that the Project will impact many
6 species through light, noise and other stressors; not just mountain lions.

7 c. Biology Conclusions Made by the Planning Commission-

- 8 1. Based on public testimony, the Project's activities would detrimentally impact
9 the research conducted on the SMER, on nearby properties, and the biology's
10 habitation, reproduction and migration patterns.
- 11 2. Additionally, the Project's biological impacts would reduce the number of
12 researchers and research projects willing to use the SMER because researchers
13 may perceive the operating mine as an impediment to their research.
- 14 3. Based on information presented during the hearings, the SMER, and biological
15 habitation, reproduction and migration patterns would also be impacted by the
16 glow created by the Project's light refracting in the air's moisture.
- 17 4. Furthermore, based on the public's comments, the crushing of granite/ concrete
18 and heavy plant traffic, would produce noise, light and vibrations that would
19 negatively affect wildlife using the linkage. This incremental loss to the
20 already impaired habitat linkage is not acceptable.
- 21 5. In light of the public's testimony, and the impacts listed above, the Project
22 would result in unavoidable adverse impacts on biology. These impacts are
23 not outweighed by the Project's benefits; therefore, the impacts are not
24 acceptable.

25 4. Cultural Resources

26 a. EIR Information-

27 Cultural Resources EIR Background

28 According to the EIR, cultural resources as defined by State and Federal regulations
include tangible buildings, sites, structures, objects and manuscripts, each of which
might have historical, architectural, archaeological, cultural, or scientific importance.
Cultural resources can also be argued to include traditional places deemed significant
by a living group's perspective or cultural history. It is possible that such places may
not have tangible culturally modified remains or artifacts present. Evidence for such
cultural resources is often found in oral history passed down from generation to
generation. According to National Register Bulletin 38, published by the National
Park Service, one kind of cultural significance a property may possess, and that may
make it eligible for inclusion in the National Register of Historic Places, is traditional
cultural significance. "Traditional" in this context refers to those beliefs, customs, and
practices of a living community of people that have been passed down through the
generations, usually orally or through practices. The traditional cultural significance of
a historic property, then, is significance derived from the role the property plays in a
community's historically rooted beliefs, customs, and practices.

1 Section 3.4 of the EIR discusses the impacts for cultural resources as a result of
2 implementing the Project. The EIR summarizes the cultural resources investigations
3 which included a Phase I Cultural Resources Assessment (Appendix F), a Phase I
4 Archaeological Assessment (Appendix F-1), and a Cultural Resources Technical
5 Report (Appendix F-2). Note that these appendices are confidential and are not for
6 public review; they are on file with the County. Criteria for determining both the
7 construction and operation impacts associated with cultural resources have been
8 developed in accordance with Appendix G of the CEQA Guidelines.

9 Additionally, a supplemental ethnographic study was prepared by Stephen O'Neal to
10 specifically address potential Pechanga traditional cultural properties (TCPs) in the
11 vicinity of the Project site. Mr. O'Neil noted that TCPs were generally defined in
12 relation to the National Park Services (NPS) Bulletin 38, Guidelines for Evaluating
13 and Documenting Traditional Cultural Properties. Mr. O'Neal's report generally
14 includes geographic areas that are eligible for inclusion in the National Register
15 because of the area's association with cultural practices or beliefs of a living
16 community. Such practices are rooted in that community's history, and are important
17 in maintaining the continuing cultural identity of the community.

18 Tribal Communications

19 The County initiated communications with Pechanga in 2005 and continued
20 communications, which included field surveys by Pechanga Tribal monitors, through
21 2010 in an effort to identify and address potential cultural resource impacts associated
22 with the Project. The EIR identified a total of seven (7) potential TCPs in the region
23 surrounding the Project. Of those potential traditional cultural properties, however, the
24 EIR determined only two properties were in proximity such that they could be
25 potentially impacted by the Project's implementation. These potential impacts to the
26 two potential traditional cultural properties, identified as Wexewxi Pu'eska and
27 Rainbow Canyon Camp (also called the 1870s Diaspora Settlement), were analyzed in
28 Impact Section 3.4 of the DEIR.

29 Summary of Cultural Resources Impact Evaluation

30 The EIR's analysis of potential impacts to Tribal cultural resources proceeded under
31 the assumption that both the Wexewxi Pu'eska and the Rainbow Canyon Camp (also
32 called the 1870s Diaspora Settlement) were eligible for listing under both the
33 California and National Registers of Historic Places as TCPs.

34 According to the EIR, these potential TCPs will not be directly impacted by the
35 Project. The EIR, however, did identify the potential for the Project to result in
36 indirect impacts to these resources as a result of adjacent project operations and
37 identified mitigation measures to reduce those potential indirect impacts to a less than
38 significant level. The EIR includes a total of four mitigation measures to reduce the
39 Project's potential indirect impacts to Pechanga's identified potential TCPs.

40 As such, the EIR concluded that the Project would have no impact to tribal
41 archeological resources and determined that the Project would have a less than
42 significant impact to archeological resources. The EIR further concluded that the
43 Project would not have any direct impacts to the two identified potential TCPs.
44 Indirect impacts, however, were determined to be potentially significant due to the

1 Project's construction and operational activities (i.e. visual intrusion, noise, light, and
2 vibration), as well as the Project's potential to increase unwanted access to the TCPs.

3 b. Public Testimony

4 During the public hearings many speakers raised specific concerns with cultural
5 resources, specifically the Pechanga Tribe.

- 6 • Mr. Paul Macarro, the cultural representative of the Pechanga Tribe, explained
7 that Wuyoot, the Luiseno Chief and Father of the first ancestral group, the
8 Kaamalam, died near the Project site. Mr. Macarro explained this was the first
9 death and introduced the Kaamalam to death.
- 10 • Mr. Paul Macarro also explained that Kaamalam Pum'ki', home to the original
11 Luiseno, is larger than the applicant or the studies in the EIR suggested. He
12 indicated it comprises a larger area including the entire hill that includes the
13 Project site.
- 14 • Mr. Paul Macarro further testified that place names indicate areas that were
15 used by the Tribe in the past. He further explained that place names are
16 different from the locations related to the creation story and are not the same as
17 TCP's.
- 18 • Ms. Laura Miranda, legal counsel and member of Pechanga, explained that not
19 all place names are classifiable as sacred.
- 20 • Ms. Miranda testified that Pechanga gave the County information on the
21 Project's impacts to specific ancestral places, including some within the Project
22 site, in the form of comment letters and Mr. Macarro's ethnography.
- 23 • Ms. Miranda also provided that Pechanga has never developed on "sacred"
24 property. The developed area near Pechanga's casino may have impacted a
25 Pechanga place name, a gathering place, but not a location from the creation
26 story, or a sacred site.
- 27 • Mr. Peter Thorson, attorney for the City of Temecula and Ms. Courtney Coyle,
28 outside Counsel for Pechanga, indicated that the LAFCO Staff Report for the
2009 City of Temecula Annexation explained that minimal development was
possible on the Project site regardless of the General Plan and Zoning
designations proposed by the annexation. They indicated the City was
proposing designations that would have permitted the same number of
residential units currently permitted by the County. The City's designations,
however, would not have permitted a quarry.
- Ms. Coyle also testified that the land use intensity of 81 residential units would
be far less than that proposed by the Project.
- Dr. Thomas King, testified in opposition to the Project, explaining aspects of
Bulletin 38, which he authored for the National Historic Register. The Bulletin,
he argued, explains that only tribes should indicate what is important to a tribe.
Further, archeological evidence should not be required to determine if an area is
significant to a tribe, which the Tribe determines is a TCP.
- Dr. King testified that a smaller potential TCP can be within another larger
TCP.
- Dr. King also explained that tribes generally attempt various forms of
protection, regarding sites, when sites are specifically threatened.

- Dr. Lisa Woodward, archivist with Pechanga, presented a number of maps including John P. Harrington's map which was created about 100 years ago showing place name locations and other location specific information, and maps showing TCP boundaries over portions of the Project site.
- Dr. Woodward, read from a letter by Steven O'Neal indicating that many potential TCP's in the vicinity of the Project site could be included in a potential TCP district.

c. Cultural Conclusions Made by the Planning Commission-

1. Although there were no archeological items found on the Project site, public testimony has demonstrated that the Project site is in close proximity to several significant archeological and historical sites.
2. Additionally, in light of Pechanga's testimony, the Project site has strong ties to Pechanga's creation story and may be eligible as a TCP or a TCP District. As a result, the Project would adversely impact Pechanga's heritage and nearby lands.
3. Furthermore, an open pit mine would forever destroy the Project site, leaving a permanent and geologically modified landscape. This permanent impact would not result from a less intensive land use such as a large lot single family home development.
4. Therefore, based on the public's testimony, the Project would result in unavoidable adverse impacts to cultural resources that are not outweighed by the Project's benefits. As a result, these environmental impacts are not acceptable.
5. As outlined above, these impacts are detrimental to the public's health, safety and general welfare.

5. Geology and Hydrogeology

a. EIR Information-

Geology and Hydrogeology EIR Background

Section 3.5 of the EIR studied Geology and Section 3.7 studied Hydrology (and Hydrogeology). The information below from the EIR is specific to the groundwater and the connection of underground throughout the site. Because this topic is covered in both sections, the information below comes from both sections of the EIR and in part from the response to comments for the Final EIR.

Information contained within the EIR, specifically related to groundwater on the site has been largely obtained from the Geologic and Hydrologic Evaluation Proposed Liberty Quarry, Riverside County, California (see Appendix H) and Responses to Frequent Questions, Proposed Liberty Quarry, Riverside County, California (see Appendix H-1), which evaluated geologic and hydrogeologic conditions for the Project. The Response to County of Riverside Review Comments, County Geologic Report No. 1902, Geotechnical Report, Proposed Liberty Quarry, Riverside County, California clarifies comments from Riverside County's review. Criteria for determining both the construction and operation impacts associated with geology and

1 hydrogeology have been developed in accordance with Appendix G of the CEQA
2 Guidelines.

3 Summary of Geology and Hydrogeology Impact Evaluation

4 According to the EIR, the site is located in rugged mountainous bedrock terrain, and
5 the massive crystalline bedrock underlying the site is considered nonwater bearing
6 (California Department of Water Resources [DWR], 1956 and 2003). Groundwater
7 also occurs to a much lesser extent locally in the crystalline bedrock, but is primarily
8 limited to fracture and joint systems and in deeply weathered areas overlain by
9 saturated Quaternary or Tertiary deposits. The EIR also provides that lowland
10 groundwater basins are not hydrologically connected with the site. Two seasonal
11 surface seeps are located on the site and appear to be related to localized fractures
12 draining under the influence of gravity. A hydrologic evaluation of the site was
13 conducted.

14 During the investigation for the EIR's analysis, groundwater was encountered in three
15 deep, vertical borings drilled into the underlying granitic bedrock. The EIR's
16 evaluation found that groundwater, where observed at the site, is limited to joints and
17 fractures because of the massive igneous bedrock underlying the site, which is
18 considered nonwater bearing by DWR. Additionally, the EIR provided that limited
19 hydraulic connection exists between groundwater encountered in bedrock fractures
20 and joints at the site.

21 Based on a review of published literature, geologic and hydrogeologic assessment
22 activities performed at the site, and subsequent data analysis and evaluation performed
23 to date, the EIR determined that the site appears to be topographically, structurally,
24 and hydraulically isolated from near-by, off site intermontane valleys and topographic
25 lowlands. As a result, the EIR determined that the Project's operations are not
26 anticipated to adversely affect local or regional groundwater supplies for residents in
27 the surrounding area, or Temecula or Rainbow Valleys.

28 EIR Summary of Groundwater

The EIR does not state or suggest that groundwater will not be encountered at the site.
The EIR found generally a low volume of groundwater in the boreholes. According to
the EIR, in well MW-2 no flowing water into the borehole was noted above 200 feet
depth, also despite the presence of joints and fractures. The EIR provided that
groundwater occurs in the bedrock at the proposed quarry site; however, it's
occurrence is in very low volume and highly dependent on the hydraulic connectivity
of joints and fractures in the bedrock, which is low. According to the EIR, there is no
aquifer beneath the site.

The EIR also provided that hydraulic isolation of the proposed quarry location is well
supported by various lines of evidence. Additionally, the EIR indicated that the poor
performance of pumping tests described above and the lack of response at observation
wells during the tests, the high seasonality of flow in local seeps, springs, and streams
suggests low connectivity with groundwater, since a good connection with a system of
high capacity should supply a more perennial flow to these features. According to the
EIR, stream flow and springs in the area exhibit seasonal flow, derived primarily from

1 recent precipitation via surface flow and/or local joints and fractures that drain to
2 ground surface rather than transmitting water through the bedrock.

3 Mitigation Measures

4 The EIR included numerous mitigation measures were applied to the Project to further
5 reduce impacts, a full list of mitigation is provided in Table ES-1 of the FEIR.

6 Impacts to Surrounding Communities

7 The EIR also specifically addressed the impacts specific to the SMER. The EIR
8 provided that groundwater is limited to joints and fractures in the massive crystalline
9 bedrock and is considered non-water bearing. Hydrogeologic testing found little, if
10 any, groundwater intercommunication on or off of the property. Therefore, the EIR
11 determined that potential impacts to groundwater off site or to groundwater seeping
12 into rivers or creeks off site are not expected.

13 b. Public Testimony

14 During the public hearings many speakers raised specific concerns regarding geology
15 and hydrogeology.

- 16 • Mr. Kerry Cato, Geologist at Cato Geoscience, Inc. provided opposition testimony,
17 contending that vertical wells are not optimal if attempting to intersect fractures.
- 18 • Mr. Cato indicated that proper testing of wells require additional pumping after the
19 first test because water recharges wells over a longer period of time. He indicated
20 the EIR only did one test in mid-summer 2006 over a two-week period.
- 21 • Mr. Cato indicated that proper testing requires drilling in lineaments. He further
22 indicated that one of the test sites was drilled about sixty-three feet from a
23 lineament. He indicated that none were drilled directly into lineaments.
- 24 • Mr. Cato testified that testing for water was not done on all thirteen wells drilled
25 on site, only three.
- 26 • Mr. Cato and Dr. Roy Shlemon, geology expert from Roy Shlemon and
27 Associates, Inc., provided opposition testimony, indicating there are unclassified
28 faults on the Project site. They indicated that faults can create pathways for water
that are different from fracture flows.
- Mr. Howard Omdahl, a local resident of the area, showed several images depicting
flora and fauna. He testified that the images indicate year round water sources
exist.
- Mr. Omdahl indicated that there are several oak trees on the site that have survived
seven year droughts which indicates connectivity of the underground water
sources, based on conversations he has had with oak tree experts.
- Chairman Mark Macarro of Pechanga indicated that rocks on the east side of the
mountain have been seeping water for over one hundred years.
- Dr. Shlemon suggested fault studies should be done for mining project
applications.
- Dr. Shlemon suggested that balanced rock studies should be done for mining
projects on sites like the Project site.
- Dr. Matt Rahn explained that a significant volume of water is contributed to the
Santa Margareta River from the groundwater within the mountain.

- Dr. Rahn further testified that during a summer test in 2010 major upstream flows within the River were shut off, yet flowing water was still being contributed to the River from groundwater within the adjacent mountain.

c. Geology and Hydrogeology Conclusions Made by the Planning Commission-

1. The information presented by several public speakers, including information on the flora and fauna found on the site, demonstrates the interconnectivity of the underground hydrology which would be significantly impacted by the Project.
2. Additionally, based on the public's testimony, the continual expansion of fractures that would result from the Project's blasting will cause water to collect within the mine pit, and create quarry lake. This is not acceptable.
3. Based on information provided by the public, rocks on the side of the mountain have been seeping water for over 100 years. Such seep indicates that a continually replenished underground water source exists in the mountain.
4. Furthermore, after considering the public's testimony, the Project will cause dewatering of the site which will impact the weeping rocks, a culturally significant feature.
5. Therefore, in light of the above, the Project would result in unavoidable adverse impacts related to geology and hydrogeology that are not outweighed by the Project's benefits. As a result, these environmental impacts are not acceptable.
6. As illustrated by the above, these impacts are detrimental to the public's health, safety and general welfare.

6. Jobs

a. EIR/Fiscal Impact Report Study Information

Jobs Analysis Background

The EIR did not specifically analyze jobs as such analysis are not required by CEQA. A Fiscal Impact Report entitled Economic Impact on Riverside County and its Southeastern Area by John Husing of Economics and Politics, Inc. dated February 13, 2007 was done to determine the fiscal impacts the Project would have on the County. This study was not a part of the CEQA analysis. As the EIR explained in the response to comments, CEQA does not require a DEIR to address the potential impacts associated with an actuarial or financial analysis of a Project. CEQA Article 9, "Contents of Environmental Impact Reports", Section 15131(a) provides that economic or social effects of a project shall not be treated as significant effects on the environment.

Jobs Analysis Summary

The Fiscal Impact Report explained, within the Temecula-Murrieta area, a key concern has been the availability of good paying local jobs . The need for local job creation was underscored because the region has just 0.86 jobs for each occupied dwelling, compared to the 1.25 average for Southern California. According to the Fiscal Impact Report, this means that the area has 31% fewer jobs for each family than is required in the Southland for a sub-market to have a self-sustained labor market. This results in a

1 large number of commuters. The Fiscal Impact Report indicated that the Project
2 would help add 287 jobs, primarily in southwestern Riverside County.

