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County of Los Angeles

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[Exempt from filing fees
per Gov. Code §6103]

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

13 CITY OF WALNUT, a municipal
14 corporation,

15 Petitioner,

16 v.

17 MOUNT SAN ANTONIO
18 COMMUNITY COLLEGE DISTRICT;
19 BOARD OF TRUSTEES OF THE
20 MOUNT SAN ANTONIO
21 COMMUNITY COLLEGE DISTRICT,
22 and DOES 1 through 10, inclusive,

23 Respondents.

Case No. BS159593

VERIFIED PETITION FOR
WRIT OF MANDATE
[Code Civ. Pro. § 1085 and/or 1094.5;
Pub. Resources Code § 21168]

**NOTE TO COURT CLERK: THIS
PETITION INCLUDES A CAUSE OF
ACTION UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT
("CEQA") TO BE ASSIGNED TO A JUDGE
DESIGNATED IN ACCORDANCE WITH
PUBLIC RESOURCES CODE § 21167.1(b)**

INTRODUCTION

Petitioner CITY OF WALNUT ("Petitioner" or "City") alleges as follows:

1. Petitioner challenges the decisions of the Mount San Antonio Community College District and its Board of Trustees (collectively, "Respondent" or "District") to approve the so-called West Parcel Solar project (hereinafter the "Project") on the south side of the Mount San Antonio College ("Mt. SAC") campus, including the District's award of the design, construction, operation, and maintenance contract for the photovoltaic solar array, the District's reliance on the its 2012 Facility Master Plan ("2012 FMP") and accompanying environmental impact report and mitigation monitoring plan, and the award of a contract for grading contract to begin work on the Project site without first seeking specific land use (and other) permits from the City in accordance with the City's Municipal Code.

2. The Project site is located wholly within City's boundaries on that southwestern portion of the Mt. SAC campus referred to by the District as the West Parcel. The 23-acre West Parcel is a steep, undeveloped hillside occupied by a mixture of native Californian Coastal Sage Scrub and Non-Native Grassland. The West Parcel Sage Scrub represents habitat for the California Coastal Gnatcatcher which is listed as a threatened species by the U.S. Fish and Wildlife Service.

3. Petitioner contends Respondent (1) failed to comply with its own Mitigation Measure requiring consultation with City prior to obtaining a grading permit and haul route for the Project; (2) failed to adequately evaluate and mitigate environmental impacts and consider Project alternatives; (3) improperly relied on a 2012 program environmental impact report ("EIR") without evaluating Project-level impacts; (4) based on Respondent's own staff's testimony, since 2012, the District has changed the Project and its mitigation measures, and because of these changes the Project requires new environmental review; (5) Respondent violated Government Code Section 65401 by failing to submit the Project, as a public works project, for a finding of consistency with the City's general plan; (6) Respondent failed to obtain a conditional use permit ("CUP") for the Project from the City;

1 and (7) Respondents violated the City's laws by not seeking a grading permit and/or
2 approved truck haul route for the Project.

3 4. Petitioner contends Respondent violated specific provisions of the California
4 Environmental Quality Act (Pub. Resources Code §§ 21000, *et seq.*: "CEQA") and the
5 Guidelines for Implementation of CEQA (Tit. 14, Cal.Code Regs., §§ 15000 *et seq.*: the
6 "CEQA Guidelines"), a statutory and regulatory framework often referred to as the "Holy
7 Grail" of California's environmental laws.

8 5. The Project is being challenged because (among other things) it is a project that
9 results in significant impacts to the environment that have not been adequately assessed or
10 mitigated in accordance with CEQA. Respondent ignored substantial evidence that
11 significant unmitigated impacts would result from the development of the Project, including
12 traffic and circulation impacts due to the hauling of 333,980 cubic yards of dirt to the Project
13 site from at least a mile away; aesthetic and visual impacts on the adjacent residential
14 properties of the City; and significant air quality impacts stemming from Respondent's failure
15 to implement its own Air Quality Mitigation Measures from its 2012 EIR.

16 6. In failing and refusing to conduct a detailed, project-level environmental impact
17 report for the Project, Respondent disregarded or treated as a mere formality the specific and
18 substantive requirements of CEQA and the CEQA Guidelines.

19 7. In approving the Project, Respondent also violated Section 65401 of
20 California's Planning and Zoning Law (Gov. Code §§ 65000 *et seq.*: "PZL") by failing to
21 submit the Project to the City for a finding of consistency with the City's general plan.

