

1 Case No.

2 Dept. No.

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5

6

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF DOUGLAS

8

GREENSTONE RENEWABLES LLC, an  
Arizona limited liability company,

9

Petitioner,

10

vs.

11

COUNTY OF DOUGLAS, a political  
subdivision of the State of Nevada,

12

Respondent.

13

14

The undersigned hereby accepts service of the Petition for Judicial Review, Petition for

15

Writ of Mandamus, and Complaint for Declaratory Judgment on behalf of Respondent County of

16

Douglas.

17

The undersigned does hereby affirm that this document does not contain the social

18

security number of any person.

19

DATED this \_\_\_\_\_ day of July, 2015.

20

DOUGLAS COUNTY DISTRICT ATTORNEY'S OFFICE

21

BY: \_\_\_\_\_

22

Cynthia Gregory, Esq.

23

1038 Buckeye Road  
Minden, Nevada 89423

24

**Attorney for Respondent  
County of Douglas**

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**SUMMONS - CIVIL**

15

**TO RESPONDENT COUNTY OF DOUGLAS**

16

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ  
THE INFORMATION BELOW.**

17

18

**TO THE RESPONDENT:** A civil Complaint has been filed by the Petitioner against you for  
the relief set forth in the Petition for Judicial Review, Petition for Writ of Mandamus and  
Complaint for Declaratory Relief ("Complaint").

19

20

21

1. If you intend to defend this lawsuit, within 20 days after this Summons is served

22

on you, exclusive of the day of service, you must do the following:

23

////

24

////

1 (a) File with the Clerk of this Court, whose address is shown below, a formal  
2 written response to the Complaint in accordance with the rules of the Court, with the  
3 appropriate filing fee.


4 (b) Serve a copy of your response upon the attorney whose name and address  
5 is shown below.

6 2. Unless you respond, your default will be entered upon application of Petitioner  
7 and failure to so respond will result in a judgment of default against you for the relief demanded  
8 in the Complaint, which could result in the taking of money or property or other relief requested  
9 in the Complaint.

10 3. If you intend to seek the advice of an attorney in this matter, you should do so  
11 promptly so that your response may be filed on time.

12 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
13 board members, commission members and legislators each have 45 days after service of this  
14 Summons within which to file an Answer or other responsive pleading to the Complaint.

MARY BIAGGINI  
DISTRICT COURT CLERK

Submitted by: 

By: \_\_\_\_\_ Date

Severin A. Carlson (NBN 9373)  
Tara C. Zimmerman (NBN 12146)  
KAEMPFER CROWELL  
50 West Liberty Street, Suite 700  
Reno, Nevada 89501  
(775) 852-3900  
(775) 327-2011 - facsimile  
**Attorneys for Petitioner**

Deputy Clerk  
1038 Buckeye Road  
2<sup>nd</sup> Floor, Judicial Center  
Minden, Nevada 89423

**NOTE: When service is by publication, add a brief statement of the object of the action.  
See Nevada Rules of Civil Procedure 4(b).**

KAEMPFER CROWELL  
50 West Liberty Street  
Suite 700  
Reno NV 89501

**AFFIDAVIT OF SERVICE**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

\_\_\_\_\_, being duly sworn, says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received one copy of the Summons and Petition for Judicial Review, Petition for Writ of Mandamus and Complaint for Declaratory Relief on the \_\_\_\_ day of \_\_\_\_\_, 2015, and served the same on the \_\_\_\_ day of \_\_\_\_\_, 2015, by:

**(Affiant must complete the appropriate paragraph)**

1. Delivering and leaving a copy with the Petitioner COUNTY OF DOUGLAS at (state address) \_\_\_\_\_

2. Serving the Petitioner COUNTY OF DOUGLAS by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the Petitioner's usual place of abode located at (state address) \_\_\_\_\_

**[Use paragraph 3 for service upon agent, completing (a) or (b)]**

3. Serving the Petitioner COUNTY OF DOUGLAS by personally delivering and leaving a copy at (state address) \_\_\_\_\_

(a) With [Name of Agent] as \_\_\_\_\_ (title), an agent lawfully designated by statute to accept service of process;

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(b) With \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. Personally depositing a copy in the mailbox of the United States Post Office, enclosed in a sealed envelope, postage prepaid (check appropriate method):

- Ordinary mail
- Certified mail, return receipt requested
- Registered mail, return receipt requested

addressed to the Petitioner COUNTY OF DOUGLAS at Petitioner's last known address which is (state address) \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Signature of person making service

1 CASE NO.:

2 DEPT. NO.:

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IN AND FOR THE COUNTY OF DOUGLAS

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GREENSTONE RENEWABLES LLC, an  
Arizona limited liability company,

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Petitioner,

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vs.

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COUNTY OF DOUGLAS, a political  
subdivision of the State of Nevada,

12

13

Respondent.

**PETITION FOR JUDICIAL REVIEW,  
PETITION FOR WRIT OF MANDAMUS,  
AND COMPLAINT FOR  
DECLARATORY JUDGMENT**

**PETITIONER REQUESTS A HEARING  
PURSUANT TO NJDCR 22(e)**

14

Petitioner, by and through its counsel of record, Kaempfer Crowell, hereby files its

15

Petition for Judicial Review, Petition for Writ of Mandamus, and Complaint for Declaratory

16

Judgment (the "Petition"). This Petition is made and based upon the provisions of Chapters 30,

17

34, and 278 of the Nevada Revised Statutes ("NRS"). In support of this Petition, the Petitioner

18

alleges as follows:

19

**INTRODUCTION**

20

1. Petitioner requests that this Court judicially review the July 2, 2015, decision of

21

the Douglas County Board of Commissioners, acting as the Board of Adjustment ("BOCC")<sup>1</sup>

22

granting an appeal of a decision of the Douglas County Planning Commission (the "Planning

23

Commission"). The appeal (the "Walker Appeal"), filed by two paid lobbyists for Douglas

24

<sup>1</sup> Notice of the BOCC's decision was filed with the Douglas County Clerk on July 6, 2015, pursuant to Douglas County Code ("DCC") Section 20.28.030 and NRS 278.3195(4)(b).

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Reno, Nevada 89501

1 County, challenged the Planning Commission's decision granting a Special Use Permit ("SUP")  
2 to Petitioner. The BOCC, by granting the appeal effectively denied the Petitioner a Special Use  
3 Permit for a solar project located in the vicinity of real property owned by Douglas County's  
4 paid lobbyists.

5 **JURISDICTION AND VENUE**

6 2. This Court has jurisdiction over this Petition for purposes of judicial review  
7 pursuant to NRS 278.3195(4)(b). The BOCC's decision is a final decision for purposes of  
8 judicial review and this Petition is timely pursuant to NRS 278.0235.