3 Because jobs and economic factors are not generally under the purview of CEQA, no
4 significance determination was made pertaining to this category.

5 **b. Public Testimony**

6 During the public hearings many speakers raised specific concerns regarding jobs and
7 fiscal issues in general.

- 8 • Dr. Gary Smith, representing the Rose Institute, provided opposition testimony
9 indicating that total aggregate production in Riverside County will not change with
10 the Project. It will simply shift the production south. He also explained that the
11 production jobs will simply shift within the County but the total job count would
12 stay consistent. He indicated that the County cannot have a reduction in truck trips
13 and an increase in jobs. He further explained that as truck trip reduction is applied,
14 the total truck distance in miles traveled will fall, which means less truck driving
15 jobs. By his account, the total jobs will actually fall within the County.
- 16 • Dr. Smith also contended that sales taxes generated from the production of
17 aggregate at the site is not as simple as the Fiscal Impact Report indicates.
- 18 • Dr. Smith discussed a study by Ms. Diane Height that studied the impacts on home
19 prices and mines. The study used hedonic home pricing models and multiple
20 regression to show homes are worth less when close to mines. He argued that
21 hedonic home pricing models and multiple regression are critical to any study that
22 analyzes home prices and their relationship to mines.

23 **c. Jobs Conclusions Made by the Planning Commission-**

- 24 1. Although the Project would create approximately 100 jobs, these jobs would be
25 generated in the future at a time when all improving sectors would also show
26 increasing job needs. Jobs are needed now in the County.
- 27 2. Many of the jobs that would result from the Project would be truck driving
28 positions that would be transplanted jobs, not newly created jobs. This would
result in a less net increase of jobs within Riverside County.
3. As a result, based on the public's testimony, the increase in jobs is relatively
small and does not help justify or offset the Project's unavoidable adverse
environmental impacts.

1 7. Noise

2 a. EIR information-

3 Noise EIR Background

4 Noise impacts generally occur when project noise levels exceed applicable standards
5 in the General Plan and noise ordinances. According to the EIR, anticipated noise
6 levels associated with the Project were evaluated at 17 noise-sensitive land uses. The
7 receptor locations, which are generally within approximately 4.5 miles of Liberty
8 Quarry include locations in the SMER, Temecula, Rainbow, and Fallbrook.

9 The EIR analysis is based on a noise study included in Appendix I. Criteria for
10 determining the significant impacts associated with noise have been developed in
11 accordance with Appendix G of the CEQA Guidelines, noise Ordinance requirements
12 of San Diego County, Riverside County and City of Temecula and CEQA thresholds
13 used by the California Energy Commission (CEC) (CCR Title 20, Article 6, Appendix
14 B(g))[4][A]).

15 Design Features that Assist in Mitigation

16 The Project design for the operation of the quarry includes the implementation of
17 design features that assist in mitigating the noise impacts and were considered by the
18 Commission. The design features are the following:

- 19 • The excavations and Plant Area locations are designed to use the surrounding
20 ridgelines and on-site setbacks to limit noise from mining activities and the
21 processing plants.
- 22 • The processing plants would be constructed on an excavated building pad of
23 1,670 to 1,700 feet above mean sea level to lower the profile of the plants and
24 limit off site noise.
- 25 • A landscaped berm, a minimum of 25 feet high, would be constructed on the
26 southwest side of the Plant Area to limit off site noise.
- 27 • Crushers and screens at the aggregate processing, concrete batch, and recycling
28 plants would be enclosed (presumed required to satisfy air quality
requirements; noise reductions from standard enclosures were taken into
account).
- Concrete truck loading operations would be partially shielded by the reclaim
tunnel structure under the concrete batch plant.
- The asphalt plant exhaust fans would be fitted with effective silencing,
anticipated to be 5 feet long.
- Engine generator sets and heavy mobile equipment would be fitted with
appropriate mufflers and enclosures so that modeled levels are realized.
- Mining activities would be set back at least 400 feet from the north site
boundary. (This setback is identified as mitigation in the biology section and is
included in the noise assessment modeling.)

Mitigation Measures

In addition to the design features listed above, the EIR included numerous mitigation measures that were applied to the Project to further reduce impacts, a full list of mitigation is provided in Table ES-1 of the FEIR. According to the EIR, ambient, construction, operational, and ground borne noise would be less than significant with mitigation incorporated.

Impacts to Surrounding Communities

The EIR also specifically analyzed the impacts to surrounding communities.

- *The SMER.* As shown in Table 4-1 of the EIR, within the SMER (Receptors 14, 15, 16, 36, and 37) noise levels with the Project and mitigation measures comply with the Riverside County residential noise standard. Therefore, potential noise impacts within the SMER would be less than significant.

Based on questionnaires, twelve SMER research projects were potentially affected by noise; however, EIR concluded no impacts to noise are expected. Noise levels will increase only slightly or will not be affected throughout the SMER due to distance from the Project's noise sources, intervening terrain, project design, and required mitigation measures as discussed above. The EIR concluded that it is not expected that noise produced by the Project would substantially impact any SMER research projects.

- *The City of Temecula.* As shown in Table 4-2 of the EIR, within Temecula at Receptors 10, 20, 21, and 35, the Project would result in no significant change in noise levels. The project does not result in the city's 65 Ldn standard being exceeded and results in a less than 5 dBA increase in ambient levels. Therefore, the EIR determined that potential noise impacts within Temecula would be less than significant.
- *The Community of Rainbow.* As shown in Table 4-3 of the EIR, within Rainbow, at Receptors 2, 17 and 18, noise levels from the Project comply with the applicable requirements of San Diego and Riverside County. Therefore, potential noise impacts within Rainbow would be less than significant.
- *The Community of De Luz.* As shown in Table 4-4 of the EIR, within De Luz, at Receptors 7 and 15, noise levels from the Project comply with the applicable requirements of Riverside County. Therefore, potential noise impacts within De Luz would be less than significant.
- *The Community of Fallbrook.* As shown in Table 4-5 of the EIR, within Fallbrook, at Receptor 12, noise levels from the Project comply with the applicable requirements of San Diego and Riverside County. Therefore, potential noise impacts within Rainbow would be less than significant.

b. Public Testimony

During the public hearings many speakers raised specific concerns regarding noise. The following outlines the concerns raised by the public during the hearings. Many of the following concerns were also shown in the biological section of these findings in Section B.3.b.

- Dr. Matt Rahn indicated the SMER is used by researchers because it has low noise levels and that mining activities can and will impact the level of research

1 and researchers willing to use the SMER in the future based on impacts from
2 the mine.

- 3 • Dr. Rahn indicated there are large volumes of study on vibration and noise
4 impacts on biology.
- 5 • These impacts included increased behavioral impacts that result from stress
6 levels which impact animal's ability find food, sleep, communicate and
7 reproduce.
- 8 • Mr. Tom Cole, code enforcement officer for the City of Temucula, explained
9 that the baseline readings for the site should have been measured on site, not
10 simply modeled. Mr. Cole took 6 readings at all times of day and weather
11 conditions over a two month period near the site that were all below 30
12 decibels.
- 13 • Mr. Mike Jurkosky, the closest resident to the Project site, testified that his
14 family would hear all quarry operations and be significantly impacted by the
15 Project.

16 c. Noise Conclusions Made by the Planning Commission-

- 17 1. Based on information presented by the public, noise levels on the Project's site,
18 particularly nighttime operations, would be incompatible with the uses of the
19 neighboring SMER property and would impact research on the property.
- 20 2. Additionally, based on the public's testimony, noise impacts from the Project
21 would reduce the number of researchers and research projects willing to use
22 the SMER because researchers may perceive the operating mine, and noise it
23 creates, as an impediment to their research.
- 24 3. In light of the public testimony, the Project would result in unavoidable noise
25 impacts to the SMER and to residential properties close to the Project's site.
26 These unavoidable adverse impacts are not outweighed by the Project's
27 benefits, therefore, they are not acceptable.
- 28 4. Additionally, as outlined above, these impacts from the Project are detrimental
to the public's health, safety and general welfare.

8. Traffic and Truck Trip Reduction

a. EIR Information

Traffic Reduction EIR Background

Traffic and transportation impacts generally occur when a proposed activity would cause an increase in traffic that is substantial in relation to existing capacity; exceed an established LOS standard; result in inadequate parking or inadequate emergency access; alter waterborne, rail, or air traffic; affect maintenance roads or circulation during construction; or conflict with adopted policies, plans, or programs supporting alternative transportation.

Riverside County and Caltrans reviewed and approved the methodology and analysis conducted in support of the traffic and transportation analysis, which was primarily based on the Revised Traffic Impact Analysis (Urban Crossroads, 2008) and the responses to comments. Criteria for determining the significant impacts associated

1 with traffic and transportation have been developed in accordance with Appendix G of
2 the CEQA Guidelines.

3 Truck Trip Reduction EIR Background

4 Section 6.3.1 of the EIR discusses the findings from the Liberty Quarry Truck Traffic
5 Miles-Reduced Evaluation (Appendix K-1). This study analyzed the number of trucks
6 that could be displaced by the Project (i.e., the reduction in the number of trucks
7 needed to transport aggregate from distant sources versus having a local source of
8 aggregate closer to the market area where it would be used). The study found that the
9 Project would reduce aggregate truck travel on I-15 in Riverside County by up to 16.5
10 million vehicle miles.

11 Mitigation Measures

12 The EIR included numerous mitigation measures that were applied to the Project to
13 further reduce impacts, a full list of mitigation is provided in Table ES-1 of the FEIR.

14 Significant and Unavoidable Traffic Impacts

15 Even after mitigation measures were taken into account, the EIR determined that the
16 Project would have the following significant and unavoidable impacts to Traffic in two
17 categories:

18 • Direct Traffic Impacts:

- 19 ○ *Impact T-1a analyzed if, "the Proposed Project could cause an increase in*
20 *traffic that is substantial in relation to the existing traffic load and capacity*
21 *of the street system (i.e., result in reduction of [level of service] LOS at*
22 *intersections)." According to the EIR, the Project has included mitigation*
23 *to pay for and construct intersection improvements that are outside the*
24 *County's jurisdiction. Although this is technically (physically) feasible,*
25 *implementation would require approval of other agencies including*
26 *Caltrans, Temecula, and San Diego County. Because the intersections are*
27 *within the jurisdiction of Caltrans, Temecula, and San Diego County, and*
28 *because no improvement can be made without the approval of these*
jurisdictions, Riverside County cannot ensure that the improvements would
mitigate the impacts of the Project. Therefore, although Riverside County
would undertake all reasonable steps to coordinate with these jurisdictions
to install the improvements, the Project's impacts on these intersections are
significant and unavoidable.
- *Impact T-1b analyzed if, "the Proposed Project could cause an increase in*
traffic that is substantial in relation to the existing traffic load and capacity
of the street system (i.e., result in increased queue lengths)." The EIR
determined that this impact is significant and unavoidable for the same
reason noted above.
- *Impact T-1c analyzed if, "the Proposed Project could cause an increase in*
traffic that is substantial in relation to the existing traffic load and capacity
of the street system (i.e., result in increased traffic volume along roadway
segments)." The EIR concluded that is impact is significant and
unavoidable for the same reason noted above.
- *Impact T-3 analyzed if, "the Proposed Project could exceed, either*
individually or cumulatively, an LOS standard established by the San

1 *Diego County Congestion Management Agency for designated roads or*
2 *highways." The EIR also determined that this impact is significant and*
3 *unavoidable for the same reason noted above.*

4 • **Cumulative Traffic-**

5 Cumulative Traffic impacts were assessed in Section 5.4.3 in the EIR.
6 According to the EIR, potential project-related local, regional, and
7 cumulative traffic impacts were determined to be less than significant with
8 implementation of mitigation measures. The applicant would pay their fair
9 share of cumulative traffic and transportation improvements including
10 participation in the Riverside County Development Impact Fees and
11 Transportation Uniform Mitigation Fee, as well as the San Diego County
12 Traffic Impact Fees for local road improvements. Although improvements
13 to roadways would mitigate impacts to a less than significant level, for the
14 same reasons noted in the transportation section above, the authority to fund
15 and implement those improvements would be outside the jurisdictional
16 authority of Riverside County in its role as the CEQA Lead Agency.
17 Because this analysis cannot assume or rely upon the funding and
18 construction by other entities, the EIR concluded that the impacts remain
19 significant and unavoidable. It is also important to note that the impacts to
20 interseccions were determined without using the truck trip reduction concept
21 in an attempt to create the most conservative analysis possible.

22 Impacts to Surrounding Communities

23 The EIR also specifically analyzed the impacts to surrounding communities.

- 24 • *The City of Temecula.* Winchester Road, Rancho California Road, and SR-79
25 South provide access to and from I-15 within Temecula. As evaluated in
26 Section 3.11 of the EIR, the Project would result in these intersections
27 operating at a less than acceptable LOS and would cause an increase in traffic
28 that is substantial in relation to the existing traffic load and capacity of the
street system. Mitigation Measures T-1 and T-2 specify improvements that
would reduce delays and allow these intersections to operate at an acceptable
level of service and for traffic load to not exceed capacity of the street system.
Because the intersections are within the jurisdiction of Caltrans, and Temecula,
, and because no improvement can be made without approval of these
jurisdictions, Riverside County cannot ensure that improvements would
mitigate the impacts of the Project. Therefore, although Riverside County
would undertake all reasonable steps to coordinate with these jurisdictions to
install the improvements, the Project's impacts on these intersections are
significant and unavoidable.
- *The Community of Rainbow.* Rainbow Valley Boulevard provides access to
and from I-15 from Rainbow. As evaluated in Section 3.11 of the EIR, the
Project would result in this intersection operating at a less than acceptable LOS
and would cause an increase in traffic, which is substantial in relation to the
existing traffic load and capacity of the street system. Mitigation Measures T-1
and T-2 specify improvements that would reduce delays and allow this
intersection to operate at an acceptable LOS and for traffic load to not exceed
capacity of the street system. The Project would add vehicle trips to the
southbound offramp at Rainbow Valley Road. The offramp is also used to

1 access a CHP weigh station. The additional vehicle traffic associated with
2 implementation of the Project would result in congestion at this offramp,
3 which could result in delayed access by fire and sheriff vehicles. Mitigation
4 Measure T-11 includes construction of a right turn lane, an additional through
5 lane, and an additional receiving lane at the Rainbow Valley Boulevard
6 southbound offramp and a two to four-lane access road to the quarry. This EIR
7 mitigation measure would reduce this potential impact to less than significant
8 because access to the weigh station would continue to be provided and is
9 considered to fall within acceptable levels. As shown in Table 4-3 of the EIR,
10 the Project would have a less than significant impact to CHP weigh station
11 access at Rainbow Valley Boulevard.

12 b. Public Testimony

13 During the public hearings many speakers raised specific concerns regarding traffic
14 and truck trip reduction.

- 15 • Dr. Gary Smith, representing the Rose Institute, testified that truck trip
16 reduction, if true, would cause the overall truck miles traveled in the County to
17 fall. He further testified that anytime overall truck miles traveled falls, it will
18 result in a decrease of truck driving jobs. Therefore, he contends, the total
19 truck driving jobs will actually fall within the County.
- 20 • Dr. Smith explained that if most of the aggregate production is going south into
21 San Diego County, truck trips would be further reduced if the Project was
22 located in San Diego County.
- 23 • Mr. Gary Gonzales, transportation engineer for the City of Temecula, argued
24 that additional unspecified intersections should have been analyzed for traffic
25 impacts.
- 26 • Mr. Jeff Heald from Fehr and Peers, provided opposition testimony contending
27 that it was not clear how Urban Crossroads ascertained if the counted
28 aggregate trucks were full aggregate trucks or empty aggregate trucks.
- Mr. Heald further argued that a passenger car equivalence of 3.0 should have
been used to be more conservative.
- Mr. Heald testified that not enough data was collected to support the claim of
reduced truck trips and that license plate surveys would have been more
appropriate.

29 c. Traffic and Truck Trip Reduction Conclusions Made by the Planning Commission-

- 30 1. Based on the public's testimony, the project will increase truck traffic.
- 31 2. Based on information presented by the public, overall truck trips throughout
32 Riverside County would not be reduced if other surface mines can compete
33 with the Project in terms of aggregate cost.
- 34 3. In light of the public's testimony, the Project would create an unavoidable
35 adverse traffic impact that is not outweighed by the Project's benefits. As a
36 result, the unavoidable traffic impacts are not acceptable.
- 37 4. Additionally, as outlined above, these traffic impacts are detrimental to the
38 public's health, safety and general welfare.

1
2
3 9. Water Supply Assessment (WSA)

4 a. EIR Information-

5 Water Supply EIR Background

6 The EIR studied the provision of water in Section 3.12, Utilities and Service Systems.
7 The Project is located within the boundaries of the Western Municipal Water District
8 (WMWD) and, as such, would receive water service as part of WMWD's retail service
9 area. The review of the water supply was not limited to the Water Supply Assessment.