22 8. In constructing the Project, Respondent is subject to the City's Municipal Code,
23 zoning ordinance, general plan regulations, land use controls grading and hauling regulations
24 that were enacted for all or part of those land parcels to ensure development uniformity,
25 compatibility, and ensure that public assets and resources are being protected and not
26 adversely impacted and to protect the health, safety and general welfare of the community.
27 This action alleges Respondent cannot exempt itself from these land use regulations under
28 statutory laws of this state, including (but not limited to) Government Code §§ 53091 and

1 53094, and that Respondent violated the City's Municipal Code by failing to obtain a CUP for
2 the Project from the City.

3 **PARTIES AND BENEFICIAL INTEREST**

4 9. Petitioner City of Walnut is a municipal corporation organized and existing
5 under the laws of the State of California and responsible for regulating and controlling land
6 use in all areas of the City, and is located within Los Angeles County.

7 10. Respondent Mount San Antonio Community College District is an unknown
8 type of public government agency and subdivision of the State of California charged with
9 complying with the California Constitution, the general laws of this State, including CEQA,
10 the City's Municipal Code and other regulations of the City. The District, through its
11 respective officers, departments, elected officials, president, and chief executive officer, made
12 the principal and final approvals for the Project at the November 18, 2015, meeting of its
13 Board of Trustees.

14 11. Respondent Board of Trustees of Mount San Antonio Community College
15 District is the elected legislative body for the Mount San Antonio Community College District
16 and in that official capacity is responsible for overseeing, creating, and implementing the
17 policies and decisions of the District, including the Project actions, approvals and decisions at
18 issue herein.

19 12. Plaintiff is ignorant of the true names and capacities of the respondents sued
20 herein as DOES 1 through 10, inclusive, and therefore sues those respondents by such
21 fictitious names. Plaintiff will amend this complaint to allege their true names and capacities
22 when ascertained. Plaintiff also designates all persons unknown claiming any interests in the
23 Project as DOE parties.

24 13. Petitioner is informed and believes and on that basis alleges that Respondent
25 and each of the Does proximately caused the acts, omissions to act, and/or injuries herein
26 alleged.

27 14. Respondent is, and at all times relevant herein has been, charged by law with the
28 performance of all duties arising under CEQA and the Guidelines, including (but not limited

1 to) the preparation and certification of a legally adequate environmental impact report ("EIR")
2 for the Project.

3 15. Petitioner has exhausted all legally available administrative remedies against
4 Respondent's decision to approve the Project. If the Court does not grant the relief prayed for
5 herein, Petitioner will suffer irreparable injury for which it has no adequate remedy at law,
6 there will be a waste, and the failure to enjoin further conduct may tend to render the
7 judgment in this action ineffectual.

8 16. Petitioner has complied with the requirements of Public Resources Code section
9 21167.5 by sending, via United States Mail, written notice of this action to Respondent. A
10 copy of the written notice provided to Respondent is attached hereto as Exhibit A and
11 incorporated herein by this reference.

12 17. Petitioner will comply with the requirements of Public Resources Code section
13 21167.7 and Code of Civil Procedure section 388 by furnishing a copy of this *Verified*
14 *Petition for Writ of Mandate; Complaint for Declaratory Relief* to the Attorney General of
15 California in accordance with Public Resources Code section 21167.7.

16 JURISDICTION AND VENUE

17 18. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5,
18 and 187 of the Code of Civil Procedure, and sections 21168 and/or 21168.5 of the Public
19 Resources Code.

20 19. Venue for this action properly lies in the Los Angeles County Superior Court
21 because the City, Respondent and the Project are located in Los Angeles County.

22 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

23 20. The Project is for the purchase and installation of a ground-mounted solar
24 photovoltaic system which will provide approximately two megawatts of energy for the
25 campus. The solar array will be located on the property southwest of Grand and Temple
26 Avenues adjacent to the main campus known as the West Parcel.

27 21. The Project was discussed in the context of the Mt. San Antonio College
28 Facility Master Plan 2012 ("2012 Master Plan") dated February 18, 2013, and was ultimately

1 approved on November 18, 2015 by the District at a meeting of the Mt. SAC Board of
2 Trustees.

3 22. In its Response to Public Comments to the 2012 FMP dated November 12,
4 2013, the District stated it was revising upwards the requirement of fill dirt to construct the
5 building pad for the Project, from 261,000 cubic yards to 333,980 cubic yards, which is an
6 increase of 28% from the original number.

7 23. The District did not perform additional or supplemental environmental impact
8 analysis of the revised fill dirt requirement, despite the increase of 28%.

9 24. In its Response to Public Comments to the 2012 FMP dated November 12,
10 2013, the District stated it was revising the total size and electrical output of the Project, from
11 a 6.6 acres , 1.5 to 20 MW facility to a 10.6 acre, 2.0 MW facility.

12 25. The District did not perform additional or supplemental environmental impact
13 analysis based on the Project's changed size, despite the 60% increase in total Project size and
14 33% increase in energy output.