9 3. This Court has jurisdiction for purposes of addressing the Petitioner's claim for  
10 declaratory relief pursuant to NRS 30.030 and 30.040 to determine whether Douglas County's  
11 ordinance, DCC 20.01.120, imposing a temporary moratorium on all solar photovoltaic facilities  
12 as a primary use applies to Petitioner's Application for a SUP, so as to prevent the BOCC from  
13 using that ordinance as a basis to deny Petitioner's Application upon this Court granting  
14 Petitioner's requests for relief, as stated herein.

15 4. This Court has jurisdiction for purposes of addressing Petitioner's Petition for  
16 Writ of Mandamus pursuant to Article 6, Section 6 of the Nevada Constitution as well as NRS  
17 34.150 to mandate that the BOCC rescind its decision granting the Walker Appeal and to uphold  
18 the Planning Commission's approval of Petitioner's SUP, in light of the BOCC abusing its  
19 discretion and failing to base its decision on substantial evidence.

20 5. This Petition is ripe for consideration because the BOCC's decision is final and  
21 the harm to Petitioner has occurred and is continuing to occur.

22 /././

23 /././

24 /././

1 **PARTIES**

2 6. Petitioner GREENSTONE RENEWABLES LLC (“Petitioner” or “Greenstone”),  
3 is an Arizona limited liability company, registered and qualified to do business in the State of  
4 Nevada.

5 7. Respondent COUNTY OF DOUGLAS (“Respondent”, “County”, or “Douglas  
6 County”), is a political subdivision of the State of Nevada.

7 8. Third parties, Steve and Mary Walker, husband and wife (the “Walkers”), are  
8 owners of real property consisting of a 30.2 acre parcel zoned A-19 located in Douglas County,  
9 Nevada, identified as Assessor Parcel Number 1319-13-000-002 and located at 661 Genoa Lane,  
10 Minden, Nevada 89423 (the “Walker Property”), which is adjacent to and immediately north of  
11 the Subject Property, defined below.

12 9. Based upon information and belief, the Walkers have served as paid and  
13 registered lobbyists for Douglas County for over ten years, including during the most recent  
14 session of the Nevada Legislature that adjourned *sine die* on or about June 1, 2015.

15 **GENERAL ALLEGATIONS**

16 10. Petitioner repeats, re-alleges and incorporates by reference the foregoing  
17 paragraphs as if set forth in full herein.

18 11. Petitioner is engaged in the business of renewable energy project development,  
19 particularly the development of utility-scale and commercial solar photovoltaic generating  
20 facilities, more particularly in the State of Arizona and the State of Nevada.

21 12. Pursuant to Section 20.604.060 of the DCC, when considering applications for a  
22 special use permit, the Planning Commission or the BOCC, where applicable, must evaluate the  
23 impact of the special use on, and its compatibility with, surrounding properties and  
24



1 neighborhoods to ensure the appropriateness of the use at a particular location and make the  
2 following findings:

3 (A) The proposed use at the specified location is consistent with the  
4 policies embodied in the adopted master plan and the general purpose and intent  
of the applicable district regulations;

5 (B) The proposed use is compatible with and preserves the character and  
6 integrity of adjacent development and neighborhoods and includes improvements  
7 or modifications either on-site or within the public rights-of-way to mitigate  
8 development related adverse impacts, such as traffic, noise, odors, visual  
nuisances, or other similar adverse effects to adjacent development and  
neighborhoods. These improvements or modifications may include, but shall not  
be limited to the placement or orientation of buildings and entryways, parking  
areas, buffer yards, and the addition of landscaping, walls, or both, to mitigate  
such impacts;

9 (C) The proposed use will not generate pedestrian or vehicular traffic  
10 which will be hazardous or conflict with the existing and anticipated traffic in the  
neighborhood;

11 (D) The proposed use incorporates roadway improvements, traffic control  
12 devices or mechanisms, or access restrictions to control traffic flow or divert  
traffic as needed to reduce or eliminate development impacts on surrounding  
neighborhood streets;

13 (E) The proposed use incorporates features to minimize adverse effects,  
including visual impacts and noise, of the proposed special use on adjacent  
properties;

14 (F) The project is not located within an identified archeological or cultural  
15 study area, as recognized by the county. If the project is located in a study area, an  
archeological resource reconnaissance has been performed on the site by a  
qualified archeologist and any identified resources have been avoided or mitigated  
16 to the extent possible per the findings in the report;

17 (G) The proposed special use complies with all additional standards  
18 imposed on it by the particular provisions of this chapter and all other  
requirements of this title applicable to the proposed special use and uses within  
the applicable base zoning district, including but not limited to, the adequate  
public facility policies of this title; and

19 (H) The proposed special use will not be materially detrimental to the  
20 public health, safety, convenience and welfare, and will not result in material  
damage or prejudice to other property in the vicinity.

21 13. On July 8, 2014 at a public hearing, the Planning Commission discussed  
22 Development Application ("DA") 14-035 filed by E.On Climate & Renewables ("E.On"), an  
23 unrelated third party, initiating a Zoning Text Amendment of the DCC to allow a solar  
24 photovoltaic ("PV") facility as a primary use on land in certain zoning districts in Douglas

1 County (the "Proposed Amendment"). Voting unanimously, the Planning Commission voted to  
2 approve the adoption of Ordinance 2014-1416 to amend the DCC to allow solar photovoltaic  
3 facility as a primary use in, amongst others, the A-19 (Agricultural) and RA-5 (Rural  
4 Agricultural) zoning districts, subject to a Special Use Permit and other standards.

5 14. At a public hearing on August 7, 2014, the BOCC discussed the Proposed  
6 Amendment (1<sup>st</sup> Hearing). According to the minutes of this hearing, Planning Staff member,  
7 Ms. Hope Sullivan, provided a background on the genesis of this request and stated:

8 that in trying to develop regulations for these facilities, the visual impacts and the  
9 impacts on species habitat were identified and supplemental standards were  
10 developed to address those impacts, and further stated that the Planning  
11 Commission would prefer to see a large solar farm instead of a series of smaller  
12 ones scattered throughout the county (emphasis added).

13 The BOCC, on motion by Commissioners Penzel and Lynn to introduce Ordinance 2014-1416,  
14 voted unanimously in favor of adopting the Proposed Amendment.

15 15. At a public hearing on September 4, 2014, the BOCC again considered the  
16 Proposed Amendment (2<sup>nd</sup> Reading) under Agenda Item No. 13, and made the following  
17 findings relating to the Proposed Amendment:

18 (A) that the proposed amendment is consistent with the policies embodied in the  
19 adopted Master Plan and the underlying land use designation contained in the land  
20 use plan, (B) that the proposed amendment will not be inconsistent with the  
21 adequate public facilities contained in DCC, Title 20, and (C) that the proposed  
22 amendment is compatible with the actual and master planned use of the adjacent  
23 properties (emphasis added).

24 16. On a motion by Douglas County Commissioners Lynn and McDermid, the BOCC  
voted unanimously approving the Proposed Amendment and adopting Ordinance 2014-1416 to  
allow a solar PV facility as a primary use in the A-19 (Agricultural), FR-19 and FR-40 (Forest  
and Range), LI (Light Industrial), PF (Public Facilities), and RA-5 and RA-10 (Rural

1 Agricultural, five- and ten-acre minimum, respectively) zoning districts subject to a Special Use  
2 Permit and other standards (the “Solar Standards”).