10 A review of the local utility and service systems and of the commitments of the utility
11 and service system providers that would serve the Project was completed in support of
12 the analysis in the EIR. Criteria for determining both the construction and operation
13 impacts associated with the utility and service systems have been developed in
14 accordance with Appendix G of the CEQA Guidelines.

15 The Water Supply Assessment (WSA) Background

16 Consistent with the requirements of California Water Code section 10910 et seq., the
17 County and the Project Applicant contacted WMWD regarding preparation of a Water
18 Supply Assessment (WSA) for the Project.

19 In reviewing the Project, WMWD staff determined that the project did not meet the
20 threshold requirements for preparation of a WSA. Specifically, WMWD concluded
21 that the portions of the Project associated with industrial and/or processing activities
22 did not exceed the Water Code threshold of 40 acres because the Project's processing
23 facilities would occupy approximately 3.42 acres of the Project site. In addition, based
24 on Western Municipal's average annual residential demand of 0.88 acre feet per unit,
25 it was determined that the project's water usage would have to exceed 440 acre feet
26 per year to trigger the Water Code's 500 dwelling unit equivalency threshold. (2005
27 Urban Water Management Plan, page 18.) The Project is anticipated to demand 398
28 acre-feet of water per year. Given the above, WMWD concluded that the Project did
not trigger the need for preparation of a WSA. Furthermore, WMWD advised the
County that there are sufficient water supplies to serve the Project.

Notwithstanding WMWD's decision that a WSA was not legally required for the
Project pursuant to the Water Code, the County independently determined that
compliance with CEQA required a full analysis of the Project's potential water supply
impacts. (Vineyard Area Citizens v. City of Rancho Cordova (2007) 40 Cal.4th 412.)
As such, Section 3.12 of the DEIR provides a detailed discussion of water supply
issues and, based on the standards articulated in Water Code Section 10910 et seq., the
Section analyzes the Project's water demands under normal, single dry year, and
multiple dry year supply scenarios.

- 1 3. While the aggregate from the Project would provide more benefit to San Diego County than
2 Riverside County, the majority of the environmental impacts remain in Riverside County. This
3 represents an environmental injustice to Riverside County.
- 4 4. Based on the information contained in the EIR and on evidence presented at the public
5 hearings, the impacts to air quality, aesthetics, traffic, noise, geology/hydrogeology, biological
6 resources and Pechanga's cultural heritage and nearby land are not outweighed by the
7 Project's benefits and would create negative effects for the region.
- 8 5. Therefore, the environmental impacts are deemed unacceptable and in accordance with CEQA
9 Guidelines Sections 15002(h)(5) and 15093(a), the Project is denied.
- 10 6. Pursuant to Section 15270(a) of the CEQA Guidelines, CEQA does not apply to projects
11 which a public agency disapproves, for this reason the EIR has not been certified.
- 12 7. Additionally, based on the above, the Commission hereby finds that the Project and proposed
13 conditions of approval for Surface Mining Permit No. 213 do not protect the public health,
14 safety or general welfare. The Surface Mining Permit, therefore, does not comply with
15 Ordinance No. 555 and is denied.
- 16 8. Additionally, granting the request for Change of Zone No. 7508 and Noise Ordinance
17 Exception No. 2 would foster and facilitate a surface mine, which, as stated above, would not
18 protect the public health safety and welfare and are hereby also denied.
- 19 9. The Commission's decision is final unless appealed or the Board of Supervisors assumes
20 jurisdiction by ordering the matter set for public hearing.
- 21 10. These findings and conclusions were adopted by the Planning Commission on December 7,
22 2011.
- 23
- 24
- 25
- 26
- 27
- 28

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: COUNTY OF RIVERSIDE; RIVERSIDE
(AVISO AL DEMANDADO): COUNTY BOARD OF SUPERVISORS; and
DOES 1 through 10, inclusive**

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 03 2012

C. LUNA

**YOU ARE BEING SUED BY PLAINTIFF: INDEPENDENT ENERGY
(LO ESTÁ DEMANDANDO EL DEMANDANTE): PRODUCERS
ASSOCIATION, a California Nonprofit Mutual Benefit Corporation; and
LARGE-SCALE SOLAR ASSOCIATION, a California Nonprofit Corporation**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

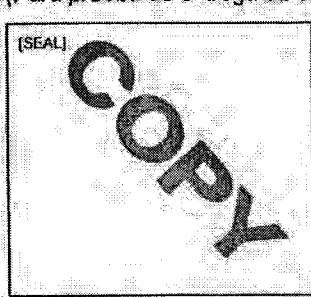
The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California - County of Riverside
46-200 Oasis Street
46-200 Oasis Street
Indio, 92201

CASE NUMBER:
(Número del Caso)
INC 1200838

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Peter Weiner (415) 856-7000 (415) 856-7100
Paul Hastings LLP
55 2nd Street, Suite 2400
San Francisco, CA 94105

DATE: **FEB 03 2012** Clerk, by **C. LUNA**, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

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

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23 Attorneys for Petitioners and Plaintiffs
24 INDEPENDENT ENERGY PRODUCERS
25 ASSOCIATION and LARGE-SCALE
26 SOLAR ASSOCIATION

27 SUPERIOR COURT OF CALIFORNIA

28 COUNTY OF RIVERSIDE

INDEPENDENT ENERGY PRODUCERS
ASSOCIATION, a California Nonprofit
Mutual Benefit Corporation; and LARGE-
SCALE SOLAR ASSOCIATION, a California
Nonprofit Corporation,

Petitioners and Plaintiffs,

v.

COUNTY OF RIVERSIDE; RIVERSIDE
COUNTY BOARD OF SUPERVISORS;
and DOES 1 through 10, inclusive,

Respondents and Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 03 2012

C. LUNA

Case No. **INC** 1200838

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

[Code of Civil Procedure Sections 1060,
1085, and 526]

Date:
Time:
Location:
Judge:

1 3. As the record reflects, the County has never even tried to show a nexus between
2 the amount of the Charge and any impact on, or services provided by, the County. In fact, the
3 vast majority of the acreage which would be subject to this Charge is property over which the
4 County concedes it does not have jurisdiction because it is owned by the federal government and,
5 under a right-of-way, granted to solar developers by the federal Bureau of Land Management.
6 Because, among other things, there is no nexus between the impact of the solar projects and the
7 amount of the Charge and because the Charge is not a reasonable payment for the use of the
8 County's property, the payment obligation imposed by the Board is a tax pursuant to Proposition
9 26, which California voters approved on November 2, 2010. As a tax, in accordance with article
10 XIII C, section 2 of the California Constitution ("article XIII C"), the Charge required voter
11 approval. Its imposition by the Board, through a procedure that is even less demanding than that
12 which the Board would have used to adopt an ordinance, was therefore wholly inappropriate.

13 **A. The Debut of Policy B-29**

14 4. On May 24, 2011, the Board approved without comment Resolution 2011-097, a
15 Notice of Intention to record an easement for use of 4,400 square feet of County property by
16 Solar Trust of America's Blythe Solar Power Project. The easement was scheduled for final
17 approval at the June 7, 2011 Board meeting.² However, as reported by Solar Trust of America in
18 a comment letter submitted in opposition to the Charge, the Board announced at the June 7, 2011
19 meeting, without prior notice to Solar Trust of America, that this item would not be heard.³ The
20 office of the Riverside County Counsel ("County Counsel") reportedly explained in an email sent
21 to Solar Trust of America the next day that the item had been taken off the agenda because the
22 Board intended to consider on June 28, 2011 a policy (later identified as "Policy B-29") that
23 might affect the County's process for granting the easement.

24 _____
25 copy of this document is included with this Petition as Exhibit A.

26 ² May 24, 2011 Minutes of the Board, Item No. 3.31, *available at*
http://rivcocob.com/proceeds/2011/p2011_05_24_files/03.31001.pdf. A true and correct copy of
27 this document is included with this Petition as Exhibit B.

28 ³ The letter submitted to Supervisor Bob Buster by Alice Harron, Vice President of Project
Development at Solar Trust of America, appears to be missing from the minutes of the various
Board proceedings addressing Policy B-29.

1 5. The Board's adoption of Resolution No. 2011-147, introducing and declaring an
2 intention to adopt Ordinance No. 909 (granting a franchise to Desert Sunlight Holdings, LLC, for
3 transmitting and distributing electricity under, along, across, or upon County roads and rights of
4 way) was also on the May 24, 2011 agenda (Item No. 3.58).⁴ It was continued to June 7, 2011
5 (Item No. 3.65), when the Board again continued it to June 28, 2011.⁵

6 6. The Board's records reflect that representatives of the County unveiled the
7 provisions of Policy B-29 for the first time at a meeting of the Coachella Valley Economic
8 Partnership on June 16, 2011. (Exhibit A at 11.) The policy described at that meeting would have
9 required solar power plant developers to pay annually to the County a charge equal to two percent
10 (2%) of gross annual receipts, provided that the County had some approval or other jurisdiction
11 over any aspect of the project that it could use as a basis for applying Policy B-29 to the project.
12 (*See id.*)

13 7. The general public, including solar developer companies waiting for long-delayed
14 permit approvals, was not given access to the language of Policy B-29 until June 23, 2011, only
15 three business days before the Board intended to vote on the policy. In the days that followed,
16 Policy B-29 met with a firestorm of criticism. In written and oral comments submitted to the
17 Board, Petitioners and Petitioners' members noted that from a legal perspective, (i) Policy B-29
18 imposed a tax that required voter, not just Board, approval; (ii) the Board lacked authority to
19 impose franchise and development agreements (the basis for the Charge) on electrical generation
20 companies that do not provide distribution services; (iii) aspects of the Policy were
21 unconstitutionally vague; (iv) the proposed Charge was actually a "development impact fee"
22 subject to the strict and unmet requirements of the Mitigation Fee Act; (v) Policy B-29 was
23 preempted by State law; and (vi) a Board policy was an inappropriate vehicle for imposing this
24 kind of burden. After hours of public comments on Policy B-29 at the June 28, 2011 Board

25 ⁴ May 24, 2011 Minutes of the Board, Item No. 3.58, available at
26 http://rivcocob.com/proceeds/2011/p2011_05_24_files/03.58001.pdf. A true and correct copy of
this document is included with this Petition as Exhibit C.

27 ⁵ June 7, 2011 Minutes of the Board, Item No. 3.65, available at
28 http://rivcocob.com/proceeds/2011/p2011_06_07_files/03.65001.pdf. A true and correct copy of
this document is included with this Petition as Exhibit D.

1 meeting, the Board agreed to send Policy B-29 back to County Staff⁶ for additional consideration,
2 and further instructed County Staff to conduct a competitive economic analysis to determine
3 whether, as developer companies had also alleged in their comments, the imposition of a solar
4 facility "payment" requirement, or Sun Tax, would put the County at a competitive disadvantage
5 for attracting solar projects to the County. The Board then placed further consideration of Policy
6 B-29 on the agenda for its August 16, 2011 meeting.⁷

7 **B. The Evolution of Policy B-29**

8 8. Several weeks after the June 28th hearing, County Staff began contacting solar
9 developer companies with interests in the County to request a meeting to discuss alternatives to
10 the Policy. The first meeting, held on August 8, 2011 – barely a week before the Board intended
11 to again consider the policy – did not leave companies, or County Staff, with enough time to
12 develop any workable alternatives. Weeks of discussions followed, including seven face-to-face
13 meetings between developer companies, some of whom are members of Petitioners, and County
14 Staff in Riverside and Indio. During this time, because the Board's scheduled deadline had
15 already passed, the companies faced a near constant threat that County Staff would move forward
16 with a policy that was not substantially different from the original Policy B-29.

17 9. In late October 2011, County Staff abandoned the discussions with the companies
18 and informed them of its intent not to seek further continuances of the Board's consideration of

19 _____
20 ⁶ In addition to TLMA Staff, staff members from the office of the Policy B-29 author,
21 Riverside County Supervisor John Benoit, and Assistant Riverside County Counsel Katherine
22 Lind played an active part in the development and refinement of Policy B-29. The use of the term
23 "County Staff" herein includes these individuals.

24 ⁷ At the June 28, 2011 meeting, the Board also voted to exempt the 4,400 square foot
25 easement required by Solar Trust of America for a several-thousand acre project on federal land
26 outside of the County's jurisdiction, from Policy B-29, if and when one was adopted, because (1)
27 the TLMA had already determined that the easement property had only nominal value, and (2)
28 Solar Trust of America needed the easement immediately to move forward with certain financing
options, including a Department of Energy guaranteed loan, which was part of a federal program
that was about to expire. Similarly, in light of pending financing deadlines, the County
negotiated a franchise fee arrangement for the Desert Sunlight project, which the County asserted
was required as part of the approval of public use and encroachment permits required to run a few
miles of transmission line under, along, across or upon County rights-of-way. Broken down on a
per acre basis, the \$600,000 annual fee agreed upon for the Desert Sunlight project was
approximately \$160 per acre. Like the Blythe Solar Power Project, all of the Desert Sunlight
generation facilities are on federal land outside of the County's jurisdiction.

1 Policy B-29.⁸

2 10. County Staff prepared a revised Policy B-29 for consideration by the Board on
3 November 8, 2011. Revised Policy B-29 was substantially similar to the original policy, except
4 for replacement of the two-percent-of-annual-gross-revenues payment with a payment of \$640
5 per acre. (Exhibit E at 21-26.) County Staff took this proposal to the Board, offering it up as an
6 improvement upon the original policy, despite the fact that, as explained in more detail below, the
7 revisions addressed none of the legal infirmities identified in the original proposal.

8 11. Prior to the November 8, 2011 Board meeting, County Staff also commissioned a
9 study of the "Effect of Proposed Board Policy B-29 on Solar Power Plant Projects," which it
10 released the Friday afternoon before the Tuesday Board meeting. (*Id.* at 27.) As LSA and
11 Petitioners' members pointed out to the Board prior to and during the November 8, 2011 meeting,
12 this study took them by surprise, because County Staff had previously refused developers'
13 requests that they conduct a study of the impact of Policy B-29 on the County's ability to attract
14 solar power plant developers. LSA and Petitioners' members also pointed out that the study's
15 conclusion that Policy B-29 would not discourage development of solar power plants failed to
16 take into account several relevant factors and was thus flawed in numerous respects.

17 12. At the November 8, 2011 Board meeting, the Board made slight modifications to
18 County Staff's proposal by increasing the threshold for exempt projects from 5 megawatts (MW)
19 to 20 MW and by making minor modifications to certain definitions. The Board also arbitrarily
20 reduced the Charge to \$450 per acre per year.⁹ After making these changes, the Board
21 unanimously adopted Policy B-29 at the November 8, 2011 Board meeting.

22
23
24 ⁸ Board Agenda Item No. 16.2 at 4 (Nov. 8, 2011), *available at*
25 http://rivcocob.com/agenda/2011/11_08_11/16.02.pdf (documenting the meetings between
26 developer companies and County Staff). A true and correct copy of this document is included
27 with this Petition as Exhibit E.

28 ⁹ The minutes from the Board meeting on November 8, 2011 are available at
http://rivcocob.com/proceeds/2011/p2011_11_08_files/16.02001.pdf. This file includes several
documents distributed and received by the Board regarding Policy B-29. Petitioners do not yet
know whether this file includes all of the materials that should be included as part of the record in
this proceeding.

1 17. Petitioner LSA is a California nonprofit corporation. LSA represents the majority
2 of the nation's largest developers and providers of utility-scale solar generating resources,
3 including developers with generation projects planned for and being permitted in the County that
4 would be adversely impacted by the Charge imposed by Policy B-29. LSA and its individual
5 member companies are leaders in the renewable energy industry who seek to advance solar
6 generation technologies and advocate for policies that ensure environmentally appropriate solar
7 generation facilities are constructed to meet the State's renewable and greenhouse gas goals.
8 LSA submitted both written and verbal comments to the Board on behalf of its members opposing
9 adoption of Policy B-29 prior to its approval.¹¹

10 18. The County is a local government agency and political subdivision of the State
11 charged with the authority to regulate and administer land use activities within its boundaries,
12 subject at all times to the obligations and limitations of the applicable provisions of the California
13 Constitution and all applicable state, federal, and other laws.

14 19. The Board is the legislative body and the highest administrative body of the
15 County. The Board, among other things, enacts policies, ordinances and resolutions, adopts the
16 annual budget, appropriates funds, and makes land use and zoning decisions for the
17 unincorporated area of the County. The Board is subject at all times to the obligations and
18 limitations of the applicable provisions of the California Constitution and all applicable state,
19 federal, and other laws.

20 20. Petitioners are unaware of the true names and capacities of respondents and
21 defendants named as Does 1 through 10, inclusive, and therefore sue said respondents and
22 defendants under such fictitious names pursuant to Code of Civil Procedure section 474.
23 Petitioners will amend this petition and complaint to allege the true names and capacities of said
24 respondents and defendants after they have been ascertained. Petitioners are informed and
25

26
27 correct copy of this document is included with this Petition as Exhibit F.

28 ¹¹ *Id.* at 67-78. A true and correct copy of this document is included with this Petition as Exhibit G.

