SANTA FE COUNTY

BOARD OF COUNTY COMMISSIONERS

SPECIAL MEETING

Public Appeal of Planning Commission Final Order in Case #24-5200

August 11, 2025

1. A. This special meeting of the Santa Fe Board of County Commissioners Board was called to order at approximately 9:00 a.m. by Chair Camilla Bustamante in the County Commission Chambers, 102 Grant Avenue, Santa Fe, New Mexico.

CHAIR BUSTAMANTE: This meeting is broadcast live on an internet stream. The County has also made a conference rooms at 102 Grant and 240 Grant available to members of the public and has rented space in the Eldorado hotel. We received written comments on this application on the hearing and we will be devoting the entirety of tomorrow's hearing to receiving oral public comment.

B. Roll Call

Roll was called by Jennifer Wilson, Deputy County Clerk, and indicated the presence of a quorum as follows:

Members Present:
Commissioner Camilla Bustamante, Chair
Commissioner Lisa Cacari Stone, Vice Chair
Commissioner Justin Greene
Commissioner Hank Hughes
Commissioner Adam Johnson

Members Excused:
None

[For clarity, comments regarding the advancement of slides/power point and the functioning of microphones were edited out of this transcript.]

2. Public Hearing

Application by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC, Applicants, for a Conditional Use Permit (CUP), Case No. 24-5200 (Arising by Appeals in Case Nos. 24-5201, 24-5202, 24-5203 and 24-5204.)

CHAIR BUSTAMANTE: All right, let's proceed to the public hearing

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portion of this meeting. May I please have the entries of appearance for the applicant parties with standing. Yes, Attorney Boyd.

WALKER BOYD (County Attorney): Yes, Chair, I think we should start with the applicant. Can the Applicants representative please stand up and identify themselves to the Board.

CHAIR BUSTAMANTE: Okay, and do we need them to speak into the microphone?

ATTORNEY BOYD: Yes, if they'll please speak up.

CHAIR BUSTAMANTE: If you'll please walk up to the podium and speak into the microphone. We'd appreciate that, thank you.

JOSHUA MAYER: Good morning everyone. My name is Joshua Mayer, I'm the senior project development manager for AES Clean Energy.

CHAIR BUSTAMANTE: Thank you.

MIKE SIMPSON: Mike Simpson, engineer with AES Clean Energy.

MATT GORDON: Matt Gordon, permitting project manager with AES Clean Energy.

LUKE PIERPONT: Luke Pierpont, counsel for Rancho Viejo Solar and AES Clean Energy.

CHAIR BUSTAMANTE: Thank you.

ATTORNEY BOYD: Chair, I would recommend that you identify all the other – have all the other parties who have been recognized as parties with standing identify themselves.

CHAIR BUSTAMANTE: Thank you. The parties with standing please stand and identify yourselves and please come to the podium and introduce yourself.

ASHLEY SCHANNAUER: My name is Ashley Schannauer. I'm an Eldorado resident and I'm representing myself.

CHAIR BUSTAMANTE: Thank you.

ROBERT STRANAHAN: My name is Robert Stranahan, I'm attorney for the Clean Energy Coalition of Santa Fe County.

CHAIR BUSTAMANTE: Thank you.

JOHN BUCHSER: I'm John Buchser with the Sierra Club.

CHAIR BUSTAMANTE: Thank you.

DENNIS KURTZ: Good morning. I'm Dennis Kurtz, I'm president of the San Marcos Association.

CHAIR BUSTAMANTE: Good to see you.

LEE ZLOTOFF: Good morning, I'm Lee Zlotoff, president of the Clean Energy Coalition for Santa Fe County.

CHAIR BUSTAMANTE: Thank you.

RANDY COLEMAN: Good morning. I'm Randy Coleman, vice president of the Clean Energy Coalition for Santa Fe County.

CHAIR BUSTAMANTE: Thank you.

JOE ROWLEY: Joe Rowley. I'm a power industry consultant on behalf

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of the Clean Energy Coalition.

CHAIR BUSTAMANTE: Thank you.

ED HENDERSON: Morning. I'm Ed Henderson. I'm with Assurance Engineering. We're fire protection group.

CHAIR BUSTAMANTE: Thank you.

CAMILLA BROM: My name is Camilla Brom and I'm representing myself.

CHAIR BUSTAMANTE: Thank you.

BRIAN ROEDER: My name is Brian Roeder. I'm here on behalf of the CEC and on behalf of Never Again Moss Landing.

CHAIR BUSTAMANTE: Thank you.

ROBERT CORDINGLEY: I'm Robert Cordingley with 350 Santa Fe and we have some witnesses who will be attending later.

CHAIR BUSTAMANTE: Thank you.

GLENN SCHIFFBAUER: I'm Glenn Schiffbauer, executive director for the Santa Fe Green Chamber of Commerce.

CHAIR BUSTAMANTE: Thank you.

JILL CLIBURN: I'm Jill Cliburn. I'm a witness for the Green Chamber of Commerce.

CHAIR BUSTAMANTE: Thank you.

PHIL UNDERCUFFLERER: Phil Undercuffler, resident of Santa Fe County, volunteer firefighter and product development for Grid Works.

CHAIR BUSTAMANTE: Thank you.

WARREN THOMPSON: Warren Thompson. I'm with Rancho Viejo Limited Partnership and I'm a witness for the Green Chamber.

CHAIR BUSTAMANTE: Thank you. Anyone else from parties with standing?

SELMA EIKELENBOOM: Good morning. Dr. Eikelenboom Schieveld, New Mexicans for Responsible Renewable Energy.

CHAIR BUSTAMANTE: Thank you. Next.

TERESA MENDOZA: Good morning everyone. My name is Teresa Mendoza. I'm here with the San Marcos Association.

CHAIR BUSTAMANTE: Thank you. Next, I understand that we have Alexandra Ladd who would like to say something before we actually start the hearings.

ALEXANDRA LADD (County Growth Management Department Director): Good morning, Madame Chair, members of the Commission. Good morning to all of my county colleagues and everyone in the room and all those watching online. My name is Alexander Ladd. I'm the director for the County's Growth Management Department and it would be remiss of me to start these proceedings without a big huge shout out to all of the County departments that are required to support us here today. Normally the Growth Management Department is the lead on land use entitlement cases and we do always appreciate the support we get but today and tomorrow are quite, quite new for all of us and I just want to say without IT support without all of your liaison who are helping out in the conference rooms. We've got the County Clerk's office here all

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day. We've got the Sheriff's Office, we have Fire Marshal team we've got all of the County Manager Office staff. We've got all of the Public Information staff on hand. And we truly couldn't do this without everyone helping. Our growth management staff is over at the other building other than the ones in this room, they are helping with the conference rooms over there. But they're also keeping the doors open because no one in this room is doing this instead of their regular job. We're all doing this, including all of you, on top of our regular jobs. So, I just wanted to say for everyone in the room, you know, we know this isn't ideal for some reasons, but given all the logistics, it this is absolutely the best solution, and we appreciate everyone's patience, understanding, and respect. So, thank you very much.

CHAIR BUSTAMANTE: Thank you very much, Ms. Ladd. I would actually like to compound/build on that one and thank you very much for those statements. I am absolutely grateful for all the work that all of County staff has put into this especially in the interest of this meeting and understanding that there are two very different perspectives on this particular project. This hearing is established the way it is to ensure the best possible process for allowing people to provide their input and for allowing this Board of County Commissioners to receive the information necessary to make a decision. So having people inside and outside of the chamber and being able to coordinate it such that as many people as possible are able to watch and engage with those participating. We are incredibly grateful and I'm so grateful to County staff for making sure that this is done with ease. It's all about respect, about trust, and about a process that is going to be open and ensuring that the Commissioners will get the information necessary for a decision that will be made. So I appreciate that.

The next tem in order is that we have a request for a communication regarding a memorandum from Roger Prucino and I'd like to ask the attorney to explain this. It's the first decision that we'll make a decision on today, Commissioners, with regard to the allowance of this memo and other items that have been presented to us prior to this meeting.

ATTORNEY BOYD: Thank you, Chair Bustamante members of the Commission. You all have been asked, I think, to rule on a couple of items prehearing and I'm not taking a position on the two other items concerning -- the two other items being Mr. Schannauer and Ms. Eikelenboom's request for the Board to demand additional discovery or additional information from the applicant and the applicant's request that the certain witnesses not be permitted to testify are excluded as offering irrelevant evidence.

I'm not going to be making argument on those two items. And it's certainly the Board's decision as to how it wants to address those items whether it should enter into hear argument and enter into deliberations at the outset or whether it wants to address those items as they come up today.

However, this morning at the outset, I do know that there are three parties withstanding who seek to make use of a January 31, 2025 memorandum by Roger Prucino to the Planning Commission. And as the County's Attorney, I have asserted the attorney-client communications privilege regarding that memorandum. The memorandum is clearly marked confidential and privileged and it was inadvertently disclosed to the parties in response to an IPRA request. And the staff member who made that inadvertent

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disclosure, our records custodian, does not have the authority to bind the County and make a determination as to the privilege. I can assert the privilege, but ultimately you all are the ones who hold that privilege and can make a decision as to whether to waive it or assert it. And as the County Attorney, I recommend that you all protect your right to receive confidential legal advice. And in that regard, I am I'm requesting that the Board vote to issue an order prohibiting the parties with standing from making use of Roger's memorandum in today's proceedings and striking that order from the administrative record. And I stand for any questions, although I do understand that you all probably will want to hear a response from the parties with standing who make who seek to make use of that memorandum. Thank you.

CHAIR BUSTAMANTE: Thank you, Attorney Boyd. Okay. The other thing that I want to also make clear, we will be timed on what is presented. The Commission will have full time for any questions, concerns, and issues. If the Commission at this time would want to at any point ask to be to go into deliberation, we can have any conversation outlined in our meeting room next door. So right now I can either hear we can either have a discussion we can um make a motion or if one wishes to ask that we go into deliberation to discuss this item it's open to the Commission to make that decision as we wish. Commissioner Hughes.

COMMISSIONER HUGHES: Well I'd go ahead and make a motion that we maintain privilege and not allow the use of the memo throughout the meeting. I want to explain that all the issues raised in the memo are raised other places and so it's not necessary and it's more to protect our right to privileged information with our attorney. I'll make a motion that to that effect.

CHAIR BUSTAMANTE: Thank you, Commissioner. Commissioner Hughes has made the motion to maintain the privilege of the Commission. And do we have a second or further discussion?

COMMISSIONER GREENE: Further discussion, please.

CHAIR BUSTAMANTE: Further discussion

COMMISSIONER GREENE: Just on the recommendation of Attorney Boyd, there are arguments to be made on both sides of this. So I would recommend hearing from the parties based on this before we actually vote on that.

CHAIR BUSTAMANTE: Further discussion.

COMMISSIONER JOHNSON: I think I would entertain brief commentary from the other parties.

CHAIR BUSTAMANTE: Okay.

COMMISSIONER GREENE: Keeping it to less than a minute or something.

COMMISSIONER CACARI STONE: I agree with Commissioner Green.

CHAIR BUSTAMANTE: Okay. So do we have a second on the motion? Hearing no second on the motion. We have a recommendation to have the parties wishing to speak in the interest of using the memo or against. What I will also remind everyone who speaks at the podium, all parties are allotted 60 minutes for their presentation or for cross-examination. Time during a cross-examination is counted in the 60 minute allowance. So for this purpose and this is –

COMMISSIONER GREENE: I think this is a separate issue.

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CHAIR BUSTAMANTE: Well, we can decide that.

COMMISSIONER GREENE: You can, that's right.

CHAIR BUSTAMANTE: If we want to we can say this is part of that 60 minutes. I would like to hear from the Board. Do we hear this outside of the 60 minutes? If we do, I ask that we don't do this very often during this meeting. We have very strict requirements for making sure that things move along. But I will ask since this is a request from the Commission to hear the cases I will ask Attorney Boyd, please.

ATTORNEY BOYD: Chair. This is this is a request coming from me. So I don't think it would be – I think it would make sense to not require the parties to use their time to respond to this request I'm making. So that that would make sense. But certainly I appreciate the sense that throughout today because of the limitation on time today that that there would be a need to limit the presentations on other issues and motions that the parties themselves have made.

CHAIR BUSTAMANTE: Very good. Okay. Then we will take -- who would like to speak to the use of Roger Prucino letter. Speak for or against this and it would not be used towards your time. Anyone else? Okay. We have two people who would like to speak. If you'll please, three people, if you'll please approach the podium in any order you'd like.

[A representative from the County Clerk's Office administered the oath to those wishing to speak throughout the meeting.]

SELMA EIKELENBOOM SCHIEVELD: My name is E-i-k-e-l-e-n-b-o-o-m and my maiden name is S-c-h-i-e-v-e-l-d, 227 San Marcos Loop, Santa Fe. I understand I'm under oath.

If you look at the memo, I mean I'm not a lawyer, but what I see is clearly a political statement in the memo and I don't see anything about if you do something a) then you can have repercussions in court for that. So don't do that. It's a political statement to influence the members of the of the planning committee. Now I know that for lawyers there are special rules regarding this memo but I am just a civilian and the moment I get/I receive something months after it has been requested then the County waives the County waives their confidentiality their privileged.

So I think that I should just have the opportunity to refer to the memo and to use screenshots of it if I think that that it will serve my cause. Thank you.

CHAIR BUSTAMANTE: Thank you. Next.

ROBERT ALLEN STRANAHAN IV: Robert Allen Stranahan, the 4th and my address is 4A Rancho Este, Santa Fe, New Mexico 87506. And I do understand I'm under oath.

I just wanted to let the Commission know that uh when the County disseminated that particular memo in response to an IPRA request, they waived any right to privilege for that document. That document has already been disseminated. People have already seen it. It's already been accessed. So there's no way to retroactively sort of reseal that. It's already been out in the public ether and there's no way to recall that. So our argument is that the privilege has already been waived and can't be retracted. Thank you.