3 17. The Solar Standards that have been incorporated into the DCC pursuant to  
4 Ordinance 2014-1416 are set forth in Section 20.668.260 of the DCC and state that a Solar  
5 Photovoltaic Facility, as a principal use of land, must meet the following standards:

6 A. The height of the solar photovoltaic unit may not exceed a height  
7 of 15 feet when measured from pre-development grade;

8 B. The solar photovoltaic units must be setback a minimum of 100  
9 feet from any lots adjacent to the subject property that are zoned residential;

10 C. The facility must comply with all Federal Aviation Administration  
11 requirements as applicable;

12 D. The site may not be illuminated at night with the exception of  
13 safety lighting required by the Uniform Building Code in effect at the time of  
14 construction;

15 E. Metal surfaces that are shiny must be painted with a non-glossy,  
16 earth tone color paint to blend with the desert landscape;

17 F. Solar photovoltaic units must utilize a film that is not reflective;

18 G. A fee to cover the cost of inspections associated with property  
19 maintenance must be paid at the time of building permit issuance;

20 H. If the facility is not used for 180 days to generate electricity, the  
21 system must be removed and the property restored to its original condition within  
22 120 days. In accordance with the provisions of Section 20.720 of this Chapter, a  
23 security to ensure compliance with the terms of this requirement shall be posted at  
24 the time of building permit along with photographs of the site. The security will  
be released upon completion of the site restoration;

I. This minimum acreage to establish this use is 160 acres. The  
acreage may be comprised of contiguous properties, but may NOT be comprised  
of non-contiguous properties.

18 18. Petitioner, through its affiliate Greenstone NV Land LLC, entered into a lease  
19 option agreement dated October 16, 2014, as amended by Amendment No. 1 dated February 9,  
20 2015 (collectively, the “Lease Option Agreement”), with Park Ranch Holdings, LLC (“Park  
21 Ranch”), which by its terms grants to Petitioner an option to lease all acreage contained in seven  
22 (7) parcels totaling 267.80 acres located in Douglas County, Nevada, comprising six (6)  
23 parcels identified as, and incorporating the entire acreage of, Assessor’s Parcel Numbers  
24 (“APN”) 1319-24-000-008, 1319-24-000-009, 1319-13-000-008, 1319-13-000-009,

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1 1319-13-000-010 and 1319-13-000-011 totaling 258.3 acres, plus an additional parcel of  
2 approximately 9.5 acres, representing only a portion of a 40.5 acre parcel identified as APN  
3 1319-24-000-011, for a grand total of 267.80 acres, and collectively more commonly known as  
4 760 Muller Lane (the "Subject Property").

5 19. Memoranda of the Lease Option Agreement have been recorded with the Douglas  
6 County Recorder on November 3, 2014, as Document No. 2014-852076, and on February 24,  
7 2015, as Document No. 2015-857383, and therefore the details of the maximum potential project  
8 site and the extent to which this coincides with the Subject Property that is the subject of the  
9 Application, have been and continue to be in the public domain.

10 20. The Subject Property is in the A-19 (Agriculture, nineteen-acre minimum net  
11 parcel size) zoning district and within the South Agriculture Community Plan. As described by  
12 the Staff in the Staff Report to the BOCC dated July 2, 2015, the Subject Property is irrigated  
13 farmland primarily used as pastureland. The site is located approximately 2,400 feet north of  
14 Muller Lane, and approximately 2,500 feet west of Highway 395. The soil types located within  
15 the Subject Property are known to be moderate soils and are noted as not being prime  
16 agricultural land as the quality of the soil is slight to high alkali. The site is relatively flat, with  
17 an average slope of about two percent, generally draining in a southeast to northwest direction. A  
18 portion of the site, approximately 1/3 of the site in the southwesterly portion, is located within  
19 Flood Zone X unshaded [sic] (500-Year Flood). As a result, any development of this area must  
20 be elevated above the anticipated high water line, or approximately one foot above the existing  
21 grade. Immediately adjacent to and south of the Subject Property are effluent ponds operated by  
22 Minden-Gardnerville Sanitation District, and an electric substation and transmission power lines  
23 operated by NV Energy. The effluent ponds cover 82 acres and are zoned as public facilities  
24 ("PF"), and the substation covers 3.67 acres and is also zoned PF.

1           21.     In January 2015, Liberty Utilities (“Liberty”), an electric utility regulated by the  
2 California Public Utility Commission (“CPUC”) and serving customers in the California area of  
3 Lake Tahoe and surrounding counties, issued a request for proposals for solar PV generating  
4 facilities.

5           22.     On February 3, 2015, Petitioner filed DA 15-013 (the “Application”) for an SUP  
6 to construct and operate a commercial solar PV farm with associated power generating  
7 equipment on the Subject Property. Douglas County Community Development (“DCCD”)  
8 Senior Planner, Mr. Emery Papp (“Papp”), was assigned as the Planner by Douglas County in  
9 relation to said Application. As part of the application process, and in conformity with the  
10 provisions of the DCC, DCCD published newspaper notices of the Application and also provided  
11 notice by mail to all owners of property within 1,320 feet from the Subject Property, based on a  
12 vicinity map and a noticing map prepared by the GIS Department of Douglas County (the  
13 “Noticed Parcels”). The Subject Property, as depicted on the vicinity and noticing maps prepared  
14 by the County, show the entire acreage of any and all parcels included therein, irrespective of  
15 whether the entire acreage of each parcel is part of the proposed project. In particular, the  
16 40.5-acre parcel identified as APN 1319-24-000-011 is shown in its entirety, notwithstanding the  
17 fact that only an approximate 9.5-acre portion is included in the proposed solar project.

18           23.     The Noticed Parcels comprise 37 parcels, including 29 parcels owned by Park  
19 Ranch, one parcel owned by Douglas County, one parcel owned by Sierra Pacific Power (d/b/a  
20 NV Energy), one parcel owned by Minden-Gardnerville Sanitation District, one parcel (the  
21 Walker Property) owned by the Walkers, and three further parcels owned by two private  
22 ranching families, one of which, Galeppi Ranch & Livestock (speaking for two parcels), has  
23 publicly supported the solar project. Therefore, with the exception of the Walkers, the Subject  
24

1 Property is surrounded by parcels owned by Park Ranch to the east and west, the public facilities  
2 parcels to the south and Galeppi Ranch & Livestock to the north.

3 24. As is customary in relation to solar PV generating facilities, the Application in  
4 item 4.0 on page 11, included the following reference to a battery energy storage system:

5 In addition, subject to, amongst others, the provision of additional information to  
6 the County, Greenstone may also construct a battery energy storage system as part  
7 of the proposed Solar Farm to aid in shaping and controlling the timing of energy  
8 production for the electrical grid.