1 believe and thereon allege that each of such respondents and defendants were responsible in some
2 legal manner for the events and happenings alleged herein.

3 **JURISDICTION AND VENUE**

4 21. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
5 sections 526, 1060 and 1085.

6 22. Venue is proper in this Court pursuant to Code of Civil Procedure section 394 in
7 that respondents and defendants are government entities and/or agents of the County.

8 23. Petitioners have no other plain, speedy, and adequate remedy; the County and the
9 Board had a clear, present, and ministerial duty to refrain from imposing an arbitrary,
10 unconstitutional tax and other unlawful burdens; and the members of the Petitioner associations
11 have a clear, present and beneficial right to be free of such taxes unless and until voter approval
12 has been obtained, as required by article XIII C, section 2 of the State Constitution, for a tax on
13 solar power plants that is not preempted by State law, or the County satisfies applicable legal
14 requirements before imposing a charge that is not a tax. Petitioners' members further have a
15 clear, present and beneficial right to be free of other unconstitutional and unlawful or inapplicable
16 requirements imposed on solar power plant owners through Policy B-29.

17 **STATEMENT OF FACTS**

18 24. Petitioners reallege paragraphs 1 through 23 above as if fully set forth herein.

19 25. On February 8, 2011, the Board directed the TLMA to prepare a policy pursuant to
20 which the TLMA Staff would negotiate "revenue generating agreements" with renewable energy
21 project developers, to "ensure that the County does not disproportionately bear the burden of
22 renewable energy production"¹²

23 26. Also on February 8, 2011, the Board discussed the County's 2011 State
24 Legislative Platform, in which the Board documented its opinion that the property tax exemption
25 for new construction of solar energy systems (Revenue and Taxation Code section 73) impairs the
26

27 ¹² Board Agenda Item No. 3.29 at 1-2 (Feb. 8, 2011), available at
28 http://rivcoeob.com/agenda/2011/02_08_11/03.29.pdf. A true and correct copy of this document
is included with this Petition as Exhibit H.

1 County's ability to mitigate the County's "disproportionate burdens" related to the development
2 of new solar facilities.¹³

3 27. Responding to the Board's directive to create a revenue generating policy targeting
4 renewable energy generators, in particular solar power plant developers, the TLMA prepared
5 Policy B-29 for the Board's consideration on June 28, 2011. Among other things, Policy B-29
6 proposed to impose, as a condition of granting certain permits or approving certain transactions,
7 an annual payment equal to two percent (2%) of gross annual receipts. In addition, Policy B-29
8 required that all instruments creating an enforceable obligation to make the payment "include a
9 term requiring delivery of a letter of credit to the County in an amount equal to the sales and use
10 taxes the County estimates will be generated by construction of the solar power plant to ensure
11 such taxes are allocated correctly to the County." (Exhibit A at 5.)

12 28. Solar power plant developers, including Petitioners' members, vociferously
13 objected to Policy B-29 due to its likely devastating economic impacts and numerous legal issues.

14 29. At the Board's direction, after discussions with developer companies described in
15 more detail above, County Staff made limited revisions to Policy B-29, which Petitioners assert
16 did nothing to address the arguments, legal and otherwise, raised against the original policy.
17 Notwithstanding that fact, on November 8, 2011, the Board unanimously adopted the revised
18 Policy B-29 for Solar Power Plants as part of "a comprehensive, integrated legislative program"
19 designed to ensure that (i) "The County can fully implement its General Plan;" (ii) "The County
20 does not disproportionately bear the burden of solar energy production;" and (iii) "The County is
21 compensated in an amount it deems appropriate for the use of its real property." (Exhibit E at
22 2.)¹⁴ Other elements of the comprehensive program included the Board's adoption of General
23 Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705, which
24 made changes to certain land use authorities to facilitate the development of solar power plants in
25

26 ¹³ *Id.* at 4.

27 ¹⁴ See also Board Policy No. B-29, available at [http://rivcocob.com/policy-b/POLICY-](http://rivcocob.com/policy-b/POLICY-B29.pdf)
28 [B29.pdf](http://rivcocob.com/policy-b/POLICY-B29.pdf) (Solar Power Plant Policy, a true and correct copy of which is included with this Petition
as Exhibit I.)

1 the County. (*Id.* at 3-4.) The Board adopted the comprehensive program as a complete, un-
2 severable package. (Exhibit I at 6.)

3 30. As adopted, the stated purposes of Policy B-29 are to implement general plan
4 amendments that promote sustainability, preservation of the "natural environment" and the
5 "environmentally and fiscally responsible" development of solar power plants; "to ensure that the
6 County does not disproportionately bear the burden of solar energy production"; to ensure the
7 County is compensated in an amount it deems appropriate for the use of its real property"; and "to
8 give solar power plant owners certainty as to the County's requirements." (Exhibit E at 21,
9 Exhibit I at 2.) In their report introducing the Revised Policy B-29, County Staff also represented
10 that the policy "strikes a balance between economic development and *protecting county*
11 *taxpayers.*" (Exhibit E at 4 (emphasis added).)

12 31. Policy B-29 employs an assortment of mechanisms to impose a Charge on solar
13 power plants in the amount of \$450 "for each acre of land involved in the power production
14 process." Specifically,

- 15 • "No encroachment permit [will] be issued for a solar power plant unless the Board first
16 grants a franchise to the solar power plant owner";
- 17 • "No interest in the County's real property, or the real property of any special district
18 governed by the County, [will] be conveyed for a solar power plant unless the Board
19 first approves a real property interest agreement with the solar power plant owner"; and
- 20 • "No approval required by [the County land use ordinance (No. 348) or the County
21 subdivision ordinance (No. 460) will] be given for a solar power plant unless the Board
22 first approves a development agreement."

23 (Exhibit E at 23 (emphasis added); Exhibit I at 3.) Each of the underlined agreements must
24 include, among other things, a provision consistent with the requirement to make the
25 aforementioned payment for each acre involved in the power production process, even if the
26 triggering county action (e.g., the encroachment permit, land use approval, or conveyance of
27 county property interest) is for only a fraction of that acreage.
28

1 32. Policy B-29 includes several incentives and credits that can be used to reduce the
2 per acre annual Charge to a minimum amount of \$225. These incentives include:

- 3 • A \$1,500 credit for each full time worker employed during the construction phase of
4 the project (the first three years following “the commencement of project
5 construction”), provided that the worker resides in the County or San Bernardino
6 County prior to the date of his or her hire;
- 7 • A \$2,500 credit for each full time worker employed during the operational phase of the
8 project, provided that the worker resides in the County or San Bernardino County prior
9 to the date of his or her hire;
- 10 • A 10% reduction in the Charge for the life of the project if construction commences on
11 or before January 1, 2014 and is thereafter pursued diligently;
- 12 • A transmission collocation incentive (5% reduction in the amount owed) for
13 transmission lines on common poles and a 3% reduction for lines within 300 feet of
14 other lines for at least one mile or 80% of the length of the longest transmission line if
15 no line is longer than a mile; and
- 16 • A credit for the percentage of any general purpose property tax or possessory interest
17 tax paid by the project owner or operator and received by the County or the County Fire
18 Department.

19 (Exhibit I at 3-4.)

20 33. An owner may request “to be excepted from this policy at the time [it] files an
21 application for a permit or approval described in this ordinance or any time thereafter. The Board
22 *may grant* the exception request upon a finding of special circumstances”, which include, among
23 other things, “a determination that the solar power plant has substantial benefit to the County
24 above and beyond the payment of required taxes or the implementation of mitigation measures
25 identified in any applicable environmental document.” (*Id.* at 5.) In addition, projects of 20 MW
26 or less are exempt from Policy B-29, although certain provisions explicitly warn against “filing
27 separate applications so as to obtain the exemption.” (*Id.*)
28

1 34. In addition to the provisions described above, Policy B-29 also requires either (1)
2 an assurance developed through an unspecified "negotiated sales and use tax commitment
3 procedure" or (2) a letter of credit due at "the close of project financing", either of which would
4 guarantee that the County would receive "an amount equal to the sales and use taxes the County
5 estimates will be generated by construction of the solar power plant" (*Id.* at 4.) The County
6 is entitled to hold the letter of credit until the facility owner pays "the taxes owed" or to pursue
7 recovery of the taxes owed in the event that the amount paid is less than "the amount owed."

8 35. Although applied on a per acre basis, the Charge is not imposed as an incident of
9 property ownership, as it applies only to each acre a developer chooses to put to use in the power
10 production process. Policy B-29 furthermore does not confer any special benefits on the paying
11 solar power plant owners other than to provide certainty regarding the amount of the Charge and
12 to make the Charge transferrable for the life of the project. (*See* Exhibit E at 5 (describing three
13 benefits to solar power plant owners created by Policy B-29 and three benefits of development
14 agreements in general, which are part of development agreements whether or not they are entered
15 into pursuant to Policy B-29).)

16 36. During the course of discussions with solar developer companies and in public
17 hearings, the County emphasized that County policies are not binding. Although this may be true
18 with respect to whether Policy B-29 binds the County, Petitioners are informed and believe, and
19 on that basis allege, that the County will impose the Charge at every opportunity. Policy B-29
20 explicitly states that the County *will not* issue key permits and approvals required for solar power
21 plants *unless* the owner agrees to pay a minimum of \$225 per acre per year, or the Board grants
22 an exemption (i.e., refrains from imposing an illegal tax) based on "special circumstances." The
23 discretion left to the Board, if any, is strictly circumscribed and even more so given the
24 introductory statement that "[t]o secure public health, safety and welfare, a solar power plant
25 *shall be subject to the requirements of [the] policy*" (Exhibit I at 2.)
26
27
28

1 **FIRST CAUSE OF ACTION**

2 **The Charge Is an Invalid Tax That Violates**
3 **Article XIII C, Section 2 of the California Constitution**
4 **(Code of Civil Procedure Sections 1060, 1085)**

5 37. Petitioners reallege paragraphs 1 through 36 above as if fully set forth herein.

6 38. Proposition 218, passed by the voters in 1996, created article XIII C to prohibit
7 local governments from imposing taxes without the required voter approval.

8 39. In 2010, voters again amended article XIII C to address a common practice of
9 local governments: disguising new taxes as fees to extract more revenue from California
10 taxpayers without having to abide by Constitutional voting requirements. Proposition 26
11 expanded the definition of "tax" in the California Constitution provisions originally added by
12 Proposition 218 to include "any levy, charge or exaction of any kind imposed by a local
13 government," with seven enumerated exceptions. (Cal. Const. art. XIII C § 1, subd. (e)). The
14 Charge imposed by Policy B-29 does not qualify for any of these exceptions.

15 40. The Charge is not imposed for a specific benefit conferred or privilege granted
16 directly to Petitioners' members that is not provided to those not charged (Cal. Const., art. XIII C,
17 § 1, subd. (e), par. (1)), and even if it were imposed for such a benefit or privilege, the Charge
18 exceeds the reasonable costs to the County of conferring the benefit or granting the privilege (*id.*).

19 41. The Charge is not imposed for a specific government service or product provided
20 directly to Petitioners' members that is not provided to those not charged (Cal. Const., art. XIII C,
21 § 1, subd. (e), par. (2)), and even if it were imposed for such a specific government service or
22 product, the Charge exceeds the reasonable costs to the County of providing the service or
23 product (*id.*).

24 42. The Charge is not imposed for the reasonable regulatory costs to the County for
25 issuing licenses and permits, performing investigations, inspections, and audits, enforcing
26 agricultural marketing orders, and the administrative enforcement and adjudication thereof (Cal.
27 Const., art. XIII C, § 1, subd. (e), par. (3)), and even if it were imposed for such regulatory costs,
28 the Charge exceeds such reasonable costs for such regulatory activity(ies) (*id.*).

43. The Charge is not imposed for entrance to or use of County property, or the

1 purchase, rental, or lease of County property (Cal. Const., art. XIII C, § 1, subd. (e), par. (4)), as
2 Policy B-29 would apply, in some instances, even when no County property is involved (e.g.,
3 when a developer requires a conditional use permit for development on private land). The Charge
4 additionally applies to all acres of a solar power plant used in the generation of electricity,
5 regardless of whether the County owns all of those acres. Even if the County were to limit the
6 application of Policy B-29 to projects that use, purchase, rent or lease some County property,
7 Proposition 26 requires that even these Charges be "no more than necessary to cover the
8 reasonable costs of the governmental activity, and that the manner in which these costs are
9 allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits
10 received from, the governmental activity." (Cal. Const., art. XIII C, § 1, subd. (e), last par.)
11 When the overall costs are adjusted for the very small amount of County property actually used
12 by projects that are primarily on federal or private land, the costs greatly exceed that which is
13 permitted under article XIII C.

14 44. The Charge is not a fine, penalty, or other monetary charge imposed by the judicial
15 branch of government or the County, as a result of a violation of law (Cal. Const., art. XIII C, § 1,
16 subd. (e), par. (5)), nor has the County ever contended that it is.

17 45. The Charge is not imposed as a condition of property development (Cal. Const.,
18 art. XIII C, § 1, subd. (e), par. (6)), for such charges can only be imposed following compliance
19 with the Mitigation Fee Act. As demonstrated in the second cause of action below, the Board did
20 not ensure compliance with that act before it enacted Policy B-29.

21 46. The Charge is not an assessment or a property-related fee as provided in article
22 XIII D of the California Constitution ("article XIII D"), nor has the County contended that it is.
23 Even if the County had contended that it was, the Charge was not imposed in accordance with the
24 provisions of article XIII D (Cal. Const., art. XIII C, § 1, subd. (e), par. (7)).

25 47. Because the Charge cannot qualify for any of the enumerated exceptions, it is a tax
26 for which the County failed to obtain the required voter approval in violation of article XIII C,
27 Section 2 of the California Constitution. Policy B-29, which attempts to impose this illegal tax, is
28 likewise unconstitutional, illegal and/or invalid.

1 governments may impose fees to defray the costs of public facilities related to development.
2 Development impact fees must bear a reasonable relationship to the impacts of development and
3 must comply with the requirements of Government Code section 66001.

4 53. Specifically, the local agency establishing or imposing a fee as a condition of
5 approval of a development project must:

6 (1) Identify the purpose of the fee;

7 (2) Identify the use to which the fee is to be put. If the use is financing public
8 facilities, the facilities must be identified;

9 (3) Determine how there is a reasonable relationship between the fee's use and the
10 type of development project on which the fee is imposed [*i.e.*, the "nexus"]; and,

11 (4) Determine how there is a reasonable relationship between the need for the
12 public facility and the type of development project on which the fee is imposed.

13 (Government Code section 66001(a).)

14 54. Here, the County did not take any of the necessary steps that must precede the
15 establishment or imposition of a development impact fee on solar power plants. It did not clearly
16 identify the purpose of the fee (payment), identify the use to which the fee is to be put, determine
17 a reasonable relationship between the fee's use and solar power plant projects, or determine a
18 reasonable relationship between the need for any public facility and solar power plants. The
19 Board did not even direct the County Executive Officer to start "evaluat[ing] how payments made
20 to the County pursuant to . . . Policy B-29 should be allocated" until almost a month *after* the
21 Board adopted the policy.¹⁵

22 55. Specifically, the Charge imposed by Policy B-29 does not satisfy the Mitigation
23 Fee Act's nexus requirement (Government Code section 66001(a)(3)) because:

- 24 a. Petitioners are informed and believe, and on that basis allege, that the County will
25 use revenues generated by the Charge to pay for goods and services unrelated to
26 the impacts of large-scale solar facilities, the impacts of which have been and will

27
28 ¹⁵ December 13, 2011 Minutes of the Board, Item No. 3.37 (included with this Petition as Exhibit J).

1 be addressed through environmental mitigation fees;

2 b. Petitioners are informed and believe, and on that basis allege, that the County will
3 place revenues generated by the Charge in the general fund; and,

4 c. Petitioners are informed and believe, and on that basis allege, that the County has
5 imposed the Charge to replace property tax revenue that the County believes the
6 State has wrongfully withheld through its adoption, and refusal to repeal, Revenue
7 and Taxation Code section 73. The Charge is not intended to defray the cost of
8 public facilities related to solar power plant development.

9 56. The County cannot avoid the requirement to support development impact fees with
10 an analysis pursuant to Government Code section 66001(a) by arguing that, at least under one
11 application of the policy, the Charge would be imposed through a voluntary development
12 agreement. Although fees imposed through such agreements are exempt from the requirements
13 of the Mitigation Fee Act, the developer must enter into the agreement *voluntarily*. Project
14 proponents may request development agreements, which serve developers' interests by protecting
15 a project with a grant of vested development rights, but they cannot be mandated by law.

16 57. Consequently, even if the Charge is a "charge imposed as a condition of property
17 development" and thus exempt from the definition of a tax in article XIII C, it was not established
18 in a lawful manner pursuant to the requirements of the Mitigation Fee Act. The County's attempt
19 to impose a development impact fee without complying with the applicable legal prerequisites
20 was arbitrary, capricious, and contrary to law.

21 **THIRD CAUSE OF ACTION**
22 **The Charge Is Preempted by State Law**
23 **Article XI, Section 7 of the California Constitution**
(Code of Civil Procedure Sections 1060, 1085)

24 58. Petitioners reallege paragraphs 1 through 57 above as if fully set forth herein.