CHAIR BUSTAMANTE: Thank you. Next.

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ASHLEY SCHANNAUER: My name is Ashley Schannauer. My address is 12 Mariano Road, Santa Fe, New Mexico in Eldorado. And, I understand that I'm under oath.

Good morning. Yes, the document that we're talking about was issued in response to an IPRA request that I made. The County Attorney talks about the inability the lack of authority of the County Attorney's office or the records custodian who is in the County Attorney's office to waive a privilege. Under the Inspection of Public Records Act, it's very clear that the records custodian has the authority and the and the duty to separate confidential information such as attorney client communications from public information and apparently that was done and apparently there was an apparent waiver and so I think that that's one point.

The second point is in terms of the issue of inadvertent disclosure. There's a New Mexico case on that particular issue. Supreme Court of New Mexico; *Doyle Hartman versus El Paso Natural Gas.* And the court there listed five factors in determining whether a document has lost its privilege. One of them is the reasonableness of the precautions taken to prevent inadvertent disclosure in view of the extent of document production. Number two, the number of inadvertent disclosures. Number three, the extent of the disclosure. Number four, any delay and measures taken to rectify the disclosures. And then the last one is very important here; whether the overriding interest of justice would be served by relieving a party of its error by relieving the County of its error in making this disclosure. I'm arguing that this case satisfies all five factors.

The reasonableness of precautions, it went through the review process at the County Attorney's Office before it was disclosed. The extent of the disclosure, the entire document. Any delay and measures taken to rectify the disclosures. This document was/ has been made public for now presumably almost two months, at least two months and just recently the redactions were made. And then finally the overriding interest of justice. I think we're all here today to serve justice. This is a big issue for the County, for the residents of the County, and I think it really behooves the Board to consider this document. Thank you.

CHAIR BUSTAMANTE: Thank you. Next, is there anyone else who would like to speak in favor or against the use of this document -- consideration of this document? Okay. Commission.

COMMISSIONER GREENE: Madam Chair, I make a motion that we go into executive session to discuss this in deliberative fashion. If there's a citation that I need to make to do this, please inform me, but hopefully um I don't need to cite state law every time I do this.

CHAIR BUSTAMANTE: Do we have a second to that effect? But I will remind the Commission that and -- and I want to ask first; is there anything in that letter as you've read it that is different from anything else that we will be hearing or have already heard and any reason that this would be unique information to be disclosed at this time per the previous motion to maintain it given that it is consistent with things that have other been already been provided? Is there anything new that we would be considering by allowing this into this discussion? Commissioner Johnson.

COMMISSIONER JOHNSON: Madam Chair, I don't believe so.

CHAIR BUSTAMANTE: Okay. Anyone else? Commissioner Greene,

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does that change your perspective?

COMMISSIONER GREENE: I'd just like the opportunity for us to discuss it and potentially with our attorney. So, but whatever.

CHAIR BUSTAMANTE: Is there a second or do we have an alternative discussion? Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: I do not see new information in the memo that would warrant -- I do not see new information in the memo that would warrant anything new for this hearing today.

CHAIR BUSTAMANTE: Thank you. Is there a second to go into executive session or we don't have a second to go into executive session? Do I hear another motion or any discussion? An alternative motion. We don't have a second. Motion dies.

Do we have a new motion for this? Commissioner Hughes, would you like to restate your initial motion?

COMMISSIONER HUGHES: I'll make it a different motion. And I want to say I don't feel strongly about this either way. So I would move that we waive privilege on this particular document, but we assert our privilege everywhere else, and we're not going to release other documents.

COMMISSIONER JOHNSON: Second.

CHAIR BUSTAMANTE: We have a motion from Commissioner Hughes to maintain our privilege – is that what I heard?

COMMISSIONER HUGHES: Waive privilege on this particular document.

CHAIR BUSTAMANTE: Waive privilege on this particular document and maintain privilege on all forthcoming information. We have a second from Commissioner Johnson. Roll call, please.

The motion passed by unanimous [5-0] roll call vote as follows:

Commissioner Justin Greene	Yes
Commissioner Hank Hughes	Yes
Commissioner Adam Johnson	Yes
Commissioner Lisa Cacari Stone	Yes
Commissioner Camilla Bustamante	Yes

CHAIR BUSTAMANTE: Thank you. The next item of question will be that we have had items presented to us or provided to us in advance. Attorney Boyd, we can make a decision to hear those within the time of the presentations or we can hear those all at the beginning of the meeting. Can you explain to us please the option that we have for hearing those cases, approving them up front or allowing them to be presented during the presentations that we'll hear today?

ATTORNEY BOYD: Chair Bustamante and Commissioners, as you all are aware, the parties have made several requests of you all. I won't reiterate them. I kind of sketched them out in my earlier presentation. Those requests all go to the types of evidence you all will hear today in today's public hearing. So depending on this, the consensus of the Commission or the Chair's preference, you all can hear argument about

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whether the Commission should or should not hear the evidence detailed by the parties in their written submissions now at the outset and deliberate and make a decision on those motions before the party's presentation. That would entail hearing argument in much the same way you just heard argument on my request from the parties who are making the motions.

Alternatively, you can wait until the party in question is in their presentation. So, for example, I understand that the applicant is seeking an order from the Commission to prohibit the testimony of certain witnesses concerning the Moss Landing battery fire. You all can hear argument on that motion now and deliberate and make a decision now or you can wait until the party who seeks to introduce that testimony calls a witness and the applicant would then object and you would hear argument at that time and then potentially deliberate and reach a decision. Those are the two paths you all face.

CHAIR BUSTAMANTE: Thank you, Attorney Boyd. And I understand that if we hear them now, the timing for the use of that information would not be placed against the time allowed for the presentations as they testify and if we opt to hear them with their presentations, it will be counted against the time allotted.

ATTORNEY BOYD: Chair, I think that that is something that's wholly committed to your discretion and the Board's discretion. You could, in fact, I can see that the argument for making the presentations on these motions count against the party's time. Unlike the motion that I just made, which was a motion by County staff, you're dealing with motions by the parties and a request by the parties. And so, just like argument, just like testimony or cross-examination, that's a party using your time. So there's an argument for counting any time spent on arguments even if it's now against the party making the argument but it's certainly your call to make.

CHAIR BUSTAMANTE: Certainly. Thank you. Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Is it all right to make a motion?

CHAIR BUSTAMANTE: Do we have any discussion if we have any discussion about this matter? Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: I'd like to make a motion to go with the second option of waiting to hear about the various motions during the time of testimony and that the time – the second part of this motion is that the time would count towards the allotted time of each presenter.

CHAIR BUSTAMANTE: Do we have any discussion or a second?

COMMISSIONER HUGHES: I'll second the motion. I think that's reasonable.

CHAIR BUSTAMANTE: We have a second. Any further discussion? We have a vote, please.

The motion passed by unanimous [5-0] roll call vote as follows:

Commissioner Justin Greene	Yes
Commissioner Hank Hughes	Yes
Commissioner Adam Johnson	Yes
Commissioner Lisa Cacari Stone	Yes
Commissioner Camilla Bustamante	Yes

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CHAIR BUSTAMANTE: We have a two-day public hearing and we're going to keep to our timing and I think we've already shown our commitment to that.

We will start now by hearing from staff.

A. Land Use Administrator and County Staff

ALEXANDRA LADD: Thank you, Madam Chair and members of the Commission with me today is our Building and Development Supervisor, Dominic Sisneros. And Dominic has been the case manager on this case since the very beginning. He has outlived changes in staff, in support staff, and two changes in leadership and he's still hanging in there. I just have a huge amount of gratitude toward Dominic's work on this case, his professionalism. He learned how to edit the website so that he could be very prompt in uploading all the documents from the public. He has spent hours and hours of his life responding to emails and phone calls. And so, Dominic is our true expert on this case, and I'm deeply grateful for his work.

With that said, I wanted to start we do have some slides. They're coming up. I wanted to just do a very, very brief introduction and one part of our presentation will be provided by our third party expert Atar Fire. Unfortunately, his flight got cancelled. So he will not be here until later in the morning. So what we will do is we will do our part of the staff presentation move on to the applicant's presentation and then when the consultant gets here we will pull up his slides to present to you.

So if you could forward do I have the thing? I probably have the thing. Okay. So, I just really briefly wanted to talk about the process and why we're all here today and the roles that each of the review agencies and bodies play in and land use entitlement process.

County staff is the first um place where a project starts. County staff will look at all of the ways in which the Sustainable Land Development Code applies to a project and then determine whether, because every project's unique, whether there are special conditions of approval that need to apply to the point – and the path is slightly different depending on the kind of project, but mostly projects will then go to the Hearing Officer. The Hearing Officer through that public hearing allows the public to comment and also establishes the facts of the case. The Planning Commission has the final approval on many types of land use entitlements. At that stage it's another public hearing. The public has another opportunity to comment on the project. The applicant has another opportunity to present the project. Further conditions of approval may be determined at that point and generally the project is approved there. If a project – certain projects go also to the Board of County Commissioners, again a public hearing, the public can comment, the applicant gives a presentation, further conditions of approval can be edited. In this case, a conditional use permit is approved by the Planning Commission and if it's appealed, which is why we're all here today, it goes to the Board of County Commissioners.

And I bring that up because I think there's been some confusion on behalf of the public thinking that county staff is responsible for making decisions. County staff is responsible for applying expertise and experience and historical knowledge of the code and other cases to make a recommendation. The decision is at the level of the Planning

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Commissioner the Board of County Commissioners.

In this particular case regarding solar projects, this timeline walks us through all of the various places where our code was amended in response to changing regulations both at a national and state level. And I won't read through all of that because you have it in your packet, but you can see we've had several changes to the SLDC, but more importantly, changes to the Fire Code.

So, the application timeline for this project, the original application was submitted in January of 2023. County staff hosted a virtual question and answer with the public in January of 2024. Eventually, the application was deemed incomplete and it was withdrawn in August of 2024. The current application was submitted in August of 2024. Additional third-party review and studies were completed. It was deemed complete by County staff in September of 2024. And at that point in time, all of the application materials were made available to the public on a dedicated County web page. In terms of public participation, public participation when you mix human beings with bureaucracy with issues of great importance is always a little bit messy. And we know that it hasn't always gone smoothly, but I do have this slide in here to point out how many times the public has had an opportunity to talk about and interact with this case. The applicant has also hosted public meetings for the public. We did – let's see how many – we did two virtual question and answer meetings. One was specifically focused on hazard mitigation. We had a public hearing in front of the Hearing Officer in December of 2024 and then the Planning Commission where the conditional use permit was approved February 3, 2025. Because this is de novo which means we're starting over. You all are considering this case on its merits as an application. And that would be today and tomorrow.

I'm going to turn it over to Mr. Sisneros for the bulk of the staff report. But I did want to add that I think what's really important a conditional use permit is not permission to build. Conditional use permit establishes the conditions that must be met before the applicant can even apply for a building permit. The building permit process is overseen by the State of New Mexico's Construction Industries Division. At that point in time, the construction drawings are reviewed. The inspectors will be out on the site if it's approved. If it's approved, he State Fire Marshal will also look at it again to determine compliance with fire codes. So I just wanted to point that out that this is -- the important part of this proceeding is understanding those conditions of approval and understanding that they cannot the project cannot move forward unless all of those conditions are met. And with that I will turn it over to Dominic.

DOMINIC SISNEROS: Good morning, Madam Chair, Commissioners. Rancho Viejo Solar Limited Partnership, Rancho Viejo L Solar LLC and AES Clean Energy Development LLC requests approval of a conditional use permit CUP to allow a 96 megawatt solar facility, a 2.3 mile generation tie line and either a 70 foot-tall steel monopole or 50 foot-tall steel H-frame pole within existing easements.

The location is a privately owned site zoned rural fringe which encompasses 828 total acres of which 684 will be developed. The access point is on State Road 14 addressed as 211 Twilight Way in SDA2, Commission District 5.

Our GIS division had provided us this map to indicate the location of the property and the parcel itself and to give a type of description and distances to show exactly how far it is from the nearest residences. The next slide is more focused on the actually battery

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energy storage system facility which is in the upper northwest corner of the parcel. Just to give a little bit of description here. If we were to take a straight line from this chamber, the room we're in right now, directly to the intersection of West San Mateo and St. Francis, that's just over 2.02 miles.

Rancho Viejo Limited Partnership Clean Energy Development requests approval of this conditional use permit. Appendix B of the use matrix of the Sustainable Land Development Code allows commercial solar facilities and high voltage electric power transmission lines as a conditional use within the rural fringe zone. A CUP application may be subject to other special reports and assessments and the conditions of approval require individual review of the proposed location, design, and configuration of the proposed project.

The applicant was required to submit several additional SRAs that are not usually required for a CUP application. The initial hazard mitigation assessment and emergency response plan are also available for public review at the CUP stage, although they will not be further refined at this time of development. All materials related to this application are available for public review on the County's website, www.santafacountynm.gov.

Special reports and assessments. The applicant had provided an environmental impact report, adequate public facilities and service assessment, site threshold analysis, aquatic resources inventory report, biological survey report, class 3 cultural resources survey and report and State Historic Preservation Office concurrence letters, visual impact assessments, noise technical report, vegetation management and noxious weed control plan, geotechnical investigation report, preliminary hazard mitigation analysis, first responder mitigation guidelines, pre-incident plan, and a decommissioning plan.