15 26. The District certified the 2012 Master Plan Subsequent EIR on December 11,
16 2013, under Agenda Item No. 18.

17 27. On May 15, 2015, the City, through email correspondence with Respondents,
18 indicated the Project would be subject to the City's zoning regulations and CUP requirements.

19 28. Early discussions between Mt. SAC and the City were predicated on a mutual
20 understanding that Mt. SAC obtain a Conditional Use Permit for the proposed Solar Project.
21 Email correspondence between Mt. SAC and City officials regarding this understanding were
22 confirmed by a July 8, 2015, letter from the City Attorney. On July 8, 2015, the City Attorney
23 sent a letter to the District's Board of Trustees reminding it that the Project would be subject
24 to City zoning regulations and CUP requirements and encouraged the Board to limit the
25 scope of any action on the Project until such time as the City was able to take the matter under
26 consideration.

27 29. On July 8, 2015, Respondent adopted Resolution No. 15-01 – Assessment,
28 Design, Installation, and Operation and Maintenance of Photovoltaic Solar System – Request

1 for Qualifications/Request for Proposal No. 3005, and in so doing entered into a design-build
2 agreement with Borrego Solar Systems, Inc., for the purchase and installation of a ground
3 mounted photovoltaic solar system. However, on September 9, 2015, the Board held a public
4 hearing and resubmitted Resolution No. 15-01 for approval. Several members of the public
5 spoke in opposition to the Project, questioning the Board about aesthetics, sight lines, and
6 other impacts. The Board moved to table the item until its special meeting held on September
7 16, 2015.

8 30. Prior to the September 16 Board special meeting, Vice President Gregoryk
9 requested CUP application materials which the City's Community Developer Director
10 provided to him on September 17, 2015 with the following narrative:

11 *Per your request, I have attached documents related to the proposed solar farm*
12 *project, generally located southwest of the Amar Rd. and Grand Ave*
13 *intersection within the City of Walnut Land Use jurisdiction. Walnut Municipal*
14 *Code (WMC) Section 25-39(f) (attached) requires approval of a Conditional*
15 *Use Permit (CUP) for a utility project, such as a solar farm, within the*
16 *residential zone. I have provided the attached documents to assist you in the*
17 *preparation of a submittal package for CUP review. Attached is the CUP*
18 *handout, which provides a thorough overview of the CUP process, including*
19 *minimum submittal requirements (development plans, development application,*
20 *supplemental documents, filing fee of \$1,965.00, etc.) that need to be completed*
21 *and submitted for review.*

22
23 *The project will be analyzed and all impacts identified and mitigated through*
24 *conditions and/or revisions to the project, including, but not limited to, traffic*
25 *and noise. Also provided is Article XIX, Section 25-194 (Conditional Use*
26 *Permits), which discusses the CUP process as well as the required four (4)*
27 *findings that the Planning Commission must find to be fact by Resolution.*
28

1 *Please note that additional materials or processes (i.e. CEQA review) may be*
2 *required.*

3 31. Respondent has now taken the position that the proposed Project is exempt from
4 City land use regulations and that a CUP is not required.

5 32. On September 16, 2015 Respondent Board of Trustees held a special meeting to
6 consider a Design Build Agreement for the proposed Project. With the expectation that a
7 CUP application was forthcoming and would be evaluated by the City on its merits in
8 accordance with the Walnut Zoning Ordinance and applicable laws, City representatives
9 attending the public hearing only observed the proceedings, expecting the City would review
10 the Project later as a "responsible agency" under CEQA. Had the City been advised that
11 Respondent's position would change so significantly to claim exemption from all City zoning
12 regulations and assert that CEQA has been satisfied by the 2013 Subsequent EIR on the 2012
13 Facility Master Plan, the City would have addressed the District's Board of Trustees to
14 confirm the City's position.

15 33. On September 17, 2015, the City sent an email to the California Energy
16 Commission requesting information on whether a Local Educational Agency ("LEA") such as
17 the District could be exempt from complying with local land use regulations. The
18 Commission replied that Proposition 39 does not exempt any LEA from complying with local
19 laws.

20 34. Respondent's website lists its funding for the Project as, "Proposition 39 Clean
21 Energy Grant and Loan funds, Edison Rebate funds and Unrestricted General Fund."

22 35. On September 18, 2015, Respondent sent an email to Petitioner claiming the
23 Project is exempt from City of Walnut zoning under Government Code section 53091(e).