25 59. The attempt by the County to impose a local tax to replace a forbidden state tax is
26 preempted by state law.

27 60. According to article XI, section 7 of the California Constitution, "[a] county or city
28 may make and enforce within its limits all local, police, sanitary, and other ordinances and

1 regulations not in conflict with general [state] laws.” *Id.*

2 61. Enacted by the Legislature pursuant to its constitutional authority to adopt such
3 legislation, Revenue and Taxation Code section 73 excludes from property tax assessments the
4 new construction of certain types of solar energy systems installed between January 1, 1999 and
5 December 31, 2016. (*See also* Cal. Const. art. XIII A, § 2.) The Legislature designed this
6 exemption to incentivize the development of new solar energy systems. (Cal. Stats. 2008 ch. 538
7 § 1 (AB 1451).)

8 62. In other state statutes, the Legislature has established that “[t]he implementation of
9 consistent statewide standards to achieve the timely and cost-effective installation of solar energy
10 systems is not a municipal affair, . . . but is instead a matter of statewide concern.” Government
11 Code section 65850.5(a). The Legislature has furthermore articulated an “intent to encourage the
12 installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting
13 for such systems.” (*Id.*)

14 63. The Legislature has repeatedly broadened and extended the protections and
15 benefits for new solar energy developments over the years. In doing so, that the State has
16 demonstrated a paramount interest and concern in promoting the development of solar energy
17 facilities by providing financial incentives and decreasing the cost of permitting.

18 64. Policy B-29, which significantly increases the costs of permitting and operating
19 solar power plants, conflicts with the statutory provisions, principles and policies underlying the
20 aforementioned solar energy tax exemptions. Policy B-29 is therefore unlawful.

21 **FOURTH CAUSE OF ACTION**
22 **Violation of the Section 16, Article IV of the California Constitution**
23 **(Code of Civil Procedure Sections 1060, 1085)**

24 65. Petitioners reallege paragraphs 1 through 64 above as if fully set forth herein.

25 66. As alleged above, Policy B-29 requires either (1) an assurance developed through
26 an unspecified “negotiated sales and use tax commitment procedure” or (2) a letter of credit due
27 at “the close of project financing”, either of which would guarantee that the County would receive
28 “an amount equal to the sales and use taxes the County estimates will be generated by
construction of the solar power plant” (Exhibit I at 4.) The County is entitled to hold the

1 letter of credit until the facility owner pays "the taxes owed" or to pursue recovery of the taxes
2 owed in the event that the amount paid is less than "the amount owed." Petitioners are informed
3 and believe, and on that basis allege, that solar power plant developers are the only type of
4 business targeted by a requirement to guarantee payment of expected taxes owed in the future.

5 67. Article IV, section 16 of the California Constitution prohibits "special legislation,"
6 meaning legislation designed to impose burdensome conditions on a class arbitrarily selected
7 from the general population of those similarly situated in relation to applicable legal
8 requirements. Legislative bodies may classify people, entities, or things and impose burdens
9 based on those classifications. But the rationale for the classification must be reasonable.

10 68. Here, the County has not provided any reason, let alone a rational reason, for
11 creating a class of one—solar plant developers—and imposing the odd requirement that solar
12 plant developers, and not other businesses, must pre-pay or otherwise guarantee a County-
13 estimated sales and use tax. Petitioners are informed and believe, and on that basis allege, that
14 the surety requirement of Policy B-29 unlawfully discriminates against solar developers. It
15 follows then that the provision is also arbitrary and capricious.

16 **FIFTH CAUSE OF ACTION**
17 **Abuse of the Police Power**
(Code of Civil Procedure Section 1060, 1085)

18 69. Petitioners reallege paragraphs 1 through 68 above as if fully set forth herein.

19 70. The exercise of a county's police powers is invalid under the Due Process Clause
20 of the California Constitution, article I, section 7, subdivision (a), if it is not reasonably related to
21 the public welfare. Local laws which "significantly affect[] the interests of nonresidents who are
22 not represented in the . . . legislative body and cannot vote on a [county] initiative" are subject to
23 judicial review under the Due Process Clause to determine whether they have a real relation to the
24 public welfare, or are instead designed to accomplish an unlawful purpose.

25 71. Although the County here represented that it was adopting Policy B-29 "[t]o
26 secure public health, safety and welfare", (Exhibit I at 2), its conclusions that the policy was
27 necessary to preserve the fundamental values of and the vision expressed in the County General
28 Plan are not supported by the content of Policy B-29, which essentially puts a price on those

1 values without requiring that the payments be used to help ameliorate the purported adverse
2 effects on the County General Plan.

3 72. Policy B-29 is primarily intended to generate revenue for the County, not to
4 protect the public welfare. Exclusively targeting corporations whose primary places of business
5 are located outside of the County to bear the burden of generating revenue for the County violates
6 Due Process and the Board's adoption of a policy doing the same was arbitrary and capricious.

7
8 **SIXTH CAUSE OF ACTION**
9 **County has no Legal Basis for Imposing Franchise Agreements**
10 **on Solar Generation Facilities**
11 **(Code of Civil Procedure Sections 1060, 1085)**

12 73. Petitioners reallege paragraphs 1 through 72 above as if fully set forth herein.

13 74. Pursuant to Policy B-29, the County would impose a requirement to obtain a
14 franchise agreement as a precondition to the award of an encroachment permit.

15 75. The statutory authorities that empower local governments to require and grant
16 franchises clearly do not apply to generation facilities. Both the Broughton Act (Public Utilities
17 Code sections 6001-6092) and the Franchise Act of 1937 (Public Utilities Code sections 6201-
18 6302) authorize the grant of franchises to utilities providing electricity directly to the public. The
19 solar power plants targeted by Policy B-29 are generation facilities, not utilities with distribution
20 capabilities and responsibilities.

21 76. Government Code section 26001 also fails to provide authority for the County to
22 impose franchises on electrical generation systems, as this provision relates to the granting of a
23 franchise "for purposes involving the furnishing of any service or commodity to the public or any
24 portion thereof."

25 77. Consistent with the above authorities, County Ordinance 499 requires only that
26 "public utility companies" hold a franchise agreement as a prerequisite to obtaining an
27 encroachment permit. Entities other than public utilities, public agencies, and right-of-way
28 easement holders can obtain an encroachment permit under a catch-all provision of Ordinance
499, 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

1 to the highway or impairment of its use as the result thereof, and that the use is reasonably
2 necessary for the performance of the functions of the applicant." This latter class of applicants
3 does not require franchise agreements for encroachment permits.

4 78. The solar power plants targeted by Policy B-29 are wholesale generating facilities
5 that do not sell electricity directly to end-users. Wholesale generating facilities transmitting
6 power to a utility are exempted from the definition of a "public utility." (Public Utilities Code
7 sections 216(g), 218(b)(3), 218.5.). Solar power plants are consequently not public utilities.

8 79. Because solar power plants are not public utilities, they come under the
9 aforementioned catch-all provision of Ordinance 499 and are not required to obtain a franchise
10 agreement. The Board's contrary interpretation of the Ordinance, and imposition of a
11 requirement to obtain a franchise agreement as a prerequisite to an encroachment permit for
12 electrical generation facilities, was therefore arbitrary, capricious, and otherwise unsupported by
13 law.

14 **SEVENTH CAUSE OF ACTION**
15 **Declaratory Relief**
16 **(Code of Civil Procedure Section 1060)**

17 80. Petitioners reallege paragraphs 1 through 79 above as if fully set forth herein.

18 81. Petitioners contend that the County abused its discretion in establishing Policy
19 B-29, that the County acted in an arbitrary and capricious manner by adopting Policy B-29, that
20 Policy B-29 violates several provisions of the California Constitution and/or State statutes, and
21 that as a result Policy B-29 is invalid and unlawful. Petitioners are informed and believe, and
22 based thereon, allege that the County contends otherwise.

23 82. An actual controversy has arisen and now exists between Petitioners, their
24 members, and the County concerning their respective rights and duties with respect to the validity
25 and legality of the County's approval of Policy B-29.

26 83. Petitioners and their member companies desire a judicial determination of their
27 rights and duties, and a judicial declaration as to the validity and legality of the foregoing.

28 84. A judicial declaration as to the validity and legality of the foregoing is necessary
and appropriate at this time under the circumstances to determine the respective rights and duties

1 of Petitioners, their members, and the County.

2 **EIGHTH CAUSE OF ACTION**
3 **Injunctive Relief**
4 **(Code of Civil Procedure Section 526)**

5 85. Petitioners reallege paragraphs 1 through 84 above as if fully set forth herein.

6 86. Petitioners have no adequate remedy at law for the injuries resulting from the
7 aforementioned conduct and unless the County is restrained and enjoined from carrying out,
8 implementing, or otherwise acting in furtherance of Policy B-29, the County's conduct will result
9 in irreparable injury to Petitioners' members.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioners pray for judgment as set forth below:

- 12 A. For a writ of mandate or peremptory writ issued under the seal of this Court and directing
13 the Riverside County Board of Supervisors to:
- 14 1. set aside Policy B-29 and cease/refrain from collecting payments in accordance
15 with the policy until the voters approve a constitutional tax on solar power plants;
 - 16 2. ensure compliance with the Mitigation Fee Act before imposing a solar facility fee;
 - 17 3. refrain from requiring franchise agreements for solar power plants.
- 18 B. For entry of a permanent injunction against the enforcement of the Charge;
- 19 C. For a declaratory judgment stating that, as a matter of law, the County's solar facility
20 Charge, as imposed, is invalid under the limitations imposed by article XIII C of the
21 California Constitution and, to the extent that the Charge is a general tax, Government
22 Code section 53723;
- 23 D. For a declaratory judgment stating that, as a matter of law, the Charge was designed to
24 nullify the effects of the property tax exemption passed by the Legislature in furtherance
25 of state policies that aim to encourage the development of renewable energy sources and
26 the County does not have authority to countermand the Legislature's judgment;
- 27 E. For a declaratory judgment stating that, as a matter of law, the requirement to provide a
28 letter of credit or other instrument to guarantee the payment of estimated sales and use
taxes unlawfully discriminates against solar power plants by selecting them for special

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burdens in violation of State constitutional law:

- F. For a declaratory judgment stating that, as a matter of law, Policy B-29 was not reasonably related to the public welfare and the County's exercise of its police power to enforce the same renders the Policy B-29 invalid under the Due Process Clause of the California Constitution, article I, section 7, subdivision (a);
- G. For a declaratory judgment stating that, as a matter of law, the County has no legal basis for imposing franchise agreements on solar generation facilities;
- H. For Petitioners' fees and costs, including reasonable attorneys' fees and expert witness costs, as authorized by Code of Civil Procedure section 1021.5 and any other applicable provisions of law;
- I. For such other legal and equitable relief as this Court deems appropriate and just including, but not limited to, refunds of any Charges collected in violation of law.

DATED: February 2, 2012

PAUL HASTINGS LLP

By: *Peter H. Weiner*

PETER H. WEINER

Attorneys for Petitioners and Plaintiffs
INDEPENDENT ENERGY PRODUCERS
ASSOCIATION and LARGE-SCALE SOLAR
ASSOCIATION

1 VERIFICATION

2 I, JAN SMUTNY-JONES declare:

3 I am the Executive Director of Petitioner Independent Energy Producers Association
4 ("IEP"). I am authorized to make this verification for and on behalf of IEP, and I make this
5 verification for that reason.

6 I have read the above petition and complaint and know its contents. All of the facts
7 alleged in the petition not otherwise supported by citations to the record, exhibits, or other
8 documents are true of my own personal knowledge, except as to those matters which are stated on
9 information and belief, and, as to those matters, I believe them to be true.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd
11 day of February, 2012 in Sacramento, California.

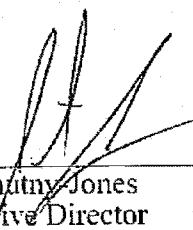
12 
13 _____
14 Jan Smutny Jones
15 Executive Director
16 Independent Energy Producers Association
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EXHIBIT "A"

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

236



FROM: Executive Office

SUBMITTAL DATE:
June 23, 2011

SUBJECT: Board Policy B-29 Pertaining to Solar Power Plants

RECOMMENDED MOTION: That the Board of Supervisors:

- (1) Approve Board Policy B-29 pertaining to solar power plants contained in Attachment A; and,
- (2) Find approval of the policy exempt from CEQA pursuant to CEQA Guidelines §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.

BACKGROUND: The County supports solar energy and acknowledges its benefits. The County also recognizes solar energy production can have adverse, unavoidable impacts on communities where it occurs, including impacts on visual, cultural, historic, agricultural, recreational, and biological resources, in addition to County facilities and services. These impacts will be experienced for decades, and perhaps indefinitely.

On February 8, 2011, (Item 3.29, Attachment B) the Board recognized the impact the sudden influx of renewable energy plants will have on Riverside County. Consequently, the Board unanimously amended the County's 2011 state legislative platform in support of legislative efforts to ensure the County does not disproportionately bear the burden of renewable energy production. The Board also directed staff to prepare a policy on revenue generating agreements pertaining to renewable energy projects. The proposed policy addresses the Board's directive specifically with respect to solar power plants.

(continued)

Denise C. Harden
Denise C. Harden, Principal Management Analyst

FORM APPROVED COUNTY COUNSEL
BY: *Katherine A. Lind* 06/23/11
KATHERINE A. LIND DATE

FINANCIAL DATA	Current F.Y. Total Cost:	\$ NA	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ NA	Budget Adjustment:	No
	Annual Net County Cost:	\$ NA	For Fiscal Year:	

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Katherine A. Lind*
County Executive Office Signature

Consent
 Policy
 Per Exec. Offc.
 Dept't Recomm.

Consistent with the County's long-standing practices, the policy compensates the County fairly for use of County assets, and for the unavoidable, adverse impacts of solar power plants. The policy also gives solar power plant developers certainty regarding the County's requirements. Combined estimates from two solar developers indicate they will pay \$9 million per year under the terms of this policy. From this, it is anticipated the potential revenue the County might receive from projects currently in process ranges from \$30-\$38 million per year.

The Bureau of Land Management identifies eastern Riverside County as the largest solar energy zone in California. This zone consists of 202,000 acres extending from Desert Center to the Colorado River. According to California Energy Commission records, more solar power plants of 100 megawatts or greater are being sited in Riverside County than in any other California county.

Already, 118,000 acres are slated for solar development, and many more projects are anticipated. 118,000 acres is equivalent to 185 square miles, an area nearly as large as Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, and Indio combined. These unique solar resources, together with substantial federal and state incentives, such as loan guarantees and tax breaks to encourage renewable energy development, are generating a surge in proposals for utility scale solar power plants in Riverside County.

Riverside County and its residents must be compensated for the unavoidable adverse impacts of these massive solar developments within our borders. Miles of mirrors stretching from Desert Center to the Colorado River will alter the historic landscape for decades. Hundreds of thousands of acres in Riverside County will no longer be available for other uses important to our economy, such as recreation and agriculture. Biological diversity and historic and cultural resources also will be lost. In addition, County roads, bridges and flood control facilities will endure additional wear and tear as a direct result of building and maintaining these plants. These projects also will permanently increase demand on county services such as, emergency services, medical services, property assessment, and law enforcement.

Consistent with state law, the County has a long-standing practice of granting electricity franchises requiring payment of 2 percent of gross annual receipts arising from use of the franchise. All current grantees of electricity franchises in the County make such payments. These agreements, dating back nearly 100 years, include the electrical franchise originally granted to Southern California Edison in 1913. Other states, such as Colorado, require a payment of 3 percent of gross annual receipts.

The proposed policy applies to solar power the same standard the County has used with conventional power for nearly 100 years. Specifically, the proposed policy states that:

- No encroachment permit shall be issued for a solar power plant until the Board first grants an electricity franchise to the solar power plant developer. Such franchise shall include a term requiring the solar power plant developer to pay the County annually 2 percent of gross annual receipts arising from the use, operation, or possession of the franchise.
- 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 until the Board first approves an agreement requiring the solar power plant developer to pay the County annually 2 percent of gross annual receipts arising from the use, operation, or possession of the real property interest.

- No land use approval required by either Ordinance Nos. 348 or 460 shall be given for a solar power plant until the Board first approves a development agreement for the solar power plant and the development agreement is effective. Such agreement shall include a term requiring the solar power plant developer to pay the County annually 2 percent of gross annual receipts arising from the use, operation or possession of the approval.
- A solar power plant operator shall deliver a letter of credit to the County in an amount equal to the County's estimate of sales and use taxes to ensure such taxes are correctly allocated to the County.

The requirement for a developer agreement is also consistent with state law, which expressly allows counties to enter into development agreements. The County of Inyo has adopted an ordinance creating a development agreement process for renewable energy projects. In addition, Riverside County recently entered into a lease agreement with a solar power plant operating on closed County landfills requiring payment of 5 percent of gross annual receipts.

Solar power plant developers claim their solar power plants will bring significant revenue to the County. However, 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 they pay possessory interest taxes on Bureau of Land Management leases, the County only retains 13 cents on the dollar. The remainder goes to the state and other taxing entities.