Staff's review of SLDC Standards; access road design traffic impact applicant states that access from State Road 14 will be subject to NMDOT standards. All interior roads will be meet SLDC with the material standards. Site threshold analysis concludes that traffic impact is minimal and traffic impact analysis is not required per NMDOT. Water supply and water conservation. Water for construction estimated at 100 to 150 a acre-feet a year with long-term use of two to three acre-feet a year supplied via a combination of sources. Off-site reclaimed water or other commercial water sources. Portable water at site for office use supplied via 5,000 gallon tank with portable toilets used during construction and NMED approved septic system installation for permanent use for the operations management office.

Landscaping and buffering: Given the nature of the facility, no new landscaping is proposed which is allowable as per Chapter 7.6.8.6 In open lands characterized by an absence of significant natural vegetation. Fences and walls: An 8 foot-tall perimeter fence is proposed to enclose the developed area of the parcel with screening on the section closest to residences.

Lighting: Lighting will be motion activated downcast shaded security lighting at the access gate at the BESS and substation location the operations building and office and solar pads. A lighting study is not required. Signs: A small identification sign may be posted at the entry gate and interior signage will restrict parking to ensure fire lanes are kept clear. Parking and loading: Visitor and employee parking at the operations building will occur 7 a.m. to 7 p.m. and applicant proposes gravel parking lot with seven spaces. Open space: Approximately 340 acres will remain natural open space which

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would meet any requirements although this particular application does not have specific requirements to open space. Protection of historic resources: Three cultural resources surveys were conducted finding 17 sites, two of which were deemed potentially eligible for status. So applicant redesigned road to avoid the resources with a 100-foot buffer and State Historic Preservation Office concurred that there is no effect on historic properties. If any resources are unearthed during construction, applicant will notify appropriate authorities. Terrain management and flood control during construction: SWSS in accordance with NLI will meet EPA standards. Applicant will use best practices to control runoff, reduce erosion, sediment and turbidity includes using silt fences, straw waddles as well as minimizing and removal of existing vegetation. A hydrological study indicated that there are no impacts on the three unnamed arroyos on properties. Development will be avoided in these areas. Solid waste: All waste generated during construction will be disposed of at a licensed solid waste facility. When the project is decommissioned, all materials will be disposed according to federal, state, and local laws. Air quality and noise construction will result in localized emissions which are regulated by NMED. Reasonable precautions are required to limit airborne dust and pollutants including water. Covering open bodied trucks, establishing vehicle speed controls, installing wind control fences, and minimizing truck idling time. Once operational, the facility will require routine inspections and maintenance with minimal emissions. During construction, ambient noise levels will increase. Once in operation, there will not be a discernible increase in sound beyond the immediate vicinity of the facility.

Fire protection: project will be constructed with a 20-foot wide internal road with fire lanes, 28 foot-turning radius, a 30,000 gallon above ground water storage tank for wildland and fire protection. In addition to the SLDC requirements, the project must be compliant with the following federal fire safety laws, which our subject matter expert will go over when he arrives, which are the International Fire Code, the 2021 Edition, and the NFPA 855 standard for the installation of stationary energy storage systems, 2023 edition.

What is the CUP criteria? A CUP is not approved if the proposed use will tend to cause detriment to health, safety, and general welfare of the area. Road congestion, a potential hazard for fire, panic, or other danger, overcrowding land, and cause undue concentration of population. Interference with adequate provisions for schools, parks, water, sewage, transportation, or other public requirements, convenience or improvements. Interference with adequate light and or air. Inconsistency with the purposes of the property zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or SGMP.

Detriment to health, safety and general welfare of the area: Solar projects do not create significant noise, light, traffic or other significant operation impacts. The operation of solar panels is not detrimental to environmental conditions at the site. The project will be required to be developed to meet and comply with all applicable requirements contained in the SLDC as well as all applicable state and federal laws and all codes and standards as adopted in Santa Fe County, New Mexico to ensure that public health and safety is protected. Staff responded, The proposed project will not be a detriment to health, safety, and general welfare of the area.

Road congestion. Any traffic impact to NM14 will be generated during the

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construction of the facility, including the 2.1 mile access road and 2.3 mile generation tie-in line. Once operational, traffic will be minimal as only four technicians will be regularly working at the site Monday through Friday with occasional work on Saturday. Staff responded, The proposed project will not create road congestion as shown in the current traffic threshold analysis.

A potential hazard for fire, panic, or other danger. The projects will comply with other with or exceed all applicable fire codes, including but not limited to International Fire Code 2021 edition as adopted by 10.25. 25.2 NMAC and 2021 International Wildland Urban Interface Code as amended. Santa Fe County Ordinance 2023-6. Santa Fe County Ordinance 2023-6 and Ordinance 2023-9 as adopted by the Board of County Commissioners. National Fire Protection Association 855 NFPA 855 standard for the installation of energy storage systems 2023 edition New Mexico Commercial Building Codes as adopted by 14.7.2 2 NMAC, New Mexico Commercial Building Code, which adopts by reference the 2009 International Building Code. The conditional use permit application has been deemed complete by the Santa Fe County Fire Department. Both the Atar Fire and Santa Fe County Fire Department conclude that the sufficient level of information has been provided to validate the issuance of a conditional use permit as it pertains to the reviewed fire and life safety codes. However, all the items included in the review letter must be satisfactorily addressed prior to issuing a development permit and commissioning of the facility. Staff has responded, potential hazards for fire, panic, or other danger will be appropriately mitigated through the conformance with applicable local and federal fire codes.

Overcrowding land and cause undue concentration of population. The project will not result in any population increases and meets the open space requirements of SLDC. If the property owner owns the surrounding parcels and is considering a Transfer of Development Rights to preserve the agricultural uses of the area of perpetuity. And I could let the Chair and the Commissioners know that the property owner has applied and is in the process of those TDR certificates. Staff responded, The project will not overcrowd land or result in any concentration of population.

Interference with adequate provisions for schools, parks, water, sewage, transportation, or other public requirements, conveniences, or improvements. A solar facility does not result in population growth and therefore does not put additional demand on public services. Water for the ongoing operations for the facility will be much less than residential development. Irrigated agricultural or more most industrial uses on-site septic will handle any waste water generated by the office use. Staff has responded, The proposed solar facility will not interfere with adequate provisions for schools, parks, water, sewage, transportation, or other public requirements.

Interference with adequate light and air. The proposed solar facility includes minor lighting that will be required to meet SLDC requirements and be shielded and down lit. The monopole or H-frame structures allowed for the site allows for the air and wind to travel through with minimal obstruction. Emissions from construction will be short-term and ongoing maintenance will result in small amount of fugitive dust and other emissions. Staff has responded, The proposed solar facility will not interfere with adequate light and air. Staff recommends that the monopole structure is used for the transmission line.

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Consistency with the purposes of the zoning classification or in any other way inconsistent with the spirit of the intent of the SLDC or SGMP. According to Section 7.2.2.2 of the SGMP, New Mexico gets approximately six full sun hours per day on average almost everywhere in the state. This coupled with gentle sloped terrain of San Fe County coupled with the annual mean total sunshine hours of 3,400 create an ideal setting for solar energy applications.

Appendix B the use matrix of the SLDC allows commercial solar facilities as a conditional use within the rule fringe zone. Rural fringe zone accommodates primarily large lot residential, grazing ecotourism, equestrian uses and renewable resources based activities. Solar facilities are not necessarily exclusive of these uses. The physical structure of the proposed project will be visually subordinate to the existing landscape. Staff's response, The proposed solar facility is consistent with the spirit and intent of the SLDC and SGMP. As stated, the SLDC illustrates that a commercial solar energy production facility within the rural fringe zoning district is an allowed use with an approved conditional use permit. And Chapter 7 of the SGMP explicitly supports the development and distribution of renewable energy on a regional scale.

Recommendation. Staff reviewed the application for conformance of the SLDC design standards and found that it meets all of the applicable requirements of the code. Staff reviewed the proposed use and determined that it meets the criteria to be approved for a conditional use permit. Staff recommends that if approved by the Board of County Commissioners, the project is subject to the following conditions. Madam Chair, may I enter these conditions into the record.

CHAIR BUSTAMANTE: Please, thank you, Mr. Sisneros.

MR. SISNEROS: Condition 1.Compliance with all reviewing agency's requirements, including the 93 conditions imposed by Santa Fe County Fire Prevention. This must be done before commissioning of the facility.

Condition 2. The drilling or use of an individual and or shared well for this use on the property is prohibited.

Condition 3. The applicant shall provide proper buffering and screening by installing paneling to a portion of the proposed 8-foot tall fence that will be located on the southwest portion of the property that is to be indicated on the CUP site development plan prior to recordation.

Condition 4. Permanent fencing will be required around all designated archeological sites to delineate and preserve the integrity of these areas. This is to be indicated on the CUP site development plan prior to recordation.

Condition 5. Prior to the recordation of the CUP site development plan, all access roads shall be permitted through Santa Fe County, built out and inspected with financial guarantees in place.

Condition 6. The CUP site development plan showing the site layout and any other conditions that may be imposed through the approval process shall be recorded at the expense of the applicant in the office of the county clerk in accordance with SLDC Chapter 4 section 4.9.6.8.

Condition 7. Utilization of the 70-foot tall steel monopole will be required as they have less of a visual impact. The poles will be required to blend into the natural landscape and shall be non-reflective.

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Condition 8. A decommissioning bond will be required prior to the recordation of the CUP site development plan and must be in place for the time of the life of the project.
Condition 9. The applicant will be required to apply for all applicable development permits after the CUP recordation.
Condition 10. Prior to recordation of the CUP site development plan, the applicant will be required to renew its access permit from NMDOT.
Condition 11. The applicant will need to provide a minimum of one accessible parking space as per table 7-9. This accessible parking space must be indicated on the CUP site development plan.
Condition 12. Applicant shall obtain an approved liquid waste permit from NMED prior to the submittal for a development permit.
Condition 13. The applicant is required to work in consultation with the appropriate flood zone authorities to address the requirements specified in Chapter 7 Section 7.18.9 of the SLDC for any still monopole located within Zone A flood hazard area and submit the findings to a staff to staff for the record.
Condition 14. Construction activity to be limited to Monday through Saturday, 7:00 a.m. to 7 p.m.. Any deviation from these construction hours will require 48 hour notice to Santa Fe County and neighbors and neighboring property owners and written approval from Santa Fe County.
Condition 15. Prior to operation, the applicant shall request and pass all required inspections and obtain a Santa Fe County business license.
Condition 16. A detailed water budget is to be submitted for review and approved by Glorieta Geoscience and Santa Fe County Utilities Division prior to the recordation of the CUP.
Condition 17. The applicant will be required to provide a smoke and plume model that will be reviewed and evaluated by Santa Fe County Fire Prevention and a subject matter expert reviewer. Applicant must satisfactorily all review comments and the model must be finalized and approved prior to the recordation of the CUP site development plan.

I do want to indicate to Madame Chair and the Commissioners that the smoke and plume model has been completed. A draft has been completed and is part of the exhibits.
Condition 18. Santa Fe County shall be reimbursed by the applicant for the third-party reviews conducted by Atar Fire and Glorieta Geoscience pertaining to this submittal prior to the recordation of the CUP site development plan.
Condition 19. Per Santa Fe County fire prevention requirements, a 10-foot non-combustible defensible space will be required as part of an overall 30 foot defensible space around the perimeter of the proposed development and to be illustrated on the recorded CUP site development plan.
Condition 20. Construction debris must be disposed of in a solid waste container and hauled off to an authorized landfill as needed for compliance with NMED regulations.
Condition 21. Applicant to conduct a 24-hour ambient noise study at the nearest sensitive receiver which is located at the southwest corner property line to collect ambient readings to evaluate the lowest 30 minute reading for daytime and nighttime. Noise study is to be reviewed and evaluated by Glorieta Geoscience. Applicant is to address all review comments and incorporate mitigation measurements measures as required to comply with SLDC Section 7.21.4 prior to the recordation of the CUP site development plan.

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I do want to let Madam Chair and the Commissioners also know that the applicant has already started this study. They have provided a draft report to us. It is online. But it is not part of your exhibits here today.

Condition 22. Should an alternate source of water be identified, such as City of Santa Fe effluent, the traffic noise and air quality studies are to be re-evaluated by the applicant to validate that the impacts disclosed in these reports have not changed. This will be subject to review and comments from Glorieta Geoscience prior to the recordation of the CUP site development plan.

Madame Chair, staff has added a 23rd condition.

Condition 23. A water source or sources must be identified prior to the recordation of the CUP site development plan.

Madam Chair, staff and the subject matter experts stand for any questions.

CHAIR BUSTAMANTE: Thank you, Mr. Sisneros. Before we move on to the cross-examination, I would like to remind the Board that this is a cross evaluation that will allow for the applicant then to ask questions of staff. Then we will also have an opportunity for cross-examination from those who have parties withstanding. It is not a time for discussion or debate. We'll have plenty of time with that when we hear this -- when we're finally ready to make a decision. Under the rules of order governing quasi judicial hearings, we've just heard from County staff. Thank you for laying the ground rules, the findings thus far. Then we'll hear from the applicant and then other parties with standing. At the conclusion of each presentation, there will be an opportunity for cross-examination of witnesses by the applicant and other parties with standing. Finally, there will be an opportunity for members of the Board to ask questions. These questions must seek evidence that will help the Board reach its decision on the application. I will limit argumentative, repetitive, or harassing questioning. As noted on the agenda, the Commission has imposed time limits on these presentations of all parties. Please note that these time limits include any time used by a party for cross-exam examination on another party and that's seen here on the wall and the clocks for each presenter. The time limits do not apply to Commissioner questions. Any further matters from the County Attorney?

ATTORNEY BOYD: Nothing, Chair. You put it down correctly. I think that it's the applicant and then the parties with standing cross-examination followed by Chair questions.

MS. LADD: Excuse me. I'm so sorry, Madam Chair. Our third party expert has just arrived. So if you want to start with questions for Dominic and myself, that's great. Or he should be in the room very shortly.