9 25. On February 6, 2015, Petitioner, working in conjunction with SunPower (a  
10 leading integrated solar firm), submitted to Liberty an offer for a solar PV generating facility  
11 with a nameplate capacity of 20 MW, representing approximately one-half of the technical total  
12 generating capacity of 40 MW of the Subject Property, to be located on the Subject Property and  
13 to be interconnected to the NV Energy substation located on the Subject Property known as the  
14 "Muller Substation".

15 26. The Walkers purchased the Walker Property in or around the year 2000, at which  
16 time Douglas County's "Right to Farm" provisions had been adopted into the DCC and  
17 accordingly, the Walkers purchased the parcel subject to a mandatory "Right to Farm" notice  
18 covering all allowed uses, both allowed "by right and allowed subject to a SUP". The Walker  
19 Property is the only parcel in the vicinity of the Subject Property with a residential dwelling unit,  
20 with the nearest other residential dwelling located at a distance of approximately 1.4 miles (as  
21 the crow flies) from the northwestern-most corner of the Subject Property, and separated from  
22 the Subject Property by a public road, Genoa Lane.

23 27. Based upon information and belief, as a result of the Walkers being long-time  
24 paid lobbyists for Douglas County, the Walkers and members of the BOCC, whether

1 individually or operating collectively, have had numerous opportunities to meet and, if only in  
2 passing or serially, discuss the Solar Project on an ex parte basis.

3 28. In mid February 2015, prior to the date Douglas County mailed the required DA  
4 notification letters, Petitioner met with Steve Walker at his residence to introduce the proposed  
5 solar project. Mr. Walker indicated that he did not like, but would not oppose, the proposed  
6 project provided that certain mitigation measures would be put in place, particularly including  
7 continued irrigation of the proposed solar site, vegetation management and weed control, and a  
8 view obstructing screen by way of a vegetative screen, which he and his wife proposed would be  
9 a 3-foot high berm planted with 15-gallon Moonglow Junipers for the length of his 250-foot long  
10 southern property boundary. Copies of the parties' email correspondence were provided to Staff  
11 and formed the basis of Staff's recommendation to the Planning Commission and Staff's  
12 formulation of SUP conditions.

13 29. On March 5, 2015, the Walkers, through their legal representative, contacted  
14 Petitioner via email to advise that, in addition to the requested mitigation measures, the Walkers  
15 also wanted Petitioner to pay them an amount equal to approximately ten percent (10%) of the  
16 estimated value of the Walker Property, estimated at \$1.28 to \$1.35 million by a local real estate  
17 firm, for alleged diminution of value due to its location adjacent to the proposed solar PV  
18 project.

19 30. At a public hearing of the BOCC on March 5, 2015 (the "E.On Hearing"), the  
20 BOCC confirmed the rejection by the Planning Commission of an unrelated, solar PV DA  
21 submitted by E.On, which was to be located on 322 acres of land zoned RA-5 and owned by  
22 Bently Enterprises ("Bently") and also surrounded by numerous parcels zoned RA-5, all located  
23 in the East Valley of Minden, in Douglas County. Previously, the Planning Commission, at its  
24 public hearing on January 13, 2015, had voted 4-1 (1 recused, 1 absent) in denial of the request

1 based on the inability to make Findings A & B of the DCC Section 20.604.060. Based on the  
2 minutes of the E.On Hearing, the Planning Commission cited East Valley Goal 1 as well as East  
3 Valley Policy 1.3 of the Master Plan. As to Finding B, the Planning Commission cited East  
4 Valley Policy 1.3. Per these minutes, the Planning Commission also had concerns regarding  
5 noise, glare and the number of panels, all of which were used as bases of denial.

6 31. The minutes of the March 5, 2015 BOCC hearing on the E.On SUP application at  
7 which the BOCC confirmed the Planning Commission's denial, voting 4-1 in favor of denial,  
8 also show that Chairman Johnson mentioned that each Commissioner met with the applicant  
9 E.On and the landowner Bently, individually, but that they had not met all residents who were  
10 opposed to the proposed solar project.

11 32. The minutes of the E.On Hearing further reflect that Vice Chairwoman  
12 McDermid stated that she thinks "it's critically important that we do have renewable energy but  
13 they need to fit in with the Master Plan and our different communities." Commissioner Lynn  
14 made clear that "this is not about view sheds. We are not voting to protect residents' view. We  
15 are protecting the integrity of existing neighborhoods." (Emphasis added).

16 33. On March 6, 2015, immediately after the BOCC rejected the E.On solar project,  
17 the Walkers, through a legal representative, indicated to Petitioner that they were no longer  
18 prepared to consider Petitioner's mitigation measures and they would now oppose Petitioner's  
19 solar project.

20 34. On March 10, 2015, Petitioner's Application for the SUP was scheduled to be  
21 discussed at a public hearing by the Planning Commission; however, due to the fact that the  
22 public notice sign (as required by Section 20.20.010 of the DCC) to be placed on the Subject  
23 Property at least ten days prior to the public hearing, as had been prepared and printed in  
24 duplicate by Papp, had inexplicably disappeared from his desk where it had been placed for



1 collection by Petitioner, Petitioner was required to agree to re-notice the Subject Property. The  
2 public hearing on Petitioner's Application was rescheduled to the next available Planning  
3 Commission regular hearing date on April 14, 2015. This delay conveniently gave opponents to  
4 the solar project, particularly the Walkers, additional time to develop arguments in opposition to  
5 the Application.

6 35. On or about April 1, 2015, Liberty awarded Petitioner a project purchase  
7 agreement in relation to a 20 MW solar PV generation facility to be constructed by Petitioner on  
8 the Subject Property, subject to certain conditions, including a final award by Douglas County of  
9 a final, non-appealable SUP in relation thereto and approval of this project by the CPUC.

10 36. Starting in early April 2015, the Walkers commenced a public-relations campaign  
11 in opposition to the project by sending letters and postcards to Douglas County residents and by  
12 submitting letters to, and placing ads in, the local newspapers in Minden-Gardnerville. Each of  
13 these communications incorporated: (i) a factually incorrect and misleading photograph of one of  
14 several unrelated solar farms or Photoshop-manipulated pictures of solar panels, (ii) statements  
15 such as "Do you want Carson Valley to look like this?" or "Do you want Carson Valley  
16 Pastureland to look like this?"; and (iii) conclusionary and factually incorrect statements such as  
17 "Per Greenstone Renewables, LLC, the purpose of the plant is to sell power to California! This is  
18 an industrial use and NOT a compatible use with the surrounding A-19 agricultural land"  
19 (emphasis added). The ads also conclude with the statement: "Save our beautiful Valley" and  
20 direct readers to attend the Planning Commission Hearing on April 14, 2015 and to contact the  
21 Planning Commission via email or telephone in opposition to the project.