Solar power plants may generate sales and use taxes for the County during construction. However, it is imperative the sales be both structured and reported correctly for the County to be allocated the revenue. If reported or paid incorrectly, this revenue will not be allocated to the County, and may not be recoverable.

Solar power plant developers also claim their solar power plants will bring a significant number of jobs to Riverside County. However, the majority of these are short-term construction jobs, and there is no requirement to employ local area residents. Once construction is completed, few long-term jobs will remain to maintain and operate these highly automated power plants.

Solar power plant developers are well-capitalized commercial energy companies – many of which are multi-national corporations – which are heavily subsidized by the state and federal governments with taxpayer dollars. While the state and federal governments may be in a position to offer such incentives, they will not bear the brunt of the impact of solar energy production. Riverside County and its residents will bear that burden.

Without franchises, real property interest agreements, or development agreements, these projects will reap the lucrative benefits of locating within Riverside County without compensating the community for the unavoidable, adverse impacts they create. Pursuant to the Board direction given on February 8, 2011, proposed Board Policy B-29 will ensure the County is fairly compensated for solar energy production in a manner consistent with the County's long-standing approach to conventional energy generation.

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Attachment A

Policy

Subject:

SOLAR POWER PLANTS

Number

B-29

Page

1 of 2

Purpose:

The Board supports solar energy and acknowledges its benefits. The Board also recognizes that solar energy production creates adverse unavoidable impacts in the communities where it occurs, including impacts to visual, cultural, historic, agricultural, recreational, and biological resources, as well as impacts to County facilities and services. The purpose of this policy is to ensure that communities do not disproportionately bear the burden of solar energy production, and to give solar energy developers 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 any applicable ordinance, state or federal law as well as the requirements of this policy.

No encroachment permit shall be issued for a solar power plant until the Board first grants an electricity franchise to the solar power plant developer. Such franchise shall include the County's standard term requiring the grantee to pay the County annually 2 percent of gross annual receipts arising from the use, operation, or possession of the franchise.

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 until the Board first approves an agreement requiring the solar power plant developer to pay the County annually 2 percent of gross annual receipts arising from the use, operation, or possession of the real property interest.

No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant until the Board first approves a development agreement for the solar power plant and the development agreement is effective. Such agreement shall include a term requiring the solar power plant developer to pay the County annually 2 percent of gross annual receipts arising from the use, operation or possession of the approval. When a solar power plant requires both an encroachment permit and one of the above-referenced approvals, only an electricity franchise shall be required.

When a solar power plant developer requires any combination of the above-referenced agreements in conjunction with a particular solar power plant, only one agreement shall include the term requiring the solar power plant developer to pay the County annually 2 percent of gross annual receipts arising from the use, operation or possession of the franchise, real property interest, or approval required.

Every electricity franchise, real property interest agreement, and development agreement shall also include a term requiring delivery of a letter of credit to the County 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 correctly to the County. The solar power plant developer shall provide the information needed by the County to make this estimate. The

**COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Attachment A

Policy

Subject:

SOLAR POWER PLANTS

Number

B-29

Page

2 of 2

County shall release annually a portion of the letter of credit equal to the amount of taxes paid, as reported by the State Board of Equalization. If, upon completion of construction, the sales and use taxes paid are less than the County's estimate, the County shall call the remaining portion of the letter of credit.

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

"Solar Power Plant." A facility used to generate, store, transmit or distribute electricity generated 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. A solar power plant includes a power plant using either a solar thermal or photovoltaic system to convert solar energy to electricity. A solar power plant does not include a solar energy system, defined below.

"Solar Energy System." A system that is:

- (1) 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,
- (2) 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.

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

439



SUBMITTAL DATE:
January 27, 2011

FROM: TLMA - Planning Department

SUBJECT: Renewable Energy Projects - 2011 State Legislative Platform; Position Regarding the Desert Renewable Energy Conservation Plan

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve and direct the Executive Office to add Attachment No. 2 to the 2011 State Legislative Platform to ensure that the County does not disproportionately bear the burden of renewable energy production;
- 2) Direct the Transportation and Land Management Agency to prepare a Board policy requiring County staff to negotiate revenue generating agreements (such as

Carolyn Syms Luna

Carolyn Syms Luna
Planning Director

Initials:
RJ:ij

CONTINUED ON ATTACHED PAGE

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	n/a
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	n/a
	Annual Net County Cost:	\$ 0	For Fiscal Year:	n/a

SOURCE OF FUNDS: n/a	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Jennifer Sargent*

Jennifer Sargent

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: February 8, 2011
xc: Transp., TLMA, EO, State Rep's.

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*

Deputy

3.29

Prev. Agn. Ref. | District: All | Agenda Number:

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

development agreements and franchise agreements) for renewable energy projects, including power plants, transmission lines, and related facilities, to further ensure that the County does not disproportionately bear the burden of renewable energy production; and,

- 3) Approve, and authorize the Chairman to sign, the attached letter to Mr. Dave Harlow, Director, California Desert Renewable Energy Conservation Plan.

BACKGROUND:

Federal and State initiatives to encourage the development of renewable energy projects have led to an influx of utility scale solar power plants in Riverside County because it is uniquely suited for the location of such facilities. The County supports renewable energy production and acknowledges the positive effects it will have. The County also recognizes that such production will result in lost economic development potential (including lost employment opportunities and lost property tax revenue), lost recreation potential, lost historical resources and the unreimbursed costs of additional transportation facilities, public safety facilities and related services. Without appropriate ways to reduce these losses, Riverside County will bear a disproportionately heavy burden for renewable energy production. This is particularly true for renewable energy projects that do not fall under the permitting jurisdiction of the County (see Attachment 1 Riverside County Statement of Jurisdiction) because the County has no opportunity to address their effects. The 2011 State Legislative Platform (see Attachment 2) identifies potential legislative remedies that would assist Riverside County in reducing its disproportionate share of renewable energy production. Directing staff to negotiate revenue generating agreements, such as development agreements and franchise agreements, will further ensure that the County is made whole.

The Desert Renewable Energy Conservation Plan (DRECP) is a State launched effort to create a joint Natural Communities Conservation Plan (NCCP) that will ensure long-term species protections while facilitating renewable energy production. The County is actively engaged in the Stakeholder Committee that is guiding development of the DRECP. The letter to the Director of the DRECP (see Attachment 3) identifies the following matters that must be resolved before Riverside County will support the DRECP:

- a. The number of renewable energy projects anticipated to be permitted and the amount and kind of mitigation anticipated to be required must be defined;
- b. Renewable energy production must be encouraged at or near the point of consumption;
- c. Already permitted Habitat Conservation Plans must not be impacted or have additional requirements imposed;
- d. Riverside County must have an integral role in planning, management, and research in order to maintain local control and involvement; and,
- e. The conservation impacts of renewable energy production must be appropriately reduced so that the County does not bear a disproportionate burden of such impacts.

ATTACHMENTS:

- 1) Riverside County Statement of Jurisdiction
- 2) 2011 State Legislative Platform
- 3) Letter to Mr. Dave Harlow, Director, California Desert Renewable Energy Conservation Plan

VALLEY ACTION

President
Patrick Swarthout
Imperial Irrigation District

Vice President
Juan DeLara
Federated Insurance/
Travertine Point

Secretary/Treasurer
Fred Bell
Noble & Company, LLC

Phil Smith
Sunrise Company

Bill Green
RBF Consulting

Lee Haven
Granite Construction

Mark Gran
Cal Energy

Wes Ahlgren
Coachella Valley
Economic Partnership

Paul Quill
Federated Insurance/
Travertine Point

Riverside County Board of Supervisors
4080 Lemon Street, 5th Floor
Riverside, CA 92502

June 21, 2011

Dear Supervisors:

As business men and women of Riverside County, we are extremely concerned with the proposal being considered by the Board on June 28th to tax solar energy projects 2 percent of gross revenue annually. This "Sun Tax" is anti-competitive and threatens tens of millions of dollars of direct tax revenue to the County and hundreds of millions of dollars of secondary economic benefit. This is particularly troubling at a time when our region ranks among the highest in unemployment in the nation and desperately needs financial recovery.

For the last few years, residents, businesses and schools have rallied to attract utility-scale solar development in Riverside County. This is a cornerstone to the Coachella Valley Economic Partnership's Blueprint because it will bring green jobs and clean energy to the County, which will in turn provide economic strength and diversity to the economy.

Other jurisdictions offer open space, abundant sunshine and no similar tax. Make no mistake about it - Riverside County is competing with other Counties and States in our region. Solar projects will be built in areas that do not have such outrageous taxes.

The County is also holding up the approvals for two projects (First Solar - Desert Sunlight and Solar Millennium - Blythe). These projects would provide over \$1 billion in economic benefits to the County. These approvals are urgent because their funding is tied to a Federal loan guarantee program that is about to expire. Further delay will stall these projects. We need the jobs and economic impact NOW!

The County would be better served by *attracting* the solar industry with tax incentives. Creating a NEW tax is short sighted and will not ultimately create revenue to bolster the County coffers. Say NO to the Sun Tax. Approve the pending projects. Get Riverside County back to work.

Sincerely,



Patrick Swarthout
President
Valley Action Group



CITY OF BLYTHE

235 North Broadway / Blythe, California 92225
Phone (760) 922-6161 / Fax (760) 922-4938

VIA FACSIMILE

June 22, 2011

Mr. Bill Luna, County Executive Officer
Riverside County
County Administration Center
4080 Lemon St.
Riverside, CA 92501

Dear Mr. Luna:

Re: Proposed 2% Franchise Fee on Solar Projects

Please be advised that, during a special meeting of the City Council held late yesterday, the Council voted unanimously to oppose the proposed franchise fee. Concerns expressed by the Council included:

- While the Board of Supervisors is scheduled to vote on the new policy as soon as next Tuesday (June 28, 2011), as of the time of the special council meeting, a draft copy of the policy had not yet been made public. As such, the council members were not apprised as to the full content of the proposed policy.
- Solar Millennium has been working with the City on its project, slated to be constructed just northwest of the Blythe Airport, for approximately two years. The Council's understanding is that the approval process was winding down and, with the formal groundbreaking attended by Governor Brown and Interior Secretary Salazar held just last Friday, final County approval was imminent. This new requirement to pay 2% of gross has seemingly taken everyone by surprise and, because the policy is being proposed so late in the game, the Council members feel that this project should be exempt from any such policy.
- The Council members did not have all the facts on how specific deal points, vis-à-vis exactions that would be realized by the City itself, were determined. The Council was concerned further that, at this late date, it did not have the option of negotiating any of those deal points.
- The City Council acknowledges that there will likely be negative impacts as a result of this project and it is very likely that many of those impacts will manifest themselves within city limits, thereby potentially taxing police and fire services,

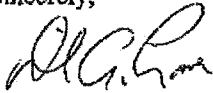
at a minimum. Although additional revenue as an offset to those future expenditures would be warranted and certainly welcomed, the Council is concerned with the potential that the new policy may result in Solar Millennium canceling the project and moving it elsewhere. The Council is desirous of ensuring that, primarily because of the potential job creation, this project moves forward and does so as quickly as possible. To that end, the City Council is respectfully requesting that the County re-agendize consideration of Resolution 2011-097 for the Board of Supervisors meeting of June 28, 2011.

The City Council is open to further discussions on a potential policy, however it feels it is too late, especially in light of the absence of a draft policy to review, for imposing this on the Solar Millennium project.

Finally, it is important to note the Council continued yesterday's meeting to next Monday, June 27, 2011 at 7:00 a.m. This final meeting has been scheduled specifically to allow the council members the opportunity to discuss the detailed content of the proposed policy (the Council's understanding is that the policy will be made public late tomorrow). It may be helpful for the County to have a representative present at the meeting, or available by telephone, for the purpose of answering questions. Please note that the meeting is scheduled for early morning.

Thank you for your time and consideration, and, as always, thank you for your interest in the City of Blythe.

Sincerely,



David A. Lane
City Manager

cc: Honorable members of the Blythe City Council
Honorable members of the Riverside County Board of Supervisors



June 17, 2011

Mr. Bill Luna
County Executive Officer
County of Riverside
4080 Lemon Street – 4th Floor
Riverside, CA 92501

Dear Bill:

On behalf of the Coachella Valley Economic Partnership (CVEP), I am writing to express our concern regarding the proposed 2% gross receipts tax on solar energy projects. It is our understanding that the Board of Supervisors will be considering this proposal at its June 28th meeting. At its June 16 meeting, the CVEP Renewable Energy Roundtable members unanimously adopted the following motion:

"That CVEP transmit a communication to the County of Riverside regarding its concerns about the proposed 2% gross receipts tax proposal and its potential impacts on the development of solar energy projects in Riverside County. Further, those potential impacts need to be more thoroughly assessed with solar industry representatives to ensure that a policy that is acceptable to the County and industry results. Finally, the First Solar and Solar Millennium projects which precipitated this new tax proposal should not be delayed but receive approvals from the County to meet upcoming federal loan guarantee requirements."

This action was taken after a robust discussion that included County representatives. There were a number of different concerns and issues discussed; many were left unanswered because no one – including those directly involved – seems to understand the entire rationale associated with the County's proposal. At the very least, this appears to represent a lack of communication between the parties on the proposed policy.

As an economic development organization, CVEP has emphasized the importance of improving our competitive profile if we expect to successfully compete for jobs and investment. This means we need to have a business-friendly environment which entails two key elements: (1) the cost of doing business, and (2) the predictability for doing business. Based on information we currently have on the County's proposal, we are concerned about both of these.

CLIMATE FOR SUCCESS



First, according to First Solar the fee to be paid to Riverside County annually from this proposal is approximately \$3.5M. In Los Angeles and Kern counties, this fee is said to be \$92,000 annually. This type of discrepancy raises questions; there may be a logical explanation but no one seems to have it. The real concern is how this proposed fee compares with fees charged by other states pursuing solar projects – Nevada, Arizona, Colorado and others. No one seems to have answers for this either and these are the serious competitors to Riverside County for solar power. We need to ensure that we are not creating an incentive for solar companies to take their jobs and investment to other states.

Second, the predictability associated with being able to conduct business “without surprises” is essential. From our understanding of the County review process, this tax proposal was introduced at a very late stage in the approval process. When this occurs in the process of government, it immediately raises suspicions and can result in a perception that a jurisdiction is not business friendly. Since Riverside County has always had a good reputation among California government agencies as “business-friendly”, we want to ensure that we maintain and enhance that reputation.

Finally, if Riverside County determines it wishes to receive more input on this matter before final action, CVEP would be happy to host County officials and industry representatives at an event in which these ideas can be exchanged. We think this approach would result in a fee policy that meets County objectives, industry needs and long-term economic development goals.

Respectfully submitted,

Thomas E. Flavin
President/CEO
CVEP

cc: Chairman Bob Buster
Vice-Chairman John F. Tavaglione
Supervisor Jeff Stone
Supervisor John J. Benoit
Supervisor Marion Ashley
CVEP Executive Committee

CLIMATE FOR SUCCESS

EXHIBIT "B"

138
**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Economic Development Agency / Facilities Management

SUBMITTAL DATE:
 May 12, 2011

SUBJECT: Resolution No. 2011-097, Notice of Intention to Convey Easement Interests in Real Property - Blythe Airport

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve Resolution No. 2011-097, Notice of Intention to Convey Easement Interests in Real Property located near Blythe Airport, County of Riverside, on a portion of Assessor's Parcel Number 818-210-014 by Grant of Easements to CA SOLAR 10, LLC; and,
2. Direct the Clerk of the Board to give notice pursuant to Government Code Section 6061.

BACKGROUND: (Commences on Page 2)

Robert Field
 Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY:
 Elizabeth J. Olson
County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended, and is set for Tuesday, June 7, 2011, at 9:00 a.m.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
 Nays: None
 Absent: None
 Date: May 24, 2011
 xc: EDA, COB

Kecia Harper-Ihem
 Clerk of the Board
 By:
 Deputy

Prev. Agn. Ref.: N/A

District: 4

Agenda Number: 3.31

FORM APPROVED COUNTY COUNSEL
 BY: ANITA C. WILLIS
 DATE: 5-11-11
 Concurrent Concurrence

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

BACKGROUND:

The original federal government land grant to the County of Riverside for the Blythe Airport included a twenty foot wide strip of land that connects the airport grounds to a water storage tank situated approximately 7,000 feet to the west of the airport perimeter. The water storage tank is not currently in use, and there are no plans to bring it back into use.

CA SOLAR 10, LLC, doing business as Solar Millennium, has been awarded a land entitlement by the Bureau of Land Management to develop a solar energy production facility on federal land in an uninhabited area north of the Blythe Airport. To access the facility and to transfer the generated power into the power grid, Solar Millennium will require easements for access and utility lines across two different sections of the 20 foot corridor.

Pursuant to Government Code Section 25526.5, a county may transfer real property or interests therein, belonging to the county to another entity, upon terms and conditions as are agreed upon if the property or interest therein to be conveyed is not required for county use and the value is deemed to be under \$25,000, without complying with any other provisions of the code section. Due to its size and location, it is deemed that this property interest has nominal value.