CHAIR BUSTAMANTE: Was he going to be part of this presentation initially?

MS. LADD: That is correct.

CHAIR BUSTAMANTE: Then let's go ahead and continue with your presentation. And then we will go on and move to the applicants questioning and then the questioning of the parties with standing if there are any.

MS. LADD: Great and I just also was told that we have a typo in our presentation. It's the 2021 building codes that apply, not 2009. And also I think when Dominic was talking about the water use, I just want to clarify it's 100 to 150 acre-feet during construction, two to three acre-feet per year as operational use.

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CHAIR BUSTAMANTE: Understood. Thank you. Okay. let's hear from your expert continuing with the presentation. If you'll please introduce yourself and be sworn in.

NICHOLAS BARTLETT: Uh, yes. Hello. My name is Nicholas Bartlett. I'm with Atar Fire.

[Duly sworn, Nicolas Bartlett, testified as follows:]

MR. BARTLETT: 342 South Car Street, Lakewood, Colorado. And I understand I'm under oath.

Sorry, I just landed at the airport about 35 minutes ago, so I'm a bit winded. Like every flight was canceled yesterday from Denver. So that's why I'm late. I apologize for that. Okay. Am I okay to go? Okay.

Good morning. Thank you for allowing me to speak today. My name is Nicholas Bartlett. I am representing Atar Fire. I'm the third party special expert for fire and life safety for Santa Fe County. And in this presentation, I'm going to go over the peer review that was done by Atar Fire for this project for the applicable fire and life safety codes and standards.

Okay. I'd first like to give a little background about myself so you know who I am. I have a bachelor's degree in mechanical engineering, a master's degree in fire safety engineering. I have almost 20 years in experience in fire protection engineering. I've worked at Underwriters Laboratories, otherwise known as UL, doing product testing and certifications for fire products. I've worked before as a consultant at Jensen Hughes, which is currently the largest fire protection company in the world. I've spent 12 years as an AHJ in two different states in the California. So I also have AHJ experience and I'm currently the principal engineer, the owner and the founder of Atar Fire which is fire protection engine consulting company specializing in renewable energy technologies. I am a licensed fire protection engineer in five states including New Mexico. So pertinent to what we're here to talk today about my experience is I've been a technical committee member of NFPA855 since 2022. I have been participating in all the updates of that standard. I actually teach NFPA855. I'm one of the few people in the country. I've taught over a thousand people in the US and Europe NFPA855, be it AHJ's, engineers, insurance companies, manufacturers, community members, etc. I'm a member of NFPA800, which is currently being developed, will be the nation's first battery code. It'll be everything related to batteries. And lastly, as it pertains to some of the product safety standards that apply to this project, UL954A and UL1973, I do participate in those committees.

So, what you see in front of you on the slide here is the codes and standards that are adopted and enforced in Santa Fe County. And these are the codes and standards to which the third party peer review was performed against. So the first is NFPA855 which is the national standard for installation of stationary energy storage systems particularly the 2023 edition as well as the international fire code the 2021 edition. The only thing I want to mention here is that I've done work in many states in the US and most jurisdictions actually do not adopt the 2023 edition of NFPA55. That is the latest and most current edition that exists and so some states don't some states and jurisdictions don't even adopt NFPA855.

The documents that were reviewed as part of this peer review were the hazard

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mitigation analysis by Kaufman engineers. That document is essentially a compendium i of all the potential failure modes of the batteries and the mechanisms in place to prevent that and if an incident would occur, what would happen. We reviewed the UL9540A thermal runaway test data, the various product certifications. We reviewed the explosion control design, the modeling report as well as the large scale deflagration test that was done. We reviewed the site plans that have been developed as well as the emergency response plan which is preliminary, the pre-incident plan which is for the fire department as well as a couple weeks ago, the first iteration of a plume analysis which was requested by Santa Fe County.

So what I wanted to do on the next three or four slides is just provide a high level of some of the safety features that are included in these containers to give you an idea of where this sits both relative to what is required and what is being provided and just to better understand what the safety features actually are.

So first of all I want to talk about explosion control. So in my professional opinion, this is bottom line the most important safety feature on any battery energy storage system project. Why? Because an explosion can injure people and first responders and you may hear about some incidents that have happened where first responders might have been injured. Those did not have any explosion control systems. So this particular project -- so we reviewed this in accordance with the codes and standards that we just referenced. So those codes and standards require one explosion control system, one. So they've provided that via what's called an NFPA68 system. So if there's an explosion in one of these containers, all the pressure goes up. It doesn't go out if there's people around. It goes up. So they provided that. We reviewed that design and at the request of Santa Fe County Fire Marshal's Office, they're actually providing a second redundant explosion control s system which is comprised of gas detection. So if there's a thermal runaway in a battery, it produces flammable gases. There's sensors that detect the gas. What they do is they turn on an exhaust fan and they're intended to remove those gases from the container in order to either prevent or minimize the consequences of an explosion. So really the net takeaway here is at the request of Santa Fe County, they've actually provided a second we'll call a redundant explosion control system.

Now this slide is on what is called thermal runaway propagation protection systems. We just call it TRPP. I just want to highlight this because this is this is a voluntary system that's being provided and most projects in the United States do not have these systems. These are relatively new. So Atar Fire reviewed the design and the large-scale testing of this system. But what these systems are designed to do is if there's thermal runaway in one cell, there's many different types of designs. What they do is they're supposed to mitigate the propensity for that thermal runway to go from cell to cell to cell. If you can limit it to one, two, three cells, that's a really great thing because you don't end up with these multi-hour, multi-day fires. And to be honest, not many projects in the country are providing these. And personally, I think every project should have something like this. So we did review the large-scale testing that would validate the performance of this system to that it actually does what it what it says it does.

So they're providing separation distances. We reviewed the separation distances that are intended based on what is required by the codes and standards because that's

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what we are enforcing. And so this installation is classified as a remote installation. That's an official classification per NFPA 55. That means it's over 100 feet from any sort of public way or exposure. And so if you're classified as that, there's certain requirements you have to follow. And in fact, there's actually no separation distance requirements code minimum for a remote installation. So the highlight here is that the back to back containers are 3'6" in apart. The pairs of container are either approximately 22 feet or 41 feet. So they are actually in fact exceeding the minimum standards the bare minimum that would be required.

Lastly, I wanted to go over just a few other safety features that are provided that Atar Fire did review for compliance with the aforementioned codes and standards. First is the product certifications. So the UL9540 listing is a certification of the entire enclosure. There's I don't know 15 construction requirements and over 20 different tests involved in obtaining that. And in order to get that listing you actually have to then prior to that, you have to go get your battery modules tested. And there's like probably about 30 different tests, abuse tests for the modules where they overcharge it, they corrode it, they put the batteries in moisture. They do all these tests by an independent test laboratory like UL or CSA or one of those other big laboratories. And you need that UL 1973 in order to get to UL 9540. So that's a basic requirement. It's a fundamental requirement in order for any project to have those as a bare minimum to establish a level of safety. They will be providing a fire alarm system. So each container as I understand will have its own fire panel and then the site itself will have a fire panel. So what would happen is if there is a fire in a container, there's smoke detectors, they would activate, they would call the Santa Fe County Fire Department to respond. But what they're also providing which would give earlier warning prior to a fire is gas detection which I already kind of mentioned but the gas detection detects thermal runaway byproducts typically prior to an actual fire.

And lastly the BESS units are provided with a battery management system. So those do all sorts of functions performance life cycle but they also perform safety functions. So if the battery management it monitors for example the cell temperatures the cell voltages the charge rates and if there's anything that are out of spec it cuts off the charger and it provides a notification and does a safety function. So that's a really critical part of any energy storage system installation.

And so what I've highlighted here on these three slides, which is what I teach in my course, is that safety for these is not just one thing. It's not just, oh, this is your battery chemistry. You're safe or you're not safe. That that that's not what this is. There are many, many things. I could rattle off about 20 different things. If you do all of those right, then the codes and standards say that it's safe, right? And so there's design features, but there's also fire department response. There's a there's a number of items collectively that need to be properly addressed in order to get to safe.

So a couple weeks ago, we received an updated plume analysis. So I just want to provide a real quick highlight of the review that Atar Fire did. So this plume analysis was requested by Santa Fe County. It's not required by NFP855 or the International Fire Code. And what we did is we just did a technical review of the document because there's no there's actually no codes and standards that say pass fail, right? It's a document that provides information which is actually typically used by emergency management programs and fire departments to inform what to do in the event of a chemical release or

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incident. That's typically what these are used for across the country. So you see on the slide there it says protective action criteria and there's three levels. So these protective action criteria are essentially a glomeration of national standards for exposure limits based on EPA, the American Industrial Hygiene Association. They take all these known health effects and they bin them in one, two, and three. And so pack three is the distance at which there may be life-threatening health effects. Pack two is irreversible or serious health effects. And everything pack two past pack two farther distances is considered mild or transient based on those u nationally recognized thresholds for health.

So what Kaufman Engineers did in this plume analysis is they modeled two scenarios and again the scenarios are supposed to be the worst case both for the release and the wind speed and environmental conditions. So the first was a precombustion non-flaming thermal runaway. They concluded 86 feet was the pack two. The second scenario was a flaming fire. So the first was a subset of that was a low intensity eight-hour burn and the second was a more higher intensity one-hour burn. So of the three of those on the screen there you can see the highest is a little under half a mile. So what that really means is that past 042 miles this particular plume analysis with the all the assumptions they made concludes that past 042 miles is pack one and everything in that area is mild or transient health effects. And so again, just to reiterate how this is typically used is actually by emergency management programs and fire departments and say, oh, here's the zones where we need to evacuate citizens and here's the zones we need where it's okay to shelter in place, which pack one is typically a shelter in place.

Let's move on to CUP versus code compliance. Okay. So CUPs are subjective in nature, right? They require, their approval is in fact independent of code compliance. So, the Atari Fire review was code compliance. Does it comply with the code or not? So a CUP is something that grants an applicant permission to pursue the development for something specific, a specific project, in a specific location but it's not an approval to construct. The legal authority for the CUP is basically the potential to perform construction and that potential is contingent upon meeting every single requirement of the codes and standards that have been adopted by Santa Fe County. So fire and building codes whether it's NFPA or the International Fire Code they don't have a CUP concept it's not it's not in the codes at all, it doesn't exist. Those codes set minimum because we already talked about here there are a couple of instances where they're exceeding minimum. Those codes and standards set the minimum legal requirements for fire and life safety and they are backed by law essentially. So compliance with those is pass or fail. They either pass or they don't. Right? If they don't they cannot proceed with the project. So it's very typical also for projects to have multiple rounds of review where the project will be reviewed the fire marshal's office will say no you don't meet these 10 items please go fix them and they cannot proceed until they fix those items.

So again a CUP grants the authority to perform specific function in a specific location. This review that Atar Fire performed was a code compliance evaluation and it still will be if a CUP is granted. Many projects may obtain a CUP but they don't -- they may not be code compliant so they can't be constructed. But on the other hand not every project requires a CUP but the Santa Fe County Fire Marshal's Office does have to review every single project for code compliance because that's law. So there's a very distinct

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difference between the CUP and the code compliance which I just wanted to emphasize because the Atar Fire review is focused on code compliance.

Okay, so in summary, this particular project is required to comply with the 2021 International Fire Code and the 2023 NFPA855 for fire and life safety because those are adopted by Santa Fe County. They are going to be providing based on our initial review of the documents several safety features that I've explained that are above and beyond what those two codes and standards actually require. That would be the thermal runaway propagation protection system and the redundant explosion control system as well as the plume analysis.

So if the conclusion is that a CUP is to be granted, there will be much more review to make sure that every single part of the project complies with those two codes and standards. There'll be drawings, submittals, more information that is legally required. It's mandated and the Santa Fe County Fire Department must enforce those.

So at this stage because this is a CUP process our review concluded there is enough information at this time to proceed with the CUP. In the future if it's granted there'll be a lot more information that's required to make sure all of the requirements are satisfied. Thank you.

CHAIR BUSTAMANTE: Thank you. Any further statements from staff? Hearing no further comments from staff, we're ready for a cross-examination by the applicant. Are there any questions or cross-examination from the applicant? Thank you. The applicant has no questions of County staff. Cross-examination by other parties with standing. We have any cross-examination of staff through parties with standing. And I will note that you do have this does impact the time that you have on the clock.

MR. STRANAHAN: Before we start that, there was a request to change the order.

CHAIR BUSTAMANTE: Yes, sir. Yes, sir, let's do that. There was a request to change the order of the presentation by Ashley Schannauer and the Clean Energy Coalition, which places the order of the presentation. Assuming that this request is not opposed by staff or the other parties, we can change the order. Who would like to read that order specifically to move -- I don't have the details of the move -- but there was a request for change in the order. And if someone wants to let us know what the specific move would be and whether or not anyone has any objections, we would move forward in that regard.

MR. SISNEROS: Madam Chair and Commissioners, the order as it stands now, the wish is for Ashley Schannauer and the San Marcos Association to switch. So it would actually go County staff, applicant AES, third, New Mexicans for Responsible Renewable Energy. Then it would go Ashley Schannauer, Then the Clean Energy Coalition, and then the San Marcos Association.

CHAIR BUSTAMANTE: That's the order that has been asked to change?

MR. SISNEROS: I apologize. So that's the order as it stands now. The change they wish for it to go now is for AES the applicant, New Mexicans for Responsible Renewal Energy then the San Marcos Association then Ashley Schannauer and then Clean Energy Coalition and then the last four would remain the same.

CHAIR BUSTAMANTE: Okay. So we would be moving item F to item D and have Ashley Schannauer be item E; correct?

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MR. SISNEROS: That is correct.

CHAIR BUSTAMANTE: Thank you. Are there any objections to this change in the agenda from the Board? From the applicants? Are there any objections? Are there any objections from parties with standing?