22 37. The Walkers' direct mailing campaign involved their mailing or hand-delivering  
23 two-sided postcards containing a highly misleading, Photoshop-altered photograph of an  
24 unrelated solar farm superimposed on the Subject Property, intentionally and incorrectly, as

1 admitted by the Walkers at the BOCC Hearing (as defined below), inserted at the property line  
2 (ignoring the 100-foot buffer zone required by the DCC) and pointing north directly at the  
3 Walkers' residence and the following unfounded and conclusionary statement: "The purpose of  
4 the plant is to sell power to California per Liberty Utilities application to the California Public  
5 Utilities Commission for a rate increase to pay for the 'Minden Solar Project'. This is an  
6 industrial use and NOT a compatible use with the surrounding agricultural and residential  
7 zoning" (emphasis added).

8 38. Starting in April, the Walkers furthered their campaign by involving volunteers  
9 operating on street corners and on a door-to-door basis across Douglas County, seeking  
10 signatures in opposition to Petitioner's SUP by way of a petition (the "Walker Petition") seeking  
11 signatures under the statement: "We, the undersigned, residents of Douglas County, Nevada,  
12 oppose the Greenstone Renewable, LLC solar electric utility plant on 260 acres between Muller  
13 Lane and Genoa Lane. The purpose of the plant is to sell power to California! This is NOT a  
14 compatible use to allow an industrial use on irrigated pastureland in agricultural/residential A-19  
15 zoning! It's in the wrong location! Please keep Carson Valley beautiful!"

16 39. Planning Staff, in its Staff Report dated April 14, 2015, recommended approval of  
17 the Application subject to twelve (12) specific conditions, all of which Petitioner is capable of  
18 meeting and has publicly stated it will meet. Later, in its July 2, 2015 Report, Staff also  
19 concluded that all 12 conditions could be met.

20 40. On April 12, 2015, the Walkers submitted to the Planning Commission a four-  
21 page memorandum entitled: "Walker's response to Douglas County Planning Staff Report on  
22 Greenstone Industrial Solar Plant," the purpose of which was (i) to question the findings made in  
23 the April 2015 Planning Department staff report and ask why other Master Plan policies were not  
24 addressed in the staff report, and (ii) to question the lack of review required by the recently

1 modified development code to allow photovoltaic projects and how that makes Carson Valley A-  
2 19 lands very vulnerable to this type of development by out-of-state commercial interests.

3 41. On April 14, 2015, the Planning Commission held a public hearing on the  
4 Application (the "April PC Hearing"). Staff prepared and submitted to the Planning Commission  
5 a memorandum dated April 14, 2015 (the "April 2015 PC Staff Report"), recommending that the  
6 Planning Commission approve Petitioner's Application (DA 15-013) subject to certain  
7 conditions of approval contained in the April 2015 PC Staff Report and based on the Planning  
8 Commission's ability to make all of the required findings in the affirmative. At this hearing, the  
9 Planning Commission voted (6-0, 1 absent) to continue the item to the meeting of May 12, 2015.

10 42. In its April 2015 PC Staff Report, Planning Staff considered the following  
11 evidence in support of its affirmative findings: (1) Vicinity Map, Applicant's Project Description  
12 and Findings, (2) Conceptual Site Plan, (3) Aerial View, (4) Street Views and Photo Simulations,  
13 (5) Detail and Specification Sheets, (6) Noise Study, (7) Public Comments, (8) Information  
14 Packet from Steve and Mary Walker, and (9) Information from U.S. Fish and Wildlife Services.

15 43. Immediately upon the conclusion of the April PC Hearing, Planning Staff  
16 informed Petitioner that the County was considering imposing a temporary moratorium of at  
17 least 180 days to any new solar project applications in Douglas County but that this would not  
18 affect the pending SUP application by Petitioner.

19 44. On May 4, 2015, the Walkers submitted an additional memorandum to the  
20 Planning Commission in opposition to the application entitled "Greenstone Application for a  
21 Solar Industrial Plant."

22 45. On May 7, 2015, the BOCC held a public hearing to discuss the adoption of  
23 Resolution 2015R-039 imposing a temporary moratorium on solar PV facilities and temporarily  
24 prohibiting the County from accepting any applications or requests to operate, permit or license

1 any such facilities, with the exception of the pending Application as it was submitted prior to  
2 consideration of the moratorium. The BOCC also discussed the introduction of Ordinance 2015-  
3 1436 comprising a zoning text amendment to amend DCC, Chapter 20.01 by placing a temporary  
4 moratorium on solar PV facilities as a primary use, designating solar PV facilities as a prohibited  
5 use per Title 20 and temporarily prohibiting the County's acceptance and consideration of any  
6 and all land use applications, development permits, business license applications, building permit  
7 applications and any other application or request to operate or otherwise license or permit any  
8 solar PV facilities, and other properly related matters.

9 46. At a public hearing on May 12, 2015 (the "May PC Hearing"), the Planning  
10 Commission continued the item from the April 14, 2015 hearing. At the May PC Hearing,  
11 Planning Staff submitted an additional Staff Report reaffirming its support of the approval of the  
12 Application. In addition, the Douglas County Assistant District Attorney also admonished the  
13 Planning Commission that, based on the dormant commerce clause, the Planning Commission  
14 could not take the fact where the power of the proposed solar PV facility would be sold, such as  
15 to California, into consideration for purposes of granting or denying the requested SUP. The  
16 Planning Commission voted (4-3) to approve the SUP based on the ability to make the required  
17 findings as identified in the Staff Report and subject to conditions of approval, following the  
18 recommendations made by Planning Staff in its April 2015 PC Staff Report.

19 47. On May 15, 2015, the Planning Commission issued an Action Letter (the "Action  
20 Letter") confirming the SUP approval and setting forth the conditions for the SUP:

21 1. The applicant/owner shall obtain a letter from the Minden-  
22 Gardnerville Sanitation District regarding the ability of Park Ranch Holdings to  
continue to accept and apply effluent on the subject parcels, pursuant to an  
existing reuse agreement.

23 2. The applicant/owner must apply for and obtain Design Review  
24 approval prior to applying for either a building permit or a site improvement  
permit.

1           3.     The project must meet all provisions of Douglas County Code  
2 section 20.664.260, standards for a Solar Photovoltaic Facility.

3           4.     The applicant/owner shall coordinate with Nevada Department of  
4 Transportation for an encroachment permit if any upgrade of access is required  
5 into the site.

6           5.     The Design Review application must include a fencing detail and a  
7 lighting detail to ensure that both are consistent with the agricultural character of  
8 the area.

9           6.     The Design Review application must be reviewed by the Water  
10 Conveyance Advisory Committee prior to applying for either a building permit or  
11 a site improvement permit.

12           7.     Landscaping between the photovoltaic facility and all property  
13 lines shall be maintained as irrigated farmland including native grasses and  
14 shrubs, and maintained in a weed-free condition. Additionally, a landscape buffer  
15 shall be planted with dense trees and native shrubs and groundcover along the  
16 northerly property line to lessen the visual impact for properties located north of  
17 the project site at 661 Genoa Lane.