The County intends to convey the following easement interests in portions of Assessor's Parcel Number 818-210-014; a 2,099 square foot access easement (Parcel "A") and a 2,505 square foot utility easement (Parcel "B"), more particularly legally described in Exhibit "A" and depicted on Exhibit "B", attached to the Resolution, by Grant of Easements to CA SOLAR 10, LLC.

To cover staff labor and other expenses, the Real Estate Division of EDA requested and received an initial deposit of \$5,000 from Solar Millennium for this undertaking and also for a related request to grant a license for water well monitoring on the Blythe airport grounds. Once fully negotiated, the monitoring agreement will be submitted to the Board of Supervisors under separate cover. If any of the deposit remains after fulfillment or denial of both requests, the unused portion will be returned to Solar Millennium.

The Resolution has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

There are no costs associated with this transaction.

1 Board of Supervisors

County of Riverside

2
3 **RESOLUTION NO. 2011-097**

4 **NOTICE OF INTENTION TO CONVEY EASEMENT INTERESTS**

5 **IN REAL PROPERTY TO CA SOLAR 10, LLC**

6
7 WHEREAS, the County of Riverside (County) owns that particular real property
8 identified by Assessor's Parcel Number 818-210-014; and,

9 WHEREAS, the land is not currently being used by the County and there is no
10 foreseeable use; and,

11 WHEREAS, the value of the property interest requested is deemed to be less
12 than \$25,000.00; now, therefore,

13 BE IT RESOLVED AND DETERMINED that the Board of Supervisors of the
14 County of Riverside, in regular session assembled on May 24, 2011, hereby directs the
15 Clerk of the Board of Supervisors to give notice pursuant to Government Code Section
16 6061, of the following:

17 NOTICE IS HEREBY GIVEN by the Board of Supervisors of the County of
18 Riverside intends to convey to CA SOLAR 10, LLC, the following described real
19 property: Parcel "A", a non-exclusive access easement consisting of two thousand
20 ninety nine (2,099) square feet of land; and Parcel "B", a non-exclusive utility easement
21 consisting of two thousand five hundred five (2,505) square feet of land, both affecting
22 portions of land situated westerly of the Blythe Airport, County of Riverside, California,
23 identified as Assessor's Parcel Number 818-210-014.

24 The Board of Supervisors intends to meet to conclude the proposed transaction
25 on or after June 7, 2011, at 9:00 am at the meeting room of the Board of Supervisors
26 located on the 1st floor of the County Administrative Center, 4080 Lemon Street,
27 Riverside, California.

28 **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 Super-
visors on the date therein set forth.

KECIA HARPER-HEM Clerk of said Board

FORM APPROVED COUNTY COUNSEL
BY: ANITA C. WILLIS 5-11-11

DATE

EXHIBIT "C"

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



3.58

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from Transportation & Land Management Agency And County Counsel regarding Adoption of Resolution No. 2011-147 declaring an intention to grant, and Introduction of Ordinance No. 909, granting a franchise to Desert Sunlight Holdings, LLC, for transmitting and distributing electricity under, along, across, or upon County roads and rights of way in Eastern Riverside County, 4th District is continued to Tuesday, June 7, 2011 at 9:00 a.m.

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on May 24, 2011 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: May 24, 2011
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

(seal)

By: [Signature] Deputy

AGENDA NO.
3.58

xc: TLMA, Co.Co., COB

EXHIBIT "D"

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



3.65

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the recommendation from Transportation & Land Management Agency And County Counsel regarding the Adoption of Resolution No. 2011-147 declaring an intention to grant, and Introduction Of Ordinance No. 909, granting a franchise to Desert Sunlight Holdings, LLC, for transmitting and distributing electricity under, along, across, or upon County roads and rights of way in Eastern Riverside County, 4th District is continued to Tuesday, June 28, 2011 at 9:00 a.m.

Roll Call:

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

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on June 7, 2011 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: June 7, 2011
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

(seal)

By: [Signature] Deputy

AGENDA NO.
3.65

xc: TLMA, Co.Co., COB

EXHIBIT "E"

**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 Johnson, Director
 Transportation and Land Management Agency

FORM APPROVED COUNTY COUNSEL
 BY: KATHERINE A. LIND DATE: _____

Departmental Comments

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	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

 BY: _____
 Denise C. Harden

County Executive Office Signature

Dept Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

RE: 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
November 3, 2011
Page 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

RE: 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
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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

RE: 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
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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

RE: 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
November 3, 2011
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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

RE: 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
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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."

2
3 **RESOLUTION NO. 2011-273**
4 **AMENDING THE RIVERSIDE COUNTY**
5 **GENERAL PLAN**

6 **(Second Cycle General Plan Amendments for 2011)**

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

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

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

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

17 **General Plan Amendment No. 1080** (GPA No. 1080) is a County-initiated general plan
18 amendment to incorporate into the Land Use Element the two new policies set forth in "GPA No. 1080
19 Exhibit A," a copy of which is attached hereto and incorporated herein by reference. GPA No. 1080 has
20 County-wide application and affects all properties located in the unincorporated area. GPA No. 1080, the
21 text of Ordinance No. 348.4734 and Ordinance No. 348.4705 were considered concurrently at the public
22 hearing before the Planning Commission on July 14, 2010. The Planning Commission recommended
23 adoption of GPA No. 1080 on July 14, 2010. GPA No. 1080, Ordinance No. 348.4734, Ordinance No.
24 348.4705, and Board of Supervisors Policy B-29 were considered concurrently at the Board of
25 Supervisors on November 8, 2011.

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

- 28
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: KATHERINE A. LIND 11/25/11
DANG

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

5 Ordinance No. 348.4734 amends Ordinance No. 348 to allow "solar energy systems" as an
6 accessory use in all zones, subject to administrative review by the Director of Building & Safety. In
7 certain cases, as stated in the ordinance, a "solar energy system" may require a plot plan. Ordinance No.
8 348.4705 amends Ordinance No. 348 to add "solar power plants" as a permitted use subject to the
9 issuance of a conditional use permit on lots ten (10) acres or larger in the following zones: General
10 Commercial (C-1/C-P), Commercial Tourist (C-T), Scenic Highway Commercial (C-P-S), Rural
11 Commercial (C-R), Industrial Park (I-P), Manufacturing-Service Commercial (M-SC), Medium
12 Manufacturing (M-M), Heavy Manufacturing (M-H), Mineral Resources (M-R), Mineral Resource and
13 Related Manufacturing (M-R-A), Light Agriculture (A-1), Light Agriculture with Poultry (A-P), Heavy
14 Agriculture (A-2), Agriculture-Dairy (A-D), Controlled Development (W-2), Regulated Development
15 Areas (R-D), Natural Assets (N-A), Waterways and Watercourses (W-1), and Wind Energy Resource (W-
16 E).

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

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

- 1 1. GPA No. 1080 does not involve a change in or conflict with the Riverside County
2 Vision, any General Planning Principle set forth in Appendix B or any Foundation
3 Component designation in the General Plan. "Creativity and Innovation," "Natural
4 Environment," and "Sustainability" are fundamental values of the County expressed in
5 the Vision of the General Plan. Encouraging solar energy systems as an accessory use
6 and encouraging the development of renewable energy resources and related
7 infrastructure, in an environmentally and fiscally responsible manner, reaffirms the
8 County's commitment to these fundamental values. No changes to General Planning
9 Principles or Foundation Component designations are proposed; no conflict with those
10 principles or designations will result.
- 11 2. GPA No. 1080 will either contribute to the purposes of the General Plan or, at a
12 minimum, would not be detrimental to them for the reasons specified above. In
13 addition, GPA No. 1080 is complementary to Policy OS 13.2 in the Multipurpose Open
14 Space Element of the General Plan which calls for the County to "support and
15 encourage voluntary efforts to provide active and passive solar access opportunities in
16 new development."
- 17 3. Special circumstances or conditions have emerged that were unanticipated in
18 preparing the General Plan. After the General Plan was adopted in 2003, the Governor
19 of the State of California issued Executive Order S-21-09 and the legislature passed SB
20 X 1-2 establishing the California Renewables Portfolio Standard Program. Pursuant to
21 this program, the amount of electricity required to be generated per year from
22 renewable energy resources has been increased to an amount that equals at least 33% of
23 the total electricity sold to retail customers by December 31, 2020. Moreover, 75% of
24 all renewable resources are to be from in-state sources by 2017. This aggressive 33%
25 standard was not anticipated in preparing the General Plan. GPA No. 1080 will aid in
26 meeting the 33% standard while also ensuring that solar power plants and related
27 infrastructure do not jeopardize the County's fundamental values set forth in the
28 General Plan Vision Statement, the General Planning Principles set forth in Appendix B
 and the General Plan policies.

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

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

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

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

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

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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

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

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

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

10 (2) A "feasible method to satisfactorily mitigate or avoid the
11 specific, adverse impact" includes, but is not limited to, any cost-
12 effective method, condition, or mitigation imposed by the county on
13 another similarly situated application in a prior successful
14 application for a permit. The county shall use its best efforts to
15 ensure that the selected method, condition, or mitigation does not
16 "significantly" increase the cost of the system or "significantly"
17 decrease its efficiency or specified performance, or allows for an
18 alternative system of comparable cost, efficiency, and energy
19 conservation benefits. For solar domestic water heating systems or
20 solar swimming pool heating systems that comply with state and
21 federal law, "significantly" means an amount exceeding 20 percent
22 of the cost of the system or decreasing the efficiency of the solar
23 energy system by an amount exceeding 20 percent as originally
24 specified and proposed. For photovoltaic systems that comply with
25 state or federal law, "significantly" means an amount not to exceed
26 \$2000 over the system cost as originally specified and proposed, or
27 a decrease in system efficiency of an amount exceeding 20 percent
28 as originally specified and proposed."

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Section 2.

to read as follows:

A new section 21.62i of Article XXI of Ordinance No. 348 is added

“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: _____
Chairman

ATTEST:
CLERK OF THE BOARD


By: _____

Deputy

(SEAL)

APPROVED AS TO FORM

November 3, 2011

By: 
TIFFANY N. NORTH
Deputy County Counsel

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

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

3 “(22) Solar power plant on a lot 10 acres or larger.”

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

6 “(18) Solar power plant on a lot 10 acres or larger.”

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

9 “(2) Solar power plant on a lot 10 acres or larger.”

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

12 “(2) Solar power plant on a lot 10 acres or larger.”

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

15 “(12) Solar power plant on a lot 10 acres or larger.”

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

18 “(4) Solar power plant on a lot 10 acres or larger.”

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

21 “(16) Solar power plant on a lot 10 acres or larger.”

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

24 “(2) Solar power plant on a lot 10 acres or larger.”

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

27 “(32) Solar power plant on a lot 10 acres or larger.”

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

1 Ordinance No. 348 to read as follows:

2 “(3) Solar power plant on a lot 10 acres or larger.”

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

5 “(15) Solar power plant on a lot 10 acres or larger.”

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

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

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

11 “(2) Solar power plant on a lot 10 acres or larger.”

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

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

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

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

26 Section 22. Existing Section 21.63 of Article XXI of Ordinance No. 348 is renumbered
27 21.64.

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

1 integrated legislative program which also includes the adoption of General Plan Amendment No 1080
2 (Land Use Policy LU 15.15) and Board of Supervisors Policy No. B-29. The Board of Supervisors
3 declares that it would not have adopted Ordinance No. 348.4705 unless General Plan Amendment No.
4 1080 (Land Use Policy LU 15.15) and Board of Supervisors Policy No. B-29 were also adopted and
5 effective. In the event that any provision of Ordinance No. 348.4705, General Plan Amendment No. 1080
6 (Land Use Policy LU 15.15) or Board of Supervisors Policy No. B-29 is determined to be invalid or
7 unenforceable, in whole or in part, by a court of competent jurisdiction, then Ordinance No. 348.4705,
8 General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Board of Supervisors Policy No. B-
9 29 shall be deemed invalid in their entirety and shall have no further force or effect.

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

11
12 BOARD OF SUPERVISORS OF THE COUNTY
13 OF RIVERSIDE, STATE OF CALIFORNIA

14 By: _____
15 Chairman


16 ATTEST:
17 CLERK OF THE BOARD

18
19 By: _____
20 Deputy

21
22 (SEAL)

23
24 APPROVED AS TO FORM

25 November 3, 2011

26
27 By: 
28 TIFFANY N. NORTH
Deputy County Counsel

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Attachment D

Policy

Subject:

SOLAR POWER PLANTS

Number

B-29

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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:

**COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Attachment D

Policy

Subject:

SOLAR POWER PLANTS

Number

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- 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.

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

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Subject:
SOLAR POWER PLANTS

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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 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 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

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

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net acreage in the immediately preceding fiscal year, including any supplemental assessments.

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.

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 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

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

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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.

**COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

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Policy		
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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.

**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 1078¹ 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 XI-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.

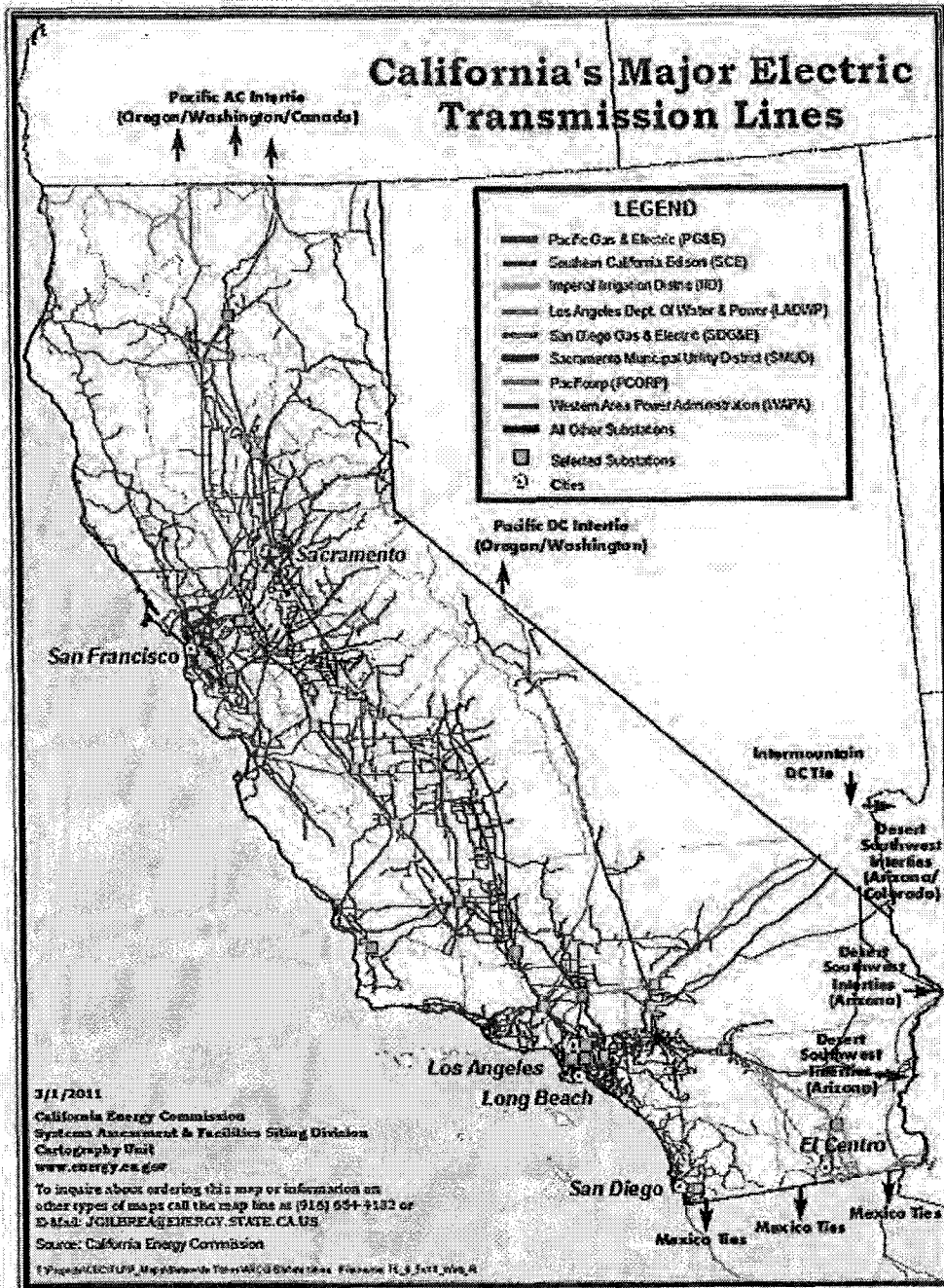
SB 2 also imposed a requirement for in-state resources, modified delivery requirements for out-of-state resources and required the CPUC to establish cost containment limits. SB 2 formally extended the RPS program to publicly owned utilities.

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.