MR. STRANAHAN: No objections. Just the other part of aspect of that request was that there was there's going to be potentially ceding of time and how we handle that. We just you know didn't have a final decision on that. So we'd like to have some guidance so I know how many how many cross-examination questions I can ask and that kind of thing.

CHAIR BUSTAMANTE: So the clock will show the time that you will have remaining on your cross-examination. So whatever time you use to cross-examine will show on the presenter on the wall.

MR. STRANAHAN: Right. I know. But there has been some discussion about certain parties being able to cede time to other parties. So if they cede from San Marcos say to CEC now I would have instead of an hour I would have an hour and five minutes or an hour and 10 minutes. So that's going to affect whether I decide to do certain cross questions or not.

CHAIR BUSTAMANTE: Yes sir. That's going to require clear communication with our timers here. So, if time has been ceded from another party, we want to make sure that that doesn't affect the time of the party that has ceded the time and that the time is allowed for the new party.

DANIEL FRESQUEZ (County Media Coordinator) Chair Bustamante, just so I'm clear. Did you say you were San Marcos Association?

MR. STRANAHAN: No, I'm with the CEC.

MR. FRESQUEZ: Okay. So if one party cedes a certain amount of time to the CDC, I just need to reflect. For example, if it's 10 minutes, add 10 minutes to CEC and then remove 10 minutes from the other party.

CHAIR BUSTAMANTE: Yes, please. And I and we'll appreciate the patience with assuring that we do that correctly because that's a little bit of juggling. Thank you.

MR. STRANAHAN: Should I just communicate that with them or should I do it through the Chair?

CHAIR BUSTAMANTE: You will do it to the Board and they will work accordingly. Thank you.

MR. STRANAHAN: Thank you.

CHAIR BUSTAMANTE: Thank you. Okay, we are ready for – actually, the question at the table was cross-examination to staff by the parties with standing. Do we have any cross-examination from parties with standing to staff? Seeing none, we will move to the presentation from the applicant. [See below]

B. Applicants Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC

[The applicant's representative were duly sworn and advised to confirm they are under oath.]

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JOSHUA MAYER: I understand I am under oath. My name is Joshua Mayer M-a-y-e-r. Address is 282 Century Place Suite 200, Louisville, Colorado 80027. Is the presentation queued? Is it possible to zoom in on one slide? You do presentation view. There's some details I just would like to make sure that folks can see as best as possible.

CHAIR BUSTAMANTE: While they're working on the presentation. I do want to let the Commission know I was going to try to hold to an hour and a half for a 15-minute break. I see that we're comfortable generally speaking at an hour and a half right now. So, at any
time you all feel that we should take a 15-minute break at an hour and a half, I'm looking for you. But if you see, you know, give me a sign that you feel that we should take a break.

COMMISSIONER HUGHES: Yes, please.

CHAIR BUSTAMANTE: Okay, we're going to go ahead and take a 10-minute break as we prepare for the presentation. [10:32-10:43]

Okay, thank you. Ready? If we can all please be seated. I also want to remind people to make sure that your cell phones are off or on vibrate as we prepare to hear from the applicant.

MR. SISNEROS: Madame Chair.

CHAIR BUSTAMANTE: Yes, sir.

MR. SISNEROS: So CEC, one of the parties with standing did have cross-examination questions of staff. And they didn't hear your last question of them of that.

CHAIR BUSTAMANTE: Okay. Let's go ahead and let's do the cross-examination from staff before the applicant starts their presentation. I'm going to ask everyone who comes to the
podium to please state your name for the record, even if you've already introduced yourself. So, we do have a question for staff. Who will be asking that question?

Cross-Examination from Parties With Standing to Staff

MR. STRANAHAN: Robert Allen Stranahan for CEC?

DEPUTY CLERK: This gentleman was already sworn in previously.

CHAIR BUSTAMANTE: Yes. We just want them to state their name. Go ahead. And how do we set up? Just ask it from here if we have Atar.

CHAIR BUSTAMANTE: You can just ask them.

MR. STRANAHAN: Okay. Do they – are they have microphone?

CHAIR BUSTAMANTE: Yes, they do.

MR. STRANAHAN: Oh, okay. So, just from for our edification, what Dominic, what is the most dangerous aspect of this project?

MR. SISNEROS: So I think that would be subjective, but that would be fire danger.

MR. STRANAHAN: Okay. And it I don't want to be cryptic. It's the BESS system. The battery array and threat and danger of thermal chemical runaway; correct?

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MR. SISNEROS: t would be the battery energy storage system. Yes.

MR. STRANAHAN: Okay. And is this the lithium ion battery technology that is proposed to be employed; is that the safest technology that could be employed?

MS. LADD: I think that's a question for our fire safety expert because we're experts in the land use code.

MR. BARTLETT: Yeah, I can comment on what are the different chemistries I think you're referring to when you say the safest technology. So the safety of a lithium ion battery chemistry is subjective based on the end use. So what chemistry? So there's about six chemistries. There's nickel manganese cobalt. There's nickel manganese cobalt aluminum. There's lithium ion phosphate --

MR. STRANAHAN: Okay. Is there a technology that is safer than the technology that is being employed here?

MR. BARTLETT: The codes and standards do not discuss chemistry and they do not conclude that one chemistry is safer than another.

MR. STRANAHAN: So an LFP system would not be safer? Is that what you're saying?

MR. BARTLETT: Well, I'm what I'm saying is subjective. I think with the measures that have been put in place and meeting codes and standards, it is as safe as any other chemistry and it meets the applicable codes and standards, which is a consensus standard, which is the agreed upon level of safety independent of chemistry.

MR. STRANAHAN: Okay. Well, I'm Just trying to find out if there's a safer technology than the technology being employed. We know that there is. LFP is considered a safer technology.

MR. BARTLETT: I could certainly agree with you that there are other non- lithium ion chemistries that are safer, flow batteries, yes, there are non-lithium ion technologies, yes.

MR. STRANAHAN: And why isn't Atar Fire recommending those safer technologies be employed?

MR. BARTLETT: Because our review was charged with looking at what was submitted and comparing it against the applicable codes and standards.

MR. STRANAHAN: Okay. So the Safety of the citizenry is obviously not what you're looking at. You're looking at do they comply minimally?

MR. BARTLETT: Yes.

MR. STRANAHAN: Okay. As one of the residents, I'd like more than that.

This is a direct injection fire suppression system, correct?

MR. BARTLETT: Yes.

MR. STRANAHAN: And when that fire suppression system is engaged, it shoots one burst. How long does that burst of fire suppressant get released?

MR. BARTLETT: I couldn't tell you the duration of the release. I could I could speak to the testing they've done and summarize that.

MR. STRANAHAN: Does it release all of the fire suppressant within that container?

MR. BARTLETT: I believe so, but I would have to defer to the applicant

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for confirmation.

MR. STRANAHAN: So, as in Moss Landing where you had multiple re-ignitions, that fire suppressant is not going to be able to suppress a re-ignition because there's not going to be anything left in the canister; correct?

MR. BARTLETT: Well, we shouldn't be comparing Moss Landing to this project because –

MR. STRANAHAN: I'm not, not comparing. I'm just saying if it's a single expression of fire suppressant and that exhausts the canister, if there's a re-ignition, which does happen, do you agree?

MR. BARTLETT: Well, I if I could be a little technical, am I allowed to speak for a couple minutes?

MR. STRANAHAN: I just want to know if it's if it can happen. Can this reignite? And if it reignites and there's no suppressant in the canister, it's not going to be effective, correct?

MR. BARTLETT: So there's a difference between a fire extinguishing system which could be used in a building could be used for a data center and historically has been used on battery extinguishing battery energy storage systems and there's a migration away from that to what's being proposed here which is not a fire extinguishing system. It's a thermal runaway propagation protection system completely different Although they both do in this particular instance use a gas agent. But the function in which the gas agent is used is very different. Imagine in a building a gas agent fills this room. There's a fire. This room needs to be very tight to hold that agent in. That's a requirement. That's a bad thing for battery energy sources. That's not what they're doing. What this system does is it takes that gas agent and then injects it into the module. We don't want it to stay there. We don't we don't want that enclosure to be super tight because we don't want an explosion hazard.

So the testing they did, they did a unit and an installation level test with this gas thermal runaway propagation protection system. And --

MR. STRANAHAN: This has gotten way beyond. I have a chance. I have an opportunity to object. If he's going to ramble, this is going against my time.

CHAIR BUSTAMANTE: Please allow him to ask answer the question. You have asked the question and he is allowed to answer.

MR. STRANAHAN: He's gone outside the scope of my question. You're talking about fire extinguishing in an overall -- I'm talking about the componentry.

CHAIR BUSTAMANTE: Okay, if you can wrap up what your answer is.

MR. BARTLETT: Yep, so the system that they've proposed, they've done testing and it demonstrated that it limited cell to cell propagation to one cell and they let that test hold there for I think 24 hours and there was no re-ignitions.

CHAIR BUSTAMANTE: Thank you. I'm going to remind you that if you have a question for the staff or applicant that you are prepared to allow them to answer that question in its completeness. We need to hear it. So, we will not have an opportunity to shut them down if it's something that's beneficial to the Commission. Okay? It's not necessarily going to be in your judgment that you've received all the information that you need. If there is further information that we need, we will hear it. Okay, thank you.

MR. STRANAHAN: I understand. But to the extent that they go outside

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the scope of my question, I am certainly allowed to then cut them off and stop them from filibustering my time away. And that's not in the best interest of the Commission to have them just ramble on on a subject that was not the essence of my question. My question was about if you've used, if the injection system has expressed all of the fire suppressant, it obviously can't reignite again. It can't shoot another. So all of the discussions about fire extinguishers and different stuff in the overall cap -- in the overall facility has nothing to do with the container. The container has a direct injection system and that's what I was trying to talk about and he went way beyond that into an area and all that does is bleed my time away.

CHAIR BUSTAMANTE: We've heard it. Thank you. Go ahead. Any other questions for staff?

MR. STRANAHAN: In your presentation, Dominic, you went through a number of different issues, landscaping, fencing, lighting, parking, no mention at all about the batteries or the BESS system, and the threat of thermal runaway fires nor any discussion about Fluence or AES and their history of fires. They've had three fires in the last six years. Why isn't there a stronger focus in the staff's presentation about the risks? Because the risks are really the only reason there's opposition here.

MS. LADD: I'll answer that one. The Land Use Code is not about battery storage systems. The land use code is in place to ensure that all applicable codes are met. In this case, it's the fire code which is not part of the land use code.

MR. STRANAHAN: Right. But you changed your codes to allow the battery system to be employed in this project. Correct?

MS. LADD: I do not believe that's correct and I'm not sure what you're referring to.

MR. STRANAHAN: Okay. So, you haven't changed any of your codes or regulations to allow battery storage as a component to this project?

MS. LADD: There was a code amendment that added language, added the word solar to what was listed in the definition, but it was only to bring it current with the state's Community Solar Act.

MR. STRANAHAN: Okay. Without that change, you couldn't put this battery array in this part project; correct?

MS. LADD: That's before my time and I won't speculate.

MR. STRANAHAN: Okay. Well, you're the expert. So, if you hadn't changed the code, could you put a BESS system in this project?

MR. SISNEROS: So, appendix B of the SLDC had not changed. That had always been an allowed use for the real fringe zoning district.

MR. STRANAHAN: So, there's nothing in your coding that changed to allow the battery system to be a part of this project.

MR. SISNEROS: That is correct.

MR. STRANAHAN: Okay. No further questions.

CHAIR BUSTAMANTE: Thank you. For the staff, I would also recommend that we acknowledge if there were any changes its relevance to the safety of the project as stated by the cross-examiner was what is of the interest, but it doesn't appear that it's been changed on to our presentation. If there is no further cross-examination for staff?

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B. Applicants Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC [cont.]

MR. MAYER: Good morning, Madam Chair, esteemed Commissioners, county staff, members of the public, both in the room here and those in the overfill, as well as those listening from home. My name is Joshua Mayer. I'm the senior project development manager for AES Clean Energy and it's my great pleasure and honor to be presenting to you today an exceptional opportunity to allow Santa Fe to accelerate its transition to a clean energy future.

As an outline of the agenda that I'll cover along with my colleague Mike Simpson, I'll initiate the conversation speaking to why we are essentially here today bringing this opportunity and this proposal forward for your consideration. I'll also describe why AES Clean Energy is consistently one of the top industry leaders in this field and a trusted community member where we provide energy. We'll then review the specific project location as well as an overview of the technology and the components and the evolution of the design through community feedback. We'll also be demonstrating the UL9548 testing of our battery system which proves successful prevention of thermal runaway, a primary concern of many of the citizens regarding this project. We'll then summarize the extensive project diligence that this project has performed both intentionally and in response to both conversations with the County, the Fire Department, and community concerns. We'll then cover the project timeline for which we are hopeful to then bring this project online and feed power into the local grid as well as summarize both the economic, the exceptional economic, and environmental benefits. And finally, a review of how this project fits within the approval criteria. And while we also think it's worth mentioning that while the Planning Commission approved this six to one, there was a recommendation of denial by the Hearing Officer. So we would like to revisit the reasons that were cited for that recommendation and respectfully refute those.

So why are we here today? I'm sure many of the folks in this room are very familiar with the graph on the left. This is depicting two things both the overall concentration of carbon dioxide in the atmosphere as well as the rate of annual emissions. So what's noticeable to take account here is that annual carbon emissions have accelerated seven times in just the last 70 years. We are starting to make some progress on bringing those down and clean energy is a significant contributor to that. While overall carbon dioxide emissions are one and a half times that which they were at pre-industrial levels. According to leading climate scientists, this is having substantial impacts around the globe but also even locally. Just last month I walked 60 miles along the Pecos wilderness from Jicarilla Peak all the way to Tesuque and frankly was quite concerned by the level of forest kill from beetle and pine and spruce beetle kill throughout such a beautiful wilderness so close. And that's actually something that I'm quite passionate about and why I work in renewable energy is to diminish the impacts of climate change in such natural areas that we all prize.