18           8.     The applicant/owner shall prepare and submit a detailed dust  
19 control plan to address dust control and wind erosion during construction and  
20 from interior access roads and from disturbed areas once the facility is operating.

21           9.     The maximum noise level at the property line will not exceed 60  
22 dB at any time.

23           10.    All access roads to and on the site shall be all weather accessible  
24 and have the capability to support a 50 ton load<sup>2</sup>.

          11.    All internal access roads shall have a minimum surface area of no  
less than 12 feet wide, with 20 feet of clear space, and meet all turning radii  
subject to the standards set by the East Fork Fire District.

          12.    A Knox Box and Knox key shall be supplied at each locked access  
gate.

          13.    All vegetation shall be managed through implementation of a  
Vegetation Management Plan to be submitted as part of the Design Review  
application and approved by the East Fork Fire District and the Community  
Development Director to eliminate the spread of wildfire through the solar farm  
and to reduce the possibility of fugitive dust, water and wind erosion of the  
topsoil.

          14.    A complete fire life safety plan/construction review shall be  
completed by the East Fork Fire District prior to the issuance of construction  
permits.

          15.    As part of the Design Review for this project, the applicant/owner  
shall demonstrate that the solar photovoltaic panels placed on site do not have any  
toxicity levels as demonstrated by lab analysis.

          16.    Prior to the installation of the first solar photovoltaic panel, the  
applicant/owner shall install a weather station on-site to include an anometer  
linked to an automated system capable of locking down and "stowing" the panels  
at any time wind speeds exceed 70 miles per hour.

<sup>2</sup> The capability to support a 50 ton load was an error. During the Walker Appeal, Planning Staff corrected this to 25 tons (50,000 pounds).

1           48.     On June 4, 2015, the BOCC held a public hearing (Second Reading) to discuss the  
2 adoption of Ordinance 2015-1436 to place a temporary moratorium on solar PV facilities as a  
3 primary use, designating solar PV facilities as a prohibited use per Title 20 and temporarily  
4 prohibiting the County's acceptance and consideration of any and all land use applications,  
5 development permits, business license applications, building permit applications and any other  
6 application or request to operate or otherwise license or permit any solar PV facilities; and other  
7 properly related matters. At this hearing, at which the entire BOCC was present, on motion by  
8 Commissioner Lynn and Vice Chairwoman McDermid, the BOCC voted (5-0) to approve the  
9 moratorium for a maximum of 360 days, an increase by 180 days based on the ability to make  
10 the required findings as identified in the Staff Report.

11           49.     On May 26, 2015, the Walker Appeal was filed appealing the May 12, 2015  
12 decision of the Planning Commission granting Petitioner an SUP for the solar PV generating  
13 facility on the Subject Property. As a part of the Walker Appeal, the Walkers individually signed  
14 an Appeal of Decision Application dated May 25, 2015, and declared under penalty of perjury  
15 that "the information contained in the appeal is true and correct."

16           50.     Pursuant to Section 20.28.020(C) of the DCC, a written notice of appeal must be  
17 filed with the community development department within ten working days of the date of the  
18 final decision. The notice of appeal shall be filed on a form provided by the county and contain a  
19 written statement of the reasons why the final decision is erroneous or why conditions to the  
20 approval are erroneous, and shall be accompanied by the fee established by resolution.

21           51.     Pursuant to Section 20.28.020(E) of the DCC, the appellate body may affirm,  
22 reverse or modify only those items raised in the appeal (emphasis added).

23           52.     The Walker Appeal claims that the Planning Commission erred as to the  
24 following findings in its approval of the SUP:

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- a. Finding A
  - i. The decision was in error because it did not legally require Greenstone to retain the 260 acres in pastureland and to continue irrigating the property. Greenstone can bulldoze the entire 260 acres and create dirt, weedy parking lot structure that is typical of a solar industrial plant. This is clearly an error on the part of the Planning Commission.
  - ii. The project is in direct conflict to LU Goal 2, because it does NOT “retain the beauty, the natural setting and resources, and the rural/agricultural character of the county...”
  - iii. Douglas County Planning Staff did not address Policy 2.2 in their report to the Planning Commission. This was clearly in error.
  - iv. Douglas County Planning Staff did not address NCSA Goal 1 and NCSA Policy 1.1 in their report to the Planning Commission how could placing 148,277 metal glaring solar panels with an 8 foot fence with 3 barbed wire on top over 260 acres of irrigated agricultural lands “maintain or enhance the existing rural and scenic character of the community.”
  - v. Land Use Policy 2.4: Douglas County shall use its planning and development regulations to protect residential neighborhoods from encroachment of incompatible activities or land uses which may have negative impact on residential living environments. and the proposed project is in direct conflict with AG Policy 1.1 because it takes 260 acres of agricultural land out of production.
  - vi. Ag Policy 1.4 – claiming that “260 acres of glaring metal photovoltaic panels surrounded by a chain link security fence does not ‘preserve and promote environmental quality’ and is in direct conflict to the public goal of agricultural preservation because it destroys the agricultural land, it doesn't preserve it.”
  - vii. A.G. Policy 1.4 - claiming that this policy also states that the development must serve the local needs of our community. As claimed by the Walkers, based on the Liberty Energy Application to the California Public Utility Commission, 100% of the "Minden Solar Plant" will be dedicated to Liberty Energy in California.
  - viii. ERC Policy 15.1 – claiming that this policy allows solar for “on-site” use only. The staff report states “the proposed use will allow for the establishment of a non-polluting renewable energy source that will benefit off-site as opposed to on-site users
  
- b. Finding B
  - i. The Greenstone project actually is in direct conflict with Finding B because it is destroying the pastureland our community so treasures.
  - ii. The application to cover 260 acres of irrigated pastureland in the middle of Carson Valley with a solar industrial plant is not compatible with surrounding properties and neighborhoods;
  - iii. Claiming that “Residents who live in A-19 residential zoning expect to look over horse and cow pastures, meadows, agricultural uses and other houses to enjoy views of the mountains.