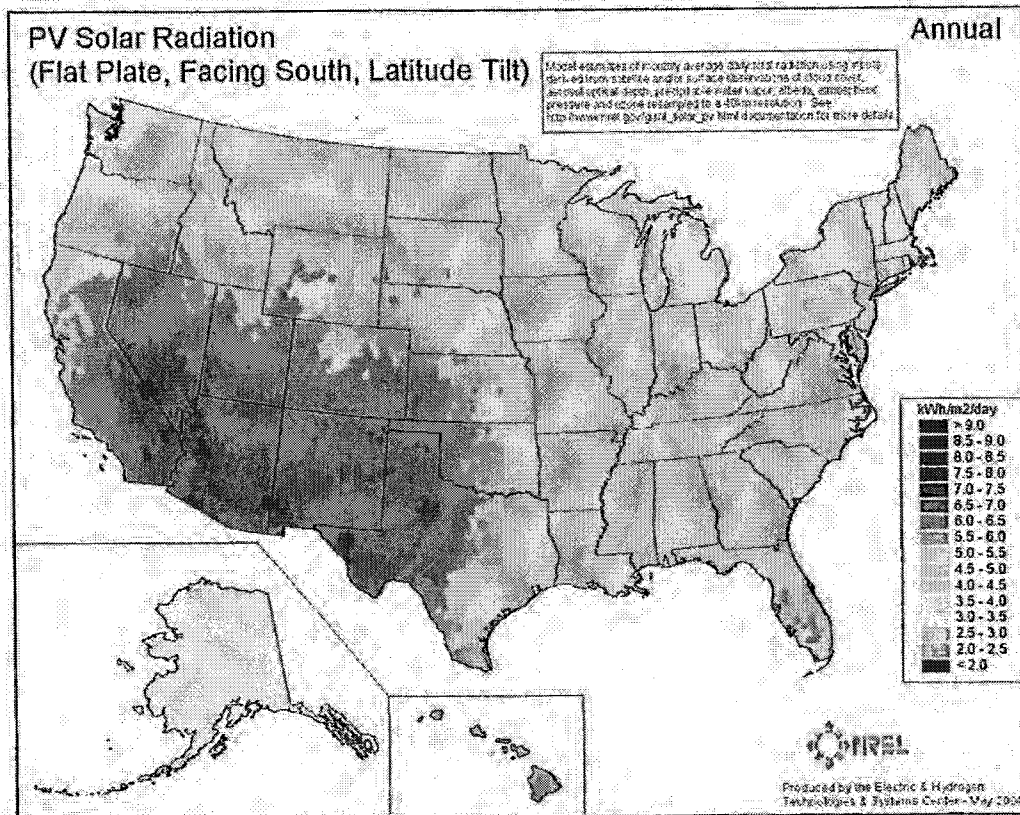
While other areas of California are attempting to attract solar and other renewable developers, transmission constraints and the complexities of finding areas with the necessary environmental attributes and transmission access will continue to make Riverside County a preferred area for solar development 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 capacity². 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 12.44 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 (Based upon 250 acres)			\$ 80,000	\$ 80,000
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 (Based upon 250 acres)			\$ 80,000	\$ 80,000
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 employ 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.

EXHIBIT "F"

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



3.65

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the recommendation from Transportation & Land Management Agency And County Counsel regarding the Adoption of Resolution No. 2011-147 declaring an intention to grant, and Introduction Of Ordinance No. 909, granting a franchise to Desert Sunlight Holdings, LLC, for transmitting and distributing electricity under, along, across, or upon County roads and rights of way in Eastern Riverside County, 4th District is continued to Tuesday, June 28, 2011 at 9:00 a.m.

Roll Call:

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

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on June 7, 2011 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: June 7, 2011
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

(seal)

By: [Signature] Deputy

AGENDA NO.
3.65

xc: TLMA, Co.Co., COB

EXHIBIT "G"

PAUL HASTINGS

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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.

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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.

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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 phase² 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.

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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.

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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

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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. XIII C 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 XIII C, 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

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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 XIII C, 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.

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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 XIII A, 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

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*

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"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

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.

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Riverside County. Specifically, the November Policy has now been packaged with General Plan Amendment ("GPA") 1080³ 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.

³ 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.

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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.

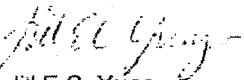
Conclusion

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.

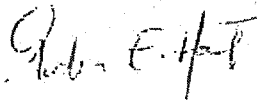
Alternatively, the County can study the actual impacts of the projects and set an appropriate impact fee. The industry has previously offered to sponsor a joint study with the County, which could build on the Solar Costs and Benefits Study it has recently commissioned Dr. John Husing, a regional economist, 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
Vice-Chairman John F. Tavaglione, District2@rcbos.org
Supervisor Jeff Stone, District3@rcbos.org
Supervisor John J. Benoit, District4@rcbos.org

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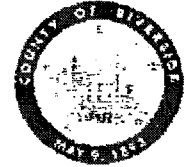
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Supervisor Marion Ashley, District4@rcbos.org
Riverside County Executive Officer Larry Parrish, ceo@rceo.org
Assistant County Counsel Katherine Lind, klind@co.riverside.ca.us
Clerk of the Board of Supervisors, cob@rcbos.org

EXHIBIT "H"

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

439



SUBMITTAL DATE:
January 27, 2011

FROM: TLMA - Planning Department

SUBJECT: Renewable Energy Projects - 2011 State Legislative Platform; Position Regarding the Desert Renewable Energy Conservation Plan

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve and direct the Executive Office to add Attachment No. 2 to the 2011 State Legislative Platform to ensure that the County does not disproportionately bear the burden of renewable energy production;
- 2) Direct the Transportation and Land Management Agency to prepare a Board policy requiring County staff to negotiate revenue generating agreements (such as

Carolyn Syms Luna

Carolyn Syms Luna
Planning Director

Initials:
R.J.rj

CONTINUED ON ATTACHED PAGE

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	n/a
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	n/a
	Annual Net County Cost:	\$ 0	For Fiscal Year:	n/a

SOURCE OF FUNDS: n/a

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Jennifer L. Sargent*

Jennifer L. Sargent

County Executive Office Signature

- Dept Recomm: Policy
- Per Exec Ofc: Policy
- Consent
- Consent

Prev. Agn. Ref.

District: All

Agenda Number:

3.29

The Honorable Board of Supervisors
RE: Renewable Energy Projects Page 2 of 2

development agreements and franchise agreements) for renewable energy projects, including power plants, transmission lines, and related facilities, to further ensure that the County does not disproportionately bear the burden of renewable energy production; and,

- 3) Approve, and authorize the Chairman to sign, the attached letter to Mr. Dave Harlow, Director, California Desert Renewable Energy Conservation Plan.

BACKGROUND:

Federal and State initiatives to encourage the development of renewable energy projects have led to an influx of utility scale solar power plants in Riverside County because it is uniquely suited for the location of such facilities. The County supports renewable energy production and acknowledges the positive effects it will have. The County also recognizes that such production will result in lost economic development potential (including lost employment opportunities and lost property tax revenue), lost recreation potential, lost historical resources and the unreimbursed costs of additional transportation facilities, public safety facilities and related services. Without appropriate ways to reduce these losses, Riverside County will bear a disproportionately heavy burden for renewable energy production. This is particularly true for renewable energy projects that do not fall under the permitting jurisdiction of the County (see Attachment 1 Riverside County Statement of Jurisdiction) because the County has no opportunity to address their effects. The 2011 State Legislative Platform (see Attachment 2) identifies potential legislative remedies that would assist Riverside County in reducing its disproportionate share of renewable energy production. Directing staff to negotiate revenue generating agreements, such as development agreements and franchise agreements, will further ensure that the County is made whole.

The Desert Renewable Energy Conservation Plan (DRECP) is a State launched effort to create a joint Natural Communities Conservation Plan (NCCP) that will ensure long-term species protections while facilitating renewable energy production. The County is actively engaged in the Stakeholder Committee that is guiding development of the DRECP. The letter to the Director of the DRECP (see Attachment 3) identifies the following matters that must be resolved before Riverside County will support the DRECP:

- a. The number of renewable energy projects anticipated to be permitted and the amount and kind of mitigation anticipated to be required must be defined;
- b. Renewable energy production must be encouraged at or near the point of consumption;
- c. Already permitted Habitat Conservation Plans must not be impacted or have additional requirements imposed;
- d. Riverside County must have an integral role in planning, management, and research in order to maintain local control and involvement; and,
- e. The conservation impacts of renewable energy production must be appropriately reduced so that the County does not bear a disproportionate burden of such impacts.

ATTACHMENTS:

- 1) Riverside County Statement of Jurisdiction
- 2) 2011 State Legislative Platform
- 3) Letter to Mr. Dave Harlow, Director, California Desert Renewable Energy Conservation Plan

ATTACHMENT NO. 1

STATEMENT OF JURISDICTION

The County has ultimate land use jurisdiction in all unincorporated areas of the County except where exercise of jurisdiction is preempted by law. As shown on the table below, Riverside County will act as the permitting authority for all proposals on unincorporated County lands for all Photovoltaic (PV) systems, Hydroelectric, Wind Energy Conversion Systems (WECS), and thermal powerplants (traditional and solar) with a generating capacity less than 50 MW. Similarly, the Bureau of Land Management (BLM) will issue permits on all federally owned lands managed by BLM for PV, Hydroelectric, WECS, and thermal powerplants with a generating capacity less than 50 MW. The California Energy Commission (CEC) has certification authority pursuant to Public Resource Code Sections 25500 et seq. for all thermal power plants in excess of 50 MW on any lands in the State of California, to the extent permitted by federal law.

JURISDICTION TABLE		Project Located on Unincorporated Riverside County Land	Project Located on Bureau of Land Management Land
TECHNOLOGY	All Photovoltaic (PV), Hydroelectric, Wind Energy Conversion Systems (WECS), and Thermal Powerplants Generating less than 50 Megawatts	Jurisdiction Riverside County	Jurisdiction Bureau of Land Management
	Thermal Powerplants Generating 50+ Megawatts	Jurisdiction (see notes) California Energy Commission	Jurisdiction (see notes) California Energy Commission
<p>Notes:</p> <ol style="list-style-type: none"> The California Energy Commission (CEC) has exclusive authority to issue a certificate for thermal powerplants with a generating capacity of 50 MW or greater for all sites and related facilities in the State; the issuance of a certificate by the CEC is in lieu of any permit required by any state, local, regional or federal agency to the extent permitted by federal law. CEC issuance of the certificate supersedes any applicable statute, ordinance or regulation of such agencies, to the extent permitted by federal law. Public Resources Code Sections 25120, 25500 and 25502. As part of the certification process, the CEC is required to request comments and recommendations from local governmental agencies that administer local laws, ordinances, regulations and standards (LORS). Public Resources Code Section 25506. The County shall provide comments and issue recommended conditions in accordance with Public Resources Code Sections 25506, 25519 and 25538. 			

ATTACHMENT NO. 2

2011 STATE LEGISLATIVE PLATFORM TO ENSURE THE COUNTY DOES NOT DISPROPORTIONATELY BEAR THE BURDEN OF RENEWABLE ENERGY PROJECTS

Issue: Riverside County supports renewable energy projects. These projects, however, will result in lost economic development potential (including lost employment opportunities and lost property tax revenue), lost recreation potential, lost historical resources and the unreimbursed costs of additional transportation facilities, public safety facilities and related services. Without appropriate ways to reduce these losses, Riverside County will bear a disproportionately heavy burden for renewable energy production because it is uniquely suited for the location of renewable energy projects.

Action: 1) Lobby for and support an amendment to Section 73 of the Revenue and Taxation Code clarifying that the property tax exclusion for newly constructed solar energy systems applies only to solar energy systems generating energy for on-site consumption and does not apply to solar power plants generating energy for off-site consumption.

Rationale: Currently, Section 73 of the Revenue and Taxation Code allows a property tax exclusion for all newly constructed solar energy systems. Pursuant to AB1451 (2008), the exclusion extends through the 2015-16 fiscal year. The term "solar energy systems" has been broadly construed to include facilities generating energy for off-site consumption. This deprives local governments of the economic benefit of the property tax that would be realized if development not exempt from such tax were to occur on the property.

Action: 2) Lobby for and support legislation that would impose a fee for energy generated by renewable energy projects at the point of consumption which would be returned to the jurisdiction where the generation occurred.

Rationale: Given the County's unique locational characteristics, it is certain that renewable energy generated in the County will be utilized outside of the County. As a result, the County will, as noted above, bear the burden of lost economic development potential, lost recreation potential, lost historical resources and the unreimbursed costs of additional transportation facilities, public safety facilities and related services. Much like the added fee for trash that comes into the County from other jurisdictions, such jurisdictions should pay an added cost for renewable energy generated within the County.

Action: 3) Support the California Desert Protection Act of 2010 (S2921) which provides that 25% of the income collected by the Bureau of Land Management (BLM) be returned to the County from which the income is derived. The bill, as proposed, allows the income to be used only for advancing renewable energy, energy efficiency, and conservation. Lobby for and support an amendment to the bill that would allow California Desert Protection Act income to also be used to enhance County infrastructure and services.

Rationale: Because the County provides transportation facilities, public safety facilities and related services to public lands, this funding mechanism could compensate the County for the additional impacts caused by renewable energy projects.

ATTACHMENT NO. 3

Date TO BE PLACED ON BOARD LETTERHEAD

Mr. Dave Harlow
Director, California Desert Renewable Energy Conservation Plan
1516 Ninth Street, MS-46
Sacramento, CA 95814

RE: RIVERSIDE COUNTY'S POSITION ON THE DESERT RENEWABLE ENERGY CONSERVATION PLAN (DRECP)

Dear Mr. Harlow:

Riverside County is a recognized leader in the protection of natural communities and endangered species. It developed both the Coachella Valley and Western Riverside Multi Species Habitat Conservation Plans (HCP) and has been implementing them for over ten years. These HCPs balance environmental protection and economic development objectives, while simplifying compliance with endangered species laws.

Consistent with this leadership role, the County has been actively participating in the DRECP process through our designated representative on the DRECP Stakeholder Committee. Although the County supports renewable energy production and acknowledges the positive effects it will have generally, the County also recognizes that conservation required by the DRECP will result in local impacts in the form of lost economic development potential (jobs, property tax revenue, etc.), lost recreation potential and lost historical resources (farmland, historic sites, etc.) Without appropriate ways to reduce these impacts, Riverside County will bear a disproportionately heavy burden for renewable energy production because it is uniquely suited for the location of such facilities. Before Riverside County can support the DRECP, the County needs to be assured that the following matters will be resolved:

- The DRECP will define the total number of renewable energy projects to be permitted in Riverside County through the Plan, the number that will be located on land within the County's jurisdiction, and the number that will be located on land outside the County's jurisdiction.
- The DRECP will define the mitigation required for the renewable energy projects to be permitted wherever located.
- In considering mitigation, the DRECP will evaluate options other than land set-asides such as the payment of fees or the cost of making the local workforce employable in the renewable energy industry.
- The DRECP will encourage renewable energy production at or near the point of consumption.
- The DRECP will acknowledge that permitted Habitat Conservation Plans will remain intact and that the DRECP will not mandate any additional requirements.
- In spite of the area encompassed by the DRECP, it will, by design, work to preserve the unique values and character of Riverside County.
- The DRECP will establish an integral role for Riverside County in the formal implementation process of the DRECP and will in no way impact local land use control.
- The DRECP will memorialize guarantees to ensure that the burden of acquisition, management, and/or monitoring do not fall on the local jurisdiction(s).
- The DRECP will ensure that lands conserved within Riverside County are managed by land managers selected and overseen by jurisdiction(s) or entities within the County.

- Research done on and for projects within Riverside County will be conducted by local entities.
- The DRECP will ensure that the conservation impacts of renewable energy production are appropriately reduced so that the County does not bear a disproportionate burden of such impacts.

Riverside County intends to continue to contribute to the DRECP process and anticipates that the final product will meet the broad scale needs of local jurisdictions, facilitate the permitting of quality renewable energy projects, and provide for the protection of the environment. Please feel free to contact Gail Barton, Principal Planner (gbarton@rcclma.org) if you require clarification or additional information.

Sincerely,

Bob Buster, Supervisor
First District
Chairman of the Board

EXHIBIT "I"

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Policy

Subject:

SOLAR POWER PLANTS

Number

B-29

Page

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:

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- 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.

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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

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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.

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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

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(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.

Reference:

Minute Order 16.2 of 11/08/2011

EXHIBIT "J"

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



FROM: Supervisor John Benoit

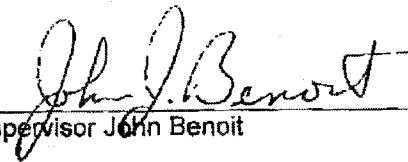
SUBMITTAL DATE: December 7, 2011

SUBJECT: Allocation of Solar Power Plant Payments

RECOMMENDED MOTION: That the Board of Supervisors direct the County Executive Office to:

- 1) Evaluate how payments made to the County pursuant to Board of Supervisors Policy B-29 should be allocated; and,
- 2) Make allocation recommendations based on the evaluation.

BACKGROUND: On November 8, 2011, the Board approved Board of Supervisors Policy B-29, which requires solar power plant owners to make payments to the County in certain situations. The Board must next determine how those payments should be allocated. I am asking the Executive Office to make recommendations concerning the allocation process. These recommendations should take into consideration the communities where solar power plants will be located.



Supervisor John Benoit