Policy makers globally and locally have obviously listened to the concerns of scientists that's manifested itself through the UN Paris Accords in 2015 committing to

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countries taking actions to try and reduce CO2 levels to 350 parts per million which is regarded as the level at which we could prevent the worst effects of climate change. New Mexico in 2019 passed the Energy Transition Act which would commit the state to 50 percent renewables by 2030. A goal to which this project would like to contribute as well as being 100 percent carbon-free resource by 2045. Mind you, that's only 20 years from now. So this is really a substantial milestone which is within reach and every community should take part. And in fact, that's what Santa Fe, both at the city level through its 25-year plan as well as the county has made stated resolutions in support of. Resolution 2017-68 was a commitment by the County to also adhere to the goals of the Paris Accord and 23-74 also looking to adopt countywide climate action plans for implementation. The Sustainable Growth Management Plan also carves out an entire chapter describing support for renewable energy and PNM as the local public service utility providing power to many of the customers and the residents of this county is the one that effectively at the end of the day needs to implement and manage this transition of the grid to clean energy resources. So there's currently an open RFP for 29 to 32 resources of which this project is participating.

So all this means is that we are transitioning from thermal-based resources such as coal or natural gas fired plants to solar and wind energy or geothermal as well. But in order to successfully complete that transition, there's one key technological component which needs to complement these facilities and that is battery energy storage which is already demonstrating its value in places like Texas, to avoid brownouts and to respond to record power demand as well as in California, as well as in Illinois, and even globally places such as Australia and Germany. So this is becoming a part of the common thread of the energy transition.

Now AES is specifically one of the industry leaders in this sector. We have over 15 years of experience deploying battery energy storage technology and we already carry the awesome responsibility at a global level of supplying power to more than 17 million households. We operate in a dozen countries and our substantial balance sheet demonstrates that we are a partner here for the long run as our four and a half decades of existence in the power generation sector already demonstrates. More specifically to the United States, AES Clean Energy is among the top five developer owner and operators of renewable energy outside of China. So we operate already over 5 gigawatts of solar, that's roughly the amount of solar energy to power more than 1 million households; more than two gigawatts of wind and approaching 2 gigawatts already of battery of deployed battery energy storage technology. We are regularly recognized throughout the industry and through media for our commitments to sustainability and our innovation in the sector.

Now, let's begin to talk specifically about the Rancho Viejo solar project for which we are seeking your consideration of approval of a conditional use permit today. So, if we begin to talk about why this location, there's several factors. As identified in the Sustainable Growth Management Plan, this site is within the area of highest solar resource within the county and it's also in close proximity to existing transmission lines. The closer you are to a transmission line, the less impact you have by not having to build new transmission lines that are dozens of miles long.

Some clarity around the overall parcel property boundary and the project itself. The overall parcel plat is much larger. It's about 828 acres. The study area for which we

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conducted our diligence is the red area and the proposed fence boundary is the pink line which represents about 680 acres. Within this entire area there'd be about 340 acres left as open space. Also, worth noting that of the 680 acres of the project roughly about 280 acres of that would actually have suspended panels above the ground as there's a significant open space amongst the array itself as well.

This project is about three miles south of Santa Fe. It's two miles east of Highway 14. It's about one and a half miles west of the Spur -- I think it's called the Camerada Loop, Spur in Eldorado. The solar array is about a third of a mile from the nearest residence in San Marcos. And very importantly, the battery energy system is a full one and a half miles from both neighborhoods. And this project sits on a larger overall tract of land that exceeds 8,000 acres in size.

And really in an unprecedented collaboration in my industry experience with the hosting land owner of this project. There's been an effort put forward to transfer the development rights off of more than 5,700 acres as perpetual conservation land as a easement around this project. I've worked previously in efforts on projects to have a one to one conservation offset, achieving nearly 10 to 1 is simply unprecedented in the industry.

If we look at the perspective of the project location to the nearest residence you can see that very faintly on the horizon that nearest residence does show up. But I think that a third of a mile is considered quite respectable offset from the proximity of this project to the nearest house.

I think it's also important that while there's been a narrative that this project is inappropriately sited amongst dense residential development in the middle of all of that being a irresponsible siting of a project. I think it's worth comparison to other projects, battery energy storage, that have been approved in the state and that are moving forward in construction. So if we compare the mile and a half radius from our proposed 48 megawatt 192 megawatt hour facility to the nearest residence a mile and a half away and then we then look at the Sun Lasso 150 megawatt 600 megawatt hour project, so three times the size what we're proposing here. This project is sited on Route 66 in western Albuquerque and there's literally thousands of homes, businesses, interstates within the same radius of which this project has none.

A recurrent theme through the various community conversations we've had, meetings/hearings, wildfire risk is certainly been among the top. And so, I think we'd like to address again in regards to the selection of the siting, it's worth noting that according to County resources this site is in the lowest category for county fire wild risk is deemed moderate. Some folks have said that this is an outdated map. It's from 2014. So if we look at additional resource the wildfirerisk.org even here we see that this site still is cited within a low to moderate categorization for wildfire risk. This is a picture of the subject property. As you can see, it's considered classified 30 percent barren land with vegetative scrub for the remainder of the environment there. So very little vegetative fuel source. But with regards to that, I would like to present a representative energy storage yard from another facility. This one is much larger than what we're proposing. Just for context, the energy storage facility at Ranch of Viejo would be about a third of what you're seeing here from the containerized solution. So you can kind of see there's three blocks there. It's effectively just a little bit smaller than one of those three

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blocks. But what I'd like to point out here is that while what you'll see through the later in our presentation of the redundancy and the layered safety mechanisms which effectively rule to extremely improbable scenario of a thermal runaway event expanding beyond a fire rated container, we take every exception into consideration to plan for a worst case scenario. And so one of the physical design implementations of a site plan is the use of defensible space. So that is siting these battery containers, these fire rated battery containers on concrete pads that are then surrounded within a graveled yard. And then through conversations with the County Fire Department, we then agreed to also implement a 20- foot gravel perimeter road which acts as an additional fire break. So the main takeaway here is that even in a exceptionally improbable scenario of a container catching fire, there is no conduit to subsequent vegetative fuel which would then lead to a wildfire. I've actually seen firsthand a solar project of ours employing a perimeter road that actually served as a defense to the solar project itself from a wildfire in western Colorado. So that that perimeter road protected our own facility from being damaged by the wildfire. So it some of these measures also protect both ways in case there was a wildfire that approached our facility. So this is very important and worth noting.

Throughout the course of the conversation regarding this project, there's often been a lot of confusion about where does the power go. I know that there's been opposition that stated that this isn't a solar project at all. this is just a battery project that's going to utilize energy arbitrage to make money and take advantage of ratepayers. That is very far from the truth. In fact, PNM directly refuted those claims in a media article in response to those assertions by opposition. This project would in most scenarios be supplying power and satisfying the demand here in Santa Fe as part of the RFP that I mentioned before. The project specifically has to demonstrate its ability to deliver transmission into the Zia Rodeo substation on Richard's Avenue here in the heart of Santa Fe.

As I proceed to discuss a bit more of the technical specifications. So this is a 115 megawatt DC solar facility. So that that translates more into the physical representation of how many solar modules would be installed. Our grid utilizes AC energy. So the rated AC output is 96 megawatts. That's through the use of inverters to convert that energy. and then as I've mentioned in order to transition to a fully renewables future, batteries are absolutely essential. We expect the lights to turn on when we want them to and so when the sun's not shining at nighttime or when the wind is not blowing, batteries are essential to be able to bridge those gaps. So this project is proposed to be paired with a 48 megawatt battery at a four-hour duration for 192 megawatt hours. It can actually be deployed for longer than four hours just at less than full capacity. This project would feed into the PNM transmission grid benefiting all of its rate payers and at 271 gigawatts of proposed energy generation that's roughly the equivalent of the entire residential load of Santa Fe. So with one project we can make an exceptional contribution towards this community being able to sustainably power itself. And in fact there's likely to be instantaneous time periods when this project could be powering the entire city and not just a reference to the residential load. And all of this is in support of the state goals to be 100 percent renewable powered.

This is considered a temporary use. We expect a 35-year asset life at the end of which we've already submitted a decommissioning plan to the County describing the

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process by which we can remove the steel piles and the concrete pads and the solar modules from the land and restore the property. We anticipate about a year-long construction process and the project will both be remotely monitored as well as staffed with anticipated four full-time O&M crew. And of course, there'd be very limited site traffic with just four on-site personnel. Although that amount would be briefly higher during the one-year construction period. In comparison to overall developments of all sorts, solar energy development is a very low impact development that effectively is a net contributor to the local community with its generation of energy.

So, as our noise study demonstrates later in the presentation, there's very minimal noise during the operation of the plant. It's a very limited consumption of water and a negligible use of lighting. Through the engagement -- through the process of engaging with the community and with the County, we've taken a significant amount of feedback into consideration and adjusted our site plan over time. So when we were first approaching the county in 2021 and having initial community meetings in 2022, we had a site plan in which the solar array actually extended about a mile further to the west and due north of the San Marcos community. Understandably there was concern about viewshed impact from that community. So we re-evaluated our study area to determine if we could condense the capacity and shift it fully east of the San Marcus community. We were able to achieve that. So there's now no viewshed impact to the north. We appreciate the community for their feedback there. We additionally have decreased the proposed panel height from a 2 by portrait architecture that would have stood about 12 feet off the ground in full tilt to only 8 feet off the ground. In consultation with the Fire Department, we've implemented a full perimeter access road to facilitate first responder access throughout the entire array. At their guidance, we've also agreed to the u implementation of a 30,000-gallon water storage tank. Water very specifically would not be used on an unlikely incident of a container experiencing a runaway rather it would be utilized for defensive posture to water down adjacent containers or adjacent vegetative areas. At the concern of the community about not having full-time personnel as these facilities are in fact capable of being operated fully remotely, we've agreed to fully staff the site with four O&M personnel and to house them in a 1400-square foot building that's located in the northeast. The next slide will demonstrate that. And we've proposed a monopole gen-tie in replacement of the original H frame which would reduce the total number of poles along the 2.3 mile route from 33 to 23 to reduce visual impact.

So just zooming in on the northeast corner, this is where you have additional infrastructure outside of just the solar arrays that populate the rest of the project. So if you look in the northeast corner that is our approximately one-acre substation that takes the site voltage from 34.5 kV up to 115 to feed into the Zia Valencia 115 kV line two miles to the east. To the west in the rectangle there that is where the battery energy system would be cited. It's a about 2 and a half acres. Just adjacent to that would be the 30,000-gallon water tank as well as signage indicating not to block that fire lane for first responders. Just south of the substation is where we'd have our O&M building also in close proximity to the energy storage and we would have a 5,000-gallon tank as well for their service needs and a septic and leach field for their use.

It's 2025, and at this point, I think solar panels are quite ubiquitous in many of our communities. So I won't spend much time on it. Clearly we find solar panels on many of

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our residential rooftops, on commercial buildings, and in facilities across the state and the country. But as I stated, these would be about 8 feet off the ground under full tilt. In the early morning or late evening, we are employing trackers. So actually in the mid part of the day the panels are laying flat horizontal with the ground at which point they're less than six feet about five and a half. The overall ground disturbance is in many ways limited to the piles being driven about 22 feet in between each and aisles that are about 15 feet apart. So you have open space between each pile or between each solar row. And we're very proud at this time to be currently specifying our design with a New Mexico based tracker manufacturer which we would aim to employ in this project.

At this point I'd like to invite my colleague Mike Simpson to the podium here to discuss more details about our energy storage system and its safety features.

CHAIR BUSTAMANTE: Thank you. Sir, you'll need to be sworn.

[Duly sworn, Mike Simpson, testified as follows:]

MIKE SIMPSON: Mike Simpson 282 Century Place, Suite 2000, Louisville, Colorado 80027. I understand I'm under oath.

Thank you very much for the opportunity to speak to you. My name is Mike Simpson. I'm one of the engineers at AES. And I'd like to talk to you a little bit about the battery energy storage system.

I've been working with lithium ion in a professional capacity for the last 20 years. And I'm very proud to be talking about what we're doing here today. The process that we use as an owner operator is really first to ensure safety of our communities and the neighbors of our plants and then optimize the availability or really the uptime of these systems because that's how we maximize revenue. That's how we minimize the overall cost of the electricity that we serve to our communities.

We're providing a conservative view. I think that's been talked about a bit today. Everything we show about the technology will be represented what we have today but we're constantly improving the product and we want to reduce noise, extend the lifetime of components really ensuring that we stay compatible with current codes and standards as they evolve and again we're proud to say that we currently are today. We're going to talk about a lot of risks too. Many of these we don't really believe to have an actual probability of occurrence but just like Mr. Bartlett said the weighting, the tolerance and even the likelihood of these scenarios is quite subjective and so we've opted to test for all of these not debating whether or not it will happen but we test for these we understand what happens capture that analyze that. Model the scenarios across even wider ranges of conditions and then we plan our plants around that. So that's why you're going to see tests of fire and explosion conditions, not because we think they're actually going to happen, but because it's important that we understand every possible scenario.

These are the enclosures that you're seeing on the screen right now. These have evolved over multiple generations of technology. Really the intent is to compartmentalize the energy storage system. And I want to point out that one of these enclosures designed for this plant is far less than 1 percent of the energy in the Moss Landing facility. And like I said, it's been a consistent product within our fleet for the last seven years now and we have not had any fires on this system.