- 1 iv. Claiming that “the destruction of nearly 260 acres of irrigated  
2 pastureland to be replaced by 148,277 glaring photovoltaic panels  
3 on 30,680 piers is not compatible with the agricultural and  
4 residential neighborhood. It is an incompatible land use and  
5 activity which will have negative impact on residential living  
6 environments and our citizen's quality of life.”
- 7 v. Claiming that a “project located in the heart of Carson Valley and  
8 at the entrance to the Towns of Genoa, Minden and Gardnerville  
9 near the County's population center is not an appropriate site for a  
10 large-scale solar industrial plant”
- 11 c. Finding E
- 12 i. Claiming that “the standards did not include a requirement for any  
13 type of environmental or wildlife study to determine the impacts  
14 the solar industrial plant will have.
- 15 ii. Claiming that: “NDOW recommended a wildlife evaluation to  
16 occur and the Planning Commission was in error to not require this  
17 evaluation to protect our wildlife habitat and insure the welfare of  
18 our citizens”.
- 19 iii. Claiming that “there is no requirement to maintain and irrigate the  
20 existing pasturelands or to maintain a weed-free condition except  
21 for the 100 foot buffer.
- 22 iv. Claiming that: “panels moving and the inverters will have much  
23 more noise that they are stating
- 24 v. Claiming, that, based on the Chapel Hill study, Walker site visits to  
Arizona solar plants and SunPower's own picture above and  
provided on page 106 of the May 12, 2015 Planning Commission  
agenda packet, “it is proven there will be glare” if this project is  
approved.
- vi. Claiming that: The industrial solar power plant is so large, its  
negative visual nuisances cannot be mitigated. The plant will be  
seen each time a citizen or visitor enters Minden or Gardnerville  
while driving South on Hwy 395, it will be seen each time one  
drives Kingsbury Grade and it will be seen from the surrounding  
hillsides where residential homes exist and recreationists use the  
extensive trail system” (emphasis added).
- d. Finding H
- i. The Greenstone solar industrial plant is materially detrimental to  
the public health, safety and welfare of Douglas County residents  
from claimed heat island effects, heat related changes in regional  
wind patterns, and that toxic materials that can leach into the  
ground from broken panels.
- ii. Claiming that Greenstone will not be able to control the dust from  
this site when the 70 to 90 mile per hour winds hit the Valley, and  
claiming that “the dust will impair visibility for the drivers on  
Hwy 395”.
- iii. Claiming that “a vigorous and thorough review of the type of solar  
panels they would use needs to be performed,”



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iv. Claiming that "stowing" the panels at any time wind speeds exceed 70 miles per hour. This is a very weak condition. They discussed having the anometer (sic) work as of 40 miles per hour. At 70 miles per hour you will already have damage".

53. The Walker Appeal also claimed:

- i. That the Planning Commission "did not legally require the set back Greenstone proposed on the maps which would have set back the solar panels away from the Walker home. Without legally requiring the set back, Greenstone can build this project for the full 260 acres fence line to fence line 100 feet from the Walker boundary. This was an error";
- ii. That "residents of residential zoning district expect that the district will be residential and agricultural. They expect to live in a quiet, country setting"; and
- iii. That "the special use will result in material damage and prejudice to every residential home and residential housing site in the area.

54. The Walkers also claimed in their Appeal that:

even though the Walkers are not able to get an appraisal regarding the proposed solar industrial plant, ask yourself a question: If you had two properties you were looking to buy and one sat on the border of a 260 acre solar industrial plant ... and another property which looked out onto a lovely green field, which one would you buy? The one with the lovely field, of course.

55. The Walkers further claimed that they

spoke to appraisers to try to define specifically the devaluation of their home if the proposed solar industrial plant were to be approved. Appraisers are not able to give an appraisal for a future development. However, there are several pieces of information listed in Exhibit 2 which prove the devaluation of the property if the solar plant was allowed (emphasis added).

None of the aforementioned pieces of information included by the Walkers in their Appeal, as alleged proof of the devaluation of the Walker Property constitutes substantial evidence.

56. In response to the Walker Appeal, Petitioner submitted to the County a detailed and substantiated rebuttal of each individual claim referenced by the Walkers.

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1           57.     On or about Thursday, June 11, 2015, Douglas County Planner, Hope Sullivan,  
2 telephoned Derek Fromm, a representative of Petitioner, to indicate that Papp was no longer  
3 working for the County and that she would be taking over the management of the docket but  
4 would need to become familiar with the case first. Ms. Sullivan immediately declined the offer  
5 made by Derek Fromm to assist her to get up to speed.

6           58.     On Wednesday, June 17, 2015, Petitioner reached out, via both email and  
7 telephone, to each of the members of the BOCC to meet and address any questions the  
8 Commissioners might have about the proposed project. Commissioners Penzel and Thaler  
9 returned Petitioner's telephone call, but indicated that they would not be able to meet due to  
10 other commitments. Vice Chairwoman McDermid responded that she would be able to meet  
11 Petitioner on June 17, 2015. Commissioners Lynn and Johnson did not respond at all.

12           59.     On June 17, 2015, Petitioner was able to briefly meet with Commissioner Penzel  
13 at a public luncheon organized by the Douglas County Chamber of Commerce. Following this  
14 event, Petitioner met with Vice Chairwoman McDermid at the County administrative offices.  
15 Commissioner Thaler joined this meeting. At this meeting, Vice Chairwoman McDermid  
16 indicated that she considered the solar farm a "visual blight" and that it was in direct  
17 contravention of the Open Space Plan ("OSP") and the Valley Vision Plan ("VVP"), of which  
18 she was a strong supporter. When prompted, Vice Chairwoman McDermid stated to Petitioner  
19 that, irrespective of the fact that the OSP and VVP (i) were not adopted documents, (ii) were  
20 unfunded, aspirational documents, (iii) had not been addressed by the Planning Commission  
21 because of the status of the documents, and (iv) had not been raised as claims by the Walkers in  
22 their Appeal, she would personally make sure these documents would be included in the record.

23     ///.  
24     ///.

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1           60. As requested by County Planner Hope Sullivan, Petitioner also made  
2 arrangements for the members of the BOCC to visit the site and to contact Park Ranch to arrange  
3 access for the site visit. In response, neither Petitioner nor Park Ranch was contacted for a site  
4 visit and no site visit was made by any Commissioner.

5           61. On Tuesday, June 23, 2015, at approximately 3:30 p.m., Petitioner received a  
6 telephone call from Mrs. Jeane Cox, DCCD Office Manager, followed by an email time-stamped  
7 4:05 p.m. stating:

8           On behalf of Hope Sullivan, Planning Manager, this email is to notify you that  
9 any correspondence or documentation you may have that you would like to  
10 include as part of the Solar Photovoltaic Facility Appeal going before the Douglas  
11 County Board of Commissioners' meeting on Thursday, 7/2/15, MUST be  
12 received in our office no later than 9:00 am tomorrow, Wednesday, 6/24/15.  
13 Please send this information to my attention at the email address shown below.  
14 Thank you, Jeane Cox, Office Manager, Douglas County Community  
15 Development.

16           62. On Wednesday, June 24, 2015, Petitioner timely submitted its complete rebuttal  
17 package to the Walker Appeal to Planning Staff, including a detailed side-by-side rebuttal of all  
18 the Walkers' claims, providing direct and pertinent material and substantial evidence refuting  
19 any and all of the Walkers' research studies and similar documents proffered by the Walkers in  
20 alleged support of their claims.

21           63. From Wednesday, June 24, 2015, through close of business on Friday, June 26,  
22 2015, Petitioner reached out via email and telephone to Hope Sullivan and Jeane Cox to be  
23 informed when the Staff Report would be available for review by Petitioner, in preparation for its  
24 BOCC hearing on Thursday, July 2, 2015. It was not until 8:45 p.m. on Friday, June 26, 2015,  
that Petitioner received an email from Hope Sullivan notifying Petitioner that the Staff Report  
had been released and was available on the County website for downloading.