24 36. On October 19, Vice President Gregoryk wrote to City Manager Rob Wishner:
25 *Pursuant to our conversation this morning, Mt. San Antonio College is*
26 *interested in presenting to the Planning Commission our plans for the Solar*
27 *Field located on the west parcel of Mt. San Antonio College. We are not*
28 *requesting a Conditional Use Permit for this project. Mt. San Antonio College's*

1 Management shall consult with the City of Walnut on a Truck Route Plan for
2 truck hauling activities with more than fifty (50) trucks per day. **Hauling of**
3 **earth materials shall only occur between 9:00 am and 2:00 pm Monday**
4 **through Friday and between 8:00 am to 5:00 pm on Saturdays to void [sic]**
5 **peak hour traffic.** Light duty trucks with a weight of no more than 8,500
6 pounds are exempted from this restriction. Facilities Planning & Management
7 shall ensure compliance.

8 (Bold added.)

9 43. Respondent further failed to adequately evaluate and mitigate environmental
10 impacts and consider Project alternatives. Respondent claims all environmental review for
11 the Project has been undertaken, yet it approved an agreement with WW Design &
12 Consulting, Inc., at the District's November 18, 2015 meeting for the purpose of conducting a
13 line-of-sight study—many months after the design-build contract had been approved.

14 44. In approving the Project without conducting adequate CEQA analysis,
15 Respondent improperly relied on the 2012 FMP Program EIR in which Project-level impacts
16 were not evaluated.

17 45. Moreover, Respondent's staff concedes that the Project and its mitigation
18 measures have changed. At the November 18 Board of Trustees meeting, President Scroggins
19 reported that mitigation modification shave been made since the original environmental
20 impact report. Because of these changes, the Project requires new environmental review

21 46. The 2012 FMP Draft Subsequent EIR ("EIR") omitted the estimated square
22 footage of the Project. (P.44)

23 47. The 2012 FMP EIR Peak Daily Summer Emission analysis was calculated based
24 on an outdated and changed baseline number of hauling trips, cubic-yards of dirt import, and
25 number of days of grading and construction

26 48. The 2012 FMP EIR Peak Daily Summer Emission analysis under-represents the
27 number of hauling trips that will be required to completed the required grading work as
28 currently contemplated for the project, and nowhere does the 2012 FMP EIR analyze

1 emissions from the many thousands of truck trips that will be required to undertake the
2 hauling and grading work.

3 **B. Violation of State Planning and Zoning Law**

4 49. Government Code section 65401 required Respondent to submit of the public
5 works projects recommended for planning, initiation or construction for the ensuing fiscal
6 year to the City. Government Code section 65402 prohibits a local agency from approving or
7 constructing a public building or structure unless it first submits the location, purpose and
8 extent of such building or structure to the planning agency having jurisdiction for a report by
9 that planning agency of such building's or structure's conformity with the local general plan.

10 50. Respondent has not submitted any of its public works project, including the
11 Project, to the City's planning commission for a finding of consistency with the City's general
12 plan.

13 **C. Violation of the Walnut Municipal Code**

14 51. In constructing the Project, Respondent is subject to the City's Municipal Code,
15 zoning ordinance, general plan regulations, and land use controls that were enacted for all or
16 part of those land parcels to ensure development uniformity, compatibility, and ensure that
17 public assets and resources are being protected and not adversely impacted.

18 52. Respondent cannot exempt itself from these land use, grading and hauling
19 regulations under statutory laws of this State, including (but not limited to) Government Code
20 sections 53091 and 53094.

21 **PRAYER**

22 WHEREFORE, Petitioner prays as follows:

- 23 1. On the first cause of action, for a judgment finding Respondent failed to fully comply
24 with CEQA and the Guidelines in approving the Project and granting a peremptory
25 writ of mandate pursuant to the Code of Civil Procedure section 1085 *et seq.* and/or
26 section 1094.5 *et seq.*, commanding Respondent to set aside its approval of the Project
27 unless and until it fully complies with CEQA and the Guidelines, and/or other
28 applicable laws.

- 1 2. For reasonable attorneys' fees in addition to any other relief granted;
2 3. For cost of suit incurred herein and for reasonable litigation expenses; and
3 4. For such other and further relief as the Court may deem just, equitable, or proper.
4

5 Dated: December 21, 2015

LEIBOLD McCLENDON & MANN, P.C.

6
7
8 By:


John G. McClendon
Attorneys for Petitioner
CITY OF WALNUT

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VERIFICATION

State of California, County of Orange

John G. McClendon hereby declares:

I am one of the attorneys for CITY OF WALNUT, the petitioner in this action. Such party is absent from the county of aforesaid where such attorneys have their office, and I make this verification for and on behalf of such party for that reason. I have read the foregoing *Verified Petition for Writ of Mandate* and know its contents. I am informed and believe on that ground allege that the matters stated in it are true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 21st day of December, 2015.


John G. McClendon