The basis of these systems is that you take a lithium-ion cell similar to what you'd have in your cell phone, although a little bit bigger than that, more like the size of a

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laptop. You pair those together into modules. The modules get strung into strings or racks and then those get put into an enclosure. It's going to look like a shipping container, but these are purpose-built enclosures that are designed to be compliant with ISO shipping standards primarily because it makes it easy to transport, more cost-effective to install. and it also gives it a sense of robustness that you would get from shipping something overseas with salt spray rather extreme environments.

As we've talked about, the energy storage system for this plant is rated at 48 megawatts AC. It's 192 megawatt hours. So, it's 48 megawatts times four. Right now that design includes 38 enclosures and they're appropriately spaced to address all the hazards on that site.

I'm going to move rather swiftly through some of these things that we've talked about before, but of course would welcome any questions. Throughout any energy storage system, there's a number of different hazards, right? These are these are inherent. This is a typical industrial facility, so you might see hazards that you'd see elsewhere; moving equipment, mechanical hazards, as well as common electrical hazards, arc flash, and we are addressing all of those, but what I'm going to focus on today is I think the subject of concern, the thermal runaway of these systems, which is not found in all industrial facilities. It is more directly linked to the chemistry inside these batteries. What -- forgive me if I'm over elaborating, but I think it's important for the context here. What we found is that if a battery overheats what can happen is that the electrolyte a very small amount of liquid not really a spillable amount but that amount of chemical can start a reaction. It can decompose and as it decomposes in that reaction it actually releases more heat. It's exothermic. So that means that the heat that caused the reaction can cause more reaction and that spins out of control. That's what's called thermal runaway. We are -- we have researched this for many years. What we find is that there's many ways to prevent these systems from overheating. The enclosures keep them at the right temperature, keep them from mechanical intervention that could cause some sort of short circuit and result in this overheating. But there are some manufacturing defects that we have seen appear. About six years ago there were some studies that showed around 1 in 10 million is about a failure rate. We know that the production quality has been enhanced quite a bit over the past few years. But even if we assume that, that level of failure, you could have a failure at one of these sites. And so we look at that that internal short circuit from like some sort of contaminant in the system as a potential failure mode. That kind of failure mode leads to one cell releasing, not the entire enclosure going into thermal runaway at a time. And so for one cell thermal runaway, it's one reason why we have this belt and suspenders approach of a thermal runaway propagation protection system.

I will note though that all the intense study around the industry, not just at AES, but everywhere has been widely socialized. The industry has learned a lot over the past many years. Some of the most extreme incidents happened back in the 2010s and since then the codes and standards have evolved to address this and it shows. Really the first time you started to see UL9540 that was mentioned earlier as well as NFPA 55, the model code emerge in around 2020 is where you see these rates fall drastically these failure rates fall drastically and stay low. We're very proud to be part of that statistic.

I will also note that these have led to changes in how the industry has designed systems. Again the enclosure that we showed you that we've designed for this site is just

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the evolution of enclosures that we were deploying back in 2018. So this is not new to us but around the industry we've seen fewer systems designed putting many, many batteries under one roof and they've all gone to compartment pretty much all gone to compartmentalized systems like we're showing here. We also have a few other differentiators. We've gone to liquid cooling which is just more effective at managing the overall lifetime and minimizing any, you know, unavailability issues. And then also included more monitoring of these systems and then as I mentioned in the AES spec systems we deploy a targeted clean agent in this thermal runaway propagation protection.

I'll just repeat again we've had no battery fires on these system designs in the last six years of deployment since we've been deploying it.

Our safety approaches that Joshua mentioned are really focused around layering redundancy. So, the first step, which is kind of a funny first step, is the hazard mitigation analysis. And the reason why it's funny is because in order to do a hazard -- in order to perform a hazard mitigation analysis, you kind of have to know all these other hazards. You have to quantify them. And so, it's really a first product. We've gone as far as submitting that draft for this. And we will continue to update that. I'll note that the NFPA69 compliance system that was proposed for design, as Mr. Bartlett recommended, has been designed by this point and will be included in the updated hazard mitigation analysis. But once you do that, then you can understand what once the HMA is written, it very clearly outlines the gaps, right? Or the hazards that need to be addressed and then those systems can be addressed. Then at that point, the hazard mitigation analysis can be revised and include how each of those hazards are addressed. But those protections, I've just included a few of them here. We have battery management systems. These are the BMS. This is monitoring of voltage, temperature and current of all the systems. It has some control capability to disconnect itself if it detects some sort of anomalous behavior. But most important it gives us eyes and you know figuratively ears into the system. We have emergency shutdown capabilities. So if the controls of the system or a human monitor detects some sort of anomalous behavior, we can shut down that system and go investigate. We have flammable gas detection. So if there is any gas released, we know about that and we detect that at much lower limits, but we actually will alarm, shut down and evacuate those systems at 10 percent of the lower explosive limits. So one-tenth of the amount that could even create some sort of deflagration or explosion, we are acting at that at that stage. We have fire detection and alarm systems. We have again the direct injection of the fire suppressant or the TRPP. Exhaust ventilation I already talked about. Deflation venting which is a different kind of venting that's really a pressure relief valve. So, every system were to fail and you still have some sort of , you know, pressure release due to ignition of a flammable gas, there's a pressure relief valve in the top of these enclosures that directs that pressure upwards instead of creating a potentially more hazardous environment. You know, rupturing the sides of the enclosure or releasing it out where personnel or other assets might be. And then, with all that, we engage in first responder training. We've been engaging with the fire department here for many years and we'll continue to do so. And all that gets built into our emergency response plan.

I'm not going to go into depth on UL 954A because I think Mr. Bartlett covered it. but just to clarify, UL 954A is a test standard. It's not a pass fail criteria. The only pass fail is whether or not you succeed in collecting the data needed to be analyzed by a fire

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protection engineer. Of course, we've done all this testing multiple times on these systems. And we're happy to be reporting that publicly through this project.

Just quickly, I'm going to run through some of the passive safety elements. And when I talk about passive safety, these are things that don't require power. They don't require active monitoring. These are just inherent capabilities, like you would find maybe a crumple zone on a car being passive safety. You don't have to do anything for it to be there. So this – at the cell module level we talked about UL 1672 excuse me 1642 and 1973. We of course also engage in factory QA quality assurance and quality control with our suppliers to ensure that we're getting quality systems long before they even hit the site before we have to mitigate any hazards. And then the battery management systems are monitoring those for us. The enclosure level we have insulation and isolation. So insulation being literally like the foam in your house that keeps the cool cool and the hot hot. And also isolation meaning that we are electrically isolated from short circuits or faults. We can disconnect these systems when needed. We have a lot of field quality assurance and quality control for when these systems are installed to ensure they continue to comply with the standards and codes. And then we talked about environmental protection like setbacks. And of course the deflogation vents are passive. Then at a system level that defensible distance the fencing the monitoring. From an active safety point of view these are systems that requires that basically provide some sort of intervention to a hazard. So there's disconnects from that BMS that can isolate those systems. The direct injection of the fire suppressant could be classified as active. And then we have active thermal management keeping these things at the temperatures they like to live at for 25 years without replacement. And then the NFPA69 combustible concentration reduction. This is the system that that can flush in fresh air and flush out flammable gases. Also while diluting those systems to prevent any sort of explosive environment from occurring. We have horn and strobe alarms for any personnel on site during any of these events. And then 24/7 remote operations control center monitoring. This is an AES in-house capability. This is not a third party. We do this for all of our plants and they also serve as subject matter experts to be able to advise first responders when they act in the case of some event.

Very quickly, I've I've mentioned all these items, but you can see how these enclosures are basically situated. The black rectangular prisms throughout the enclosure. Most of the enclosure interior volume is full of battery modules. On one end of the enclosure, we've got some disconnects. We've got some auxiliary systems like dehumidifiers to keep the, you know, condensation and corrosion down. We have the heating, ventilation, and cooling, the liquid cooling pipes. We have internal PLC's, programmable logic controllers, industrial controllers that are meant again, these are not Windows-based systems that can that can crash. These are meant to run continuously 24/7. And when anything is in an abnormal state that is alarmed, through our site control and data acquisition system, to that remote operation center.

I want to quickly illustrate how this thermal runaway propagation protection system works through a short video. This is a video that that we collected during our test. We did in addition to testing that we had received from our suppliers, our battery suppliers. The thermal runaway propagation protection system is basically a cylinder of fire suppressant along with a network of tubes that goes throughout the enclosure. It

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runs over every single battery module and every single tube has multiple perforations in it. Each perforation is covered with basically a plastic sleeve. So it's sealed under normal conditions, but if there's a thermal runaway event, that plastic melts very quickly. It exposes the perforation directly over the fire. And when smoke is either one of two situations can trigger this. Either you have two smoke alarms go that ill trigger fire suppressant or you have heat detected in a module that is above a certain threshold. Either one will trigger the basically opening of a valve, release that fire suppressant into the entire network of tubes. So wherever there is a fire, and that perforation is exposed, the fire suppressant runs out into that and basically floods that cell. And so again, it's not a extinguishing system for a large-scale fire, but what we've shown is that it does drastically reduce the heat. It doesn't extinguish that fire, but that fire continues and then it cools the neighboring cells so that the fire doesn't go beyond one cell. We have again tested this extensively. That testing includes monitoring of those systems until they reach ambient temperature again. So at that point with no elevated temperature there's no further risk of spread of fire. That was mentioned earlier. That's how the system works. Is it possible to show the video? Do I just click again?

[Video was shown and Mr. Simpson talked over it.]

And I'll talk through I mean essentially you're really not going to see a whole lot here. Apologies for our material. We'll get through that quickly. These are some of our previous systems that we've installed in the past few years. But they do they have had this same thermal irrigation protection system. So there every enclosure has its own fire alarm control panel FACP that can be linked to a site panel that that can be visible at all times to first responders. And again all of those systems are monitored 24/7 by our teams. In the back there's a network of pipes that gets distributed throughout the enclosure. Those pipes literally run over every single module every single cell. So the third party test was conducted at a nationally recognized testing laboratory, CSA. They were the ones hosting the test but we did collect this data. And what you see in the video is flame out for a few seconds and then that the smoke detectors trigger the release of the suppressant. The suppressant was that cell and the and after several about 30 more seconds that fire finishes. You're going to see the camera change views. It's not some sort of -- there's a flash of light, but it's really just the camera changing into night mode here into infrared mode rather because there's no more light inside that system camera. And then all you see on the outside of the enclosure image is basically a one puff of smoke. At that point, we expect that the flammable gases have been combusted but they're not really, they don't present the same hazard as if they were continually out of the system and then we monitor that system. In this case, it took 6 hours to return to ambient and then at that point the test was concluded per the standard. [end video]

So I'll go on to the next thing. I do want to quickly touch on the scenarios that we recent more recently analyzed at the request of the County. We did look into a more detailed analysis of what's called the plume study. What happens if there is some sort of event. Again, this is the improbable situation where all of the redundant safety measures that we just talked through have failed. So this is not like in parallel. This is sequential. everything we just talked about as a safety mechanism has failed for whatever reason. This is not typical of safety culture that you look at multiple parallel failures. Typically, single or maybe dual fault tolerance is what we're looking for. But we do look at it here.

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And what we find is that in the first scenario, if there's a cell failure and you release combustible gases, but you're not igniting those, which is somewhat rare, but can happen in single cell events. In that case what we find is that at about 11-feet altitude there are exposures above acceptable limits to about 87 feet. So that's well within the site boundaries of AES's plant design. We do with all of these studies you see by the yellow arrow we transpose that to ground level because yes someone would be at about 6 feet altitude but if you get a downdraft we do consider that. So 87 feet would be the distance that we would estimate there. If we look at the situation where you have all of the situations where that gas is ignited and you actually have a fire, this was reported on earlier, but that's about .43 mile, right? Now the study showed that that would occur in the expected wind conditions that would occur at 195 feet altitude. So not really detectable to people. But we do again assume that maybe everything goes wrong and then it goes wrong again and you get a downdraft that forces that to the ground. In that case it would be at .43 mile again far, far away about a third less than a third the distance to any residence. And then just quickly summary summarizing this up all this gets built into our emergency response plans which we coordinate with the local fire departments at all of our plants. These include, you know, how this should be managed, who to contact, what are the possible scenarios referencing the hazard mitigation analysis. As well we detail our cyber security plans. And so with that, I'd like to pass it back to my colleague Joshua. Thank you very much.

MR. MAYER: Thank you very much, Mike. Great. Well, seeing that I have a little bit more than 15 minutes left and there's still a bit of information covered, I will try and go fairly expediently. That being said, we certainly will welcome questions at the end of this and we can certainly revisit any slides that you feel we may have passed through quite abruptly.

So the next couple slides are just to document the extensive amount of diligence that we've done in evaluating the site and in providing the information of interest to the County and to the community. I can say that in my experience, this is more diligence that we produced at this stage of a project development than any other project I've worked on. But it's just a testament to the communication, the dialogue that we've had to make sure that the County and the community has the information to have the confidence that we do that this can be a safely operated facility. So we fully have performed a whole host of environmental studies listed here that have already been mentioned in prior presentations. But we've also included appraisal of the solar impact study. This was performed by a national appraiser and then cross-checked by a local Santa Fe based appraiser. These reports were done to the standards the uniform standards of appraisal practice by the appraisal institute utilizing match pair analysis and anticipating no impact in values to the nearby residences.

Again we've advanced the performance of many studies and draft reports that typically are not provided at this stage but rather when we go to a construction permit but we've very voluntarily and eagerly performed the preliminary hazard mitigation analyses, the first responder guidelines, pre-incident plans and the plume study that Mike just covered now. And the noise report I'll touch on here momentarily. Actually, I'll touch on it right now. So, there actually has been an update. This slide is now slightly out of date as we were requested after the documentation deadline to perform a 24-hour field

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survey of ambient noise. We performed that. I believe that'll be distributed now. But at a high level I will provide the updates that at the end of the day the anticipated noise levels and impacts from the facility are still within the County ordinance for acceptable noise. Those would be 37 decibels during the daytime from the facility and 30.7 at night time. Both of these fall within the thresholds of five higher than the ambient which is actually below the code of 55 and 45. So, again these are very silent facilities and the impact is deemed to be negligible to the human perception.