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1           64.     Upon review of this BOCC Hearing Staff Report, a 1,583-page and 126MB PDF  
2 file, it became immediately apparent that the Walkers had continued to supply new information  
3 to the County notwithstanding the May 26, 2015 appeal deadline, including a memo dated June  
4 4, 2015 (identified by Planning Staff as "BOCC ATTACHMENT C" at page 493 of the Staff  
5 Report) stating:

6           Commissioners, although the recent exercise involving the citizens of Carson  
7 Valley to develop a vision for Carson Valley is not an official planning document,  
8 it does address the wants/desires of the citizens. Attached to this short memo is a  
9 document from the Carson Valley Vision power point presentation. Note the  
10 location of the location [sic] of the triangular arrows with the depiction "VIEW  
PRESERVATION" on the Environmental Principles slide. Seems the area  
suggested to preserve per the slide and the location of the proposed Utility Scale  
260 acre solar farm (with panels allowed to be 15 feet high) are in the same place.  
Thought you should be aware of the conflict.

11 These new claims that were not previously raised by the Walkers in opposition to the SUP  
12 proceedings before the Planning Commission, nor raised in the Walker Appeal, were  
13 inappropriate for the BOCC to consider.

14           65.     By allowing the Walkers to insert memoranda into the record and, in effect, make  
15 new claims after the appeal period had already expired, and for the OSP and VVP to be  
16 subsequently added ex parte to the Staff Report, Petitioner has been deprived of its substantive  
17 and procedural due process rights. The County improperly expanded the basis of the Walker  
18 Appeal to include an alleged "conflict" between the location of the proposed solar project and  
19 the "view preservation" area of the non-adopted VVP. BOCC Vice Chairwoman McDermid in  
20 effect made the Walkers her agent to do her bidding in opposition to Petitioner's solar project by  
21 allowing a post-appeal submission.

22           66.     In addition, the BOCC Hearing Staff Report included the Douglas County Valley  
23 Vision 2013 Open Space Plan and the Douglas County Open Space Agricultural Lands  
24 Preservation Implementation Plan 2007, neither of which (unlike all of the numerous other

1 documents contained in this Staff Report) contain any indicator as to their provenance or how  
2 and on what basis they were included in the Staff Report. These documents, which do not have  
3 any legal status, were not referenced in any manner by the Walkers at the Planning Commission  
4 nor in their Appeal and, therefore, should not have been considered by the BOCC pursuant to  
5 DCC Section 20.12.020.

6 67. The Walker's memorandum submitted after the deadline to formulate claims  
7 against the SUP as granted by the Planning Commission, conveniently provided a "Walker-  
8 initiated" alibi for the inclusion of the OSP and the VVP into the Staff Report – the very plans  
9 Vice Chairwoman McDermid discussed as the basis for her findings at the BOCC hearing.

10 68. At the BOCC hearing, the Walkers testified that 700 signatures in opposition had  
11 been assembled. Based upon a review of the signatures submitted into the record, frequently  
12 multiple signatories reside at the same street address and most signatories to the Walker petition  
13 show addresses across Douglas County and at distant locations from the Subject Property. As  
14 stated herein, the Walker ad campaign contained false and misleading statements and the  
15 signatures submitted in opposition were also false or misleading. Neither constitutes substantial  
16 evidence.

17 69. The Walkers, without providing any evidentiary support, claim that "the special  
18 use will result in material damage and prejudice to every residential home and residential  
19 housing site in the area." At the BOCC Hearing, the Walkers produced Daniel Leck ("Leck"), a  
20 certified general appraiser, as an expert witness to provide testimony and a PowerPoint  
21 presentation regarding the impact to the area allegedly resulting from the proposed solar plant  
22 (the "Leck Testimony"), which the BOCC received, and unquestioningly accepted, as evidence  
23 in support of its finding of material damage. The Planning Staff has communicated to Petitioner  
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1 that the County has not requested, and therefore does not have in its record, a copy of the Leck  
2 PowerPoint presentation.

3 70. The Leck Testimony, as well as assertions made therein, reflect intentionally  
4 misleading personal opinions by Leck, which may have risen to unprofessional conduct under  
5 NRS 645C.470(4), as Leck's Testimony (i) does not have any bearing whatsoever on the  
6 proposed solar project; (ii) intentionally opines on an alleged battery storage facility that the  
7 Walkers for the first time raised at the BOCC Hearing, and (iii) includes a gratuitous statement  
8 that "regarding the staff's Attachment O, I agree with their findings", (iv) includes entirely  
9 fabricated statements about the alleged percentage of general devaluation of the entire housing  
10 stock in Carson Valley resulting from its association with a solar farm, and generally completely  
11 lacks support from relevant, substantial evidence, as a result of which the BOCC could not  
12 reasonably rely on the Leck Testimony to support the claims by the Walkers with respect to  
13 material damage and prejudice.

14 71. Pursuant to DCC 20.28.020(E), the BOCC "may affirm, reverse or modify only  
15 those items raised in the appeal (emphasis added). As the record shows, the BOCC did not limit  
16 itself to the "items raised in the appeal" in making its findings, nor did the members of the  
17 BOCC provide detailed statements in support of these findings, nor did the members of the  
18 BOCC support their findings with material, substantial evidence.

19 **PETITION FOR JUDICIAL REVIEW**

20 72. Petitioner repeats, re-alleges and incorporates by reference the foregoing  
21 paragraphs as if set forth in full herein.

22 73. Douglas County has a duty to refrain from exercising its zoning and land use  
23 authority in a manner that is arbitrary and capricious.

24 /././







1 91. Accordingly, the rights of the Petitioner are detrimentally affected in that the  
2 BOCC's misapplication of the ordinance would result in the Petitioner's project being disallowed  
3 in the event Petitioner prevails on its Petition for Judicial Review or Petition for Writ of  
4 Mandamus.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Petitioner prays for judgment as follows:

7 1. For judicial review of Douglas County's upholding of the Walker Appeal, AP 15-  
8 006, of the Planning Commission's Decision to Approve SUP DA 15-013 for a solar PV facility  
9 at 760 Muller Lane;

10 2. For judicial review of Douglas County's denial of the request for a SUP DA 15-  
11 013;

12 3. For an Order reversing Douglas County's upholding the Walker Appeal (AP 15-  
13 006);

14 4. For an Order reversing Douglas County's denial of the SUP;

15 5. Alternatively, for a Writ of Mandamus ordering Douglas County to deny the  
16 Walker Appeal and to uphold the decision of the Planning Commission issuing Petitioner the  
17 SUP;

18 6. For a Declaratory Judgment that the County's ordinance placing a moratorium on  
19 solar facilities would not be applicable to Petitioner's Application should this Court grant  
20 Petitioner's requests for relief;

21 7. For an award of attorneys' fees and costs incurred in the filing of this action  
22 pursuant; and

23 ///.  
24 ///.

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