We'll just revisit the visual simulation. There was certainly concerns about view sheds. This is looking at the view from highway 14. So in order to protect the scenic byway, the facility is sited at a distance that again is very difficult to discern. You may see a faint blue line on the horizon, but the overall characteristic of the view is unaltered. from Eldorado, it's extensively or exceptionally difficult to view the site being more than a mile and a half to even two miles away. There's also some shrubbery located near the neighborhood that that disrupts the view. You might be able to see gen-tie at two miles long at certain northern locations of the neighborhood. All in all, I think there's maybe 20 properties on the extreme perimeter of the neighborhood that may be able to see the facility approximately one and a half to two miles away.

And then in full transparency, we're also sharing the visual simulation from the nearest residence. This is at the property boundary. It's actually another thousand feet to the nearest residence but you can see that, you know, there is evidence of the of the solar array located to the northeast of the property boundary. However, there's no disruption to the view of the mountains or much of the vegetative area to the north. And this does not account for the condition of paneled fencing in this part of the array.

There's a lot of talk in over the course of many months regarding this project that it's most certainly going to contribute to groundwater contamination and that there's going to be PF -- I'm sorry, PFA contamination. There's been a misconstruing of other unrelated incidents in the state with actually what the targeted clean agent suppressant being proposed here is. So, we're proposing FK5112, previously also goes under the name of Novak 1230. Very important to note this is a non PBT. So, there are tens of thousands of PFAs, we like to call them forever chemicals, but there's tens of thousands of them. This is one of those tens of thousands. And there's a category of non PBT, meaning it's not persistent, it's not bioaccumulative, and it's not toxic. This is an EPA approved fire suppressant that is largely employed in libraries, data centers, hospitals, could even be in this building somewhere. So, it's very commonly utilized. It's housed in a container within the BESS enclosure. There's ingress protection, so there's no manner for this to leak outside of the container. And given that it's applied directly at the cell level, this is not a flooded application and it's vaporized upon contact. And lastly, with there being no guidance to provide water on an affected container, there's literally no medium for groundwater contamination in the worst case event of a thermal runaway in a scenario like this. So this is a -- this is not a PFA that has often been confused with AFFs, aqueous film forming foams, utilized in other fire suppression that has led to contamination and unrelated nonsolar projects in the state that have been confused in the media with a risk that this project does not actually pose.

Water use. This has also been updated based on some guidance with an exchange with the third party reviewer. But the overall point that I'd like to express here is that

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there's a significant effort to utilize reclaimed water. The majority of the water for the project will be deployed during the construction phase as dust mitigation mechanism. This would be estimated to be 100 to 150-acre feet over that 12-month period. That's roughly the equivalent of the low-level use of a golf course or of about 480 homes. So that's about 20th the size or the anticipated use of the Eldorado neighborhood. And while our initial report has us claiming or anticipating using 50 percent reclaimed water, we will attempt to utilize as much as 100 percent that would increase the total number of trucks to between 22 and 33 a day but that's not anticipated to have any impact of the site threshold analysis for traffic impacts.

During the operational phase of the facility, the water use is substantially less, only two to three acre-feet, and that's actually quite optional for washing panel soiling. and there'd also be the 3,000 gallons a month of portable water for the O&M personnel. Two to three acre-feet is about four to eight houses annual water usage.

Just at a high level, the project timeline, we began our conversation with the County in 2021. Over the last several years, we've updated designs. We've performed studies. We've advanced through the Planning Commission earlier this year. We've obtained an interconnection agreement with PNM and we've submitted a bid into the PNM RFP. So, we're hoping, with your consideration today, to secure the conditional use permit. We are also hoping to be successful in the RFP with PNM and ultimately begin construction efforts, completion of design in 2026, initiation of construction as early as the end of '26 or early '27 to be operational by the end of '28 and the facility could operate for 35 years.

I would like to quickly review the significant economic benefits that this project presents to the County and to its citizens. So most importantly this is a market competitive supply of clean energy that in times of inflation as we've all experienced last several years is provided a long-term fixed cost for multiple decades. So that is very significant at holding energy prices down. During the construction phase, we anticipate nearly 200 jobs to be created with an additional four high-paying jobs for during the operational phase. There's of course additional contributions to local services, to restaurants, other professional services and accommodation. This project represents more than a $200 million capital investment in the County to be able to generate significant amounts of energy. We estimate nearly $28 million in overall labor of wages, another $5 million of those wages or additional material procurement to happen specifically within Santa Fe County. I mentioned the specification of utilizing a New Mexico based tracker manufacturer, we estimate that value to be upwards of $18 million in manufacturing output. And while it's preliminary at this time, this project would ultimately seek an industrial revenue bond and through discussion with local counsel, we estimate that that could lead to in excess of $10 million in property tax generation contributions to the County for its services, as well as, at the time of construction and upfront $4 million in gross receipts taxes of which 3 million we anticipate would go to the County. Of course from the environmental perspective again this is a low impact development that simultaneously diversifies and strengthens grid resiliency in Santa Fe County. It contributes to the overall state goals of achieving a 100 percent clean energy future powered by renewables and can provide the equivalent of nearly the entire residential annual load of the community.

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With the time I have remaining, I'll just quickly revisit the approval criteria and then of course respond to the Hearing Officer's recommendation. So many of these criteria were reviewed previously but I'll just speak to them in brief. So through the adherence and actually going above and beyond as has as has been described already with applicable fire and safety codes , we firmly believe that this project can be safely operated and would not pose any detriment to the health, safety or general welfare of the area nor create a potential hazard for fire, panic or other dangers. There would be minimal congestion to roads given that we would only have four personnel operating the site. Again no impacts to population. This is a net contributor to the community as it's not drawing on public resources rather contributing through energy generation and property tax and would have no impacts on light or air being that this is an emissions free energy generation facility. And as is stated in the rural fringe zoning renewable resource based activities are an appropriate zoning use as classified.

So I would, of course, like to just quickly address the conclusions that the Hearing Officer made so that we have that on the record for your consideration. The first one that was cited was that the project is too big and too close to communities. Given that this project can actually provide the equivalent of the residential load of the community and not even the entire annual use of the community, I would say that it's not too big. If anything, it may even be too small. The battery is a mile and a half from the nearest residence. So I think that is very appropriately sited, especially in light of the results of the plume study that we provided. And the solar is a full third of a mile away from the nearest residence with only 20 homes within a mile. Regarding concerns of battery safety and prior incidents. Again, it's worth noting that many of the incidents that have made the news predated current fire safety codes and standards, specifically NFPA 855 and UL 9540, which you've already heard quite a bit about. But this project will adhere to all of those latest standards and in fact exceed many of them. There was the mention that the ability for the County to manage a potential BESS incident without a proper Hazmat team. That was cited yet both the County Fire Department and the independent consultant did conclude that sufficient level of information has been provided to validate the issuance of a CUP at this time and I believe the City of Santa Fe has a Hazmat team that can respond in 24 minutes based on our pre-incident plan. There was a citation that this is a proposed system that's older and a lesser safe type of technology. That is also untrue. This is our latest generation. We've been deploying this type of infrastruct -- or this type of architecture for more than six years with no incidents to date and this will continue to be the latest generation of that. But it's being designed also to the latest standards of NFPA and UL.

I already addressed the concern about PFAs but it was misconstrued in this finding. Again there was the conflation of aqueous film forming foams from other unrelated incidents not solar projects. That is not at all comparable to FK512 which is a non PBT clean agent that we're proposing. And as water is not a recommended use in the case of a thermal event there is no median for groundwater contamination. This is largely a solid state facility.

CHAIR BUSTAMANTE: You have three minutes.

MR. MAYER: Thank you. Potential for wildfire we've already addressed through the significant redundancy of safety features in the system as well as the physical

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design aspects ensuring defensible space void of vegetation to serve as a conduit and siting it in the lowest area of fire risk. There has been no evidence that I've seen to date of any home insurance being affected by proximity to solar and a battery project. Climate change, however, is leading in many areas to that effort. So, if anything, this is helping combat that. And we performed the property appraisal as well, from an independent, two independent appraisers.

Lastly, there was unfortunately some outdated, inaccurate information that the Hearing Officer cited from the draft first responder mitigation guidelines. Those had been updated and the language that she had cited had actually been removed more than two months or about two months prior to the hearing, but apparently that did not make it to her. So is it is irrelevant cited language that no longer had a basis but the updated included the mention of the direct injection clean agent fire suppression system very notable.

So I'll conclude going back to the actions that have been taken at the global and local levels with the message that came from Antonio Guterres, the secretary general of the UN just at the new year. So we're currently in a string of the 10 hottest years on record all in a row. And so there is significant concern that action needs to be taken now. And so at the direction of the UN and the secretary general encouraging all countries, governments, communities to do what they can to support this transition to renewables. And so with that, it's again my honor, and my utmost pride to be able to present to you all today this opportunity for Santa Fe to also take a leadership role in participating in a clean energy transition when you consider approving the request for the conditional use permit today. So with that, I would invite -- thank you again for your attention both Commissioners, staff, members of the audience, both in this room and tuned in from home. As the sun sets on the horizon, Rancho Viejo Solar, if approved and built, will be able to keep the lights on for Santa Fe well into the night. So with that, I invite any questions that the audience or the Commissioners may have for us. Thank you for your time and attention. Thank you.

CHAIR BUSTAMANTE: Okay, we have cross-examination by other parties with standing
and we will again, the time for the questions and the answers will work against the time but if I can ask the applicant to promptly return to the podium to answer the questions unless microphones have been made available. Are there microphones there? No. So you will need to return to the podium quickly to answer any questions.

MR. SISNEROS: Madam Chair, yes, the applicant has been provided a microphone.

CHAIR BUSTAMANTE: Very good. Thank you very much. So the applicant will not have to get up and answer the question. Okay. Questions for the applicant? Yes, sir. Please state your name.

MR. STRANAHAN: Robert Allen Stranahan IV for CEC. And I've already been sworn in.

I have a couple of questions for you. The first one is are you going to be using Fluence as a –

CHAIR BUSTAMANTE: If you can please speak into the microphone.

MR. STRANAHAN: Are you going to be using Fluence on this project?

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MR. MAYER: No, sir. This is an AES specified design.

MR. STRANAHAN: Okay. And there's they're not going to have any participation in the operations or in any way whatsoever.

MR. MAYER: No. And I think it's worth denoting that Fluence is a completely separate business entity from AES Clean Energy. We both have common ownership through the AES Corporation who owns a variety of business units and --

MR. STRANAHAN: I'm aware of that I'm aware that they're –

MR. MAYER: -- it's a joint venture mutually shared.

MR. STRANAHAN: I don't need to know their history. I asked if they –

CHAIR BUSTAMANTE: I'm sorry please allow him to answer the question.

MR. STRANAHAN He's just trying to run out the time.

CHAIR BUSTAMANTE: Okay.

MR. STRANAHAN That's ridiculous.

CHAIR BUSTAMANTE: Okay, if we can keep our question, our answers brief to answer the question.

MR. STRANAHAN: It was a yes or no question. Were they going to be on the project?

MR. MAYER: No.

MR. STRANAHAN: Thank you. This technology that you are employing is so dangerous that you have had to warn your shareholders in your annual report that this technology may lead to injury and death. Correct?

MR. SIMPSON: I believe that statement was talking about previous technology not the AES specified technology. So, no.

MR. STRANAHAN: And you stated before that and if I get this correct that in the last seven years by employing this technology you've had no fires. Is that correct?

MR. SIMPSON: Correct.

MR. STRANAHAN: However, you acknowledge that you have not employed this exact compilation of systems in any other area. Correct?

MR. SIMPSON: We have deployed it.

MR. STRANAHAN: The exact same system?

MR. SIMPSON: Correct.

MR. STRANAHAN: Okay. Where was that?

MR. SIMPSON: We deployed it at a test site and we are now deploying it in California.

MR. STRANAHAN: Okay, So, two sites. Question, is it correct that there have been 81 fires related to BESS technology in the last seven years, 81?

MR. SIMPSON: I do not recall that figure.

MR. STRANAHAN: Do you think that's high or low?

MR. SIMPSON: I don't recall.

MR. STRANAHAN: Okay. It was in your presentation. There are 81 fires related to this. So, the idea that this is somehow innocuous technology is crazy. And that's all the questions I have. Thank you.

CHAIR BUSTAMANTE: Any other parties withstanding questions?

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Please state your name.

ASHLEY SCHANNAUER: My name's Ashley Schannauer.

The question is for Mr. Simpson. Your slides indicate that the this technology has been UL 9540 certified; is that correct?

MR. SIMPSON: Correct.

MR. SCHANNAUER: When did it receive that certification?

MR. SIMPSON: The official date was a few months ago.

MR. SCHANNAUER: Thank you.

MR. SIMPSON: Thank you.

CHAIR BUSTAMANTE: Additional questions from parties with standing. Please approach the podium and state your name.

SELMA EIKELENBOOM: Dr. Selma Eikelenboom. This is not a question for any of the applicants. They showed -- they came up they came up. It has nothing to do with –

CHAIR BUSTAMANTE: She is a party with standing and if it's not a question for the applicant, this wouldn't be the time to state make a statement.

MS. EIKELENBOOM: They show -- you brought the report the new test report.

CHAIR BUSTAMANTE: Then we will wait till your time to speak and you can bring it up then. Thank you very much. Anyone else have questions for the applicant at this time? Okay. Questions from the Commissioners for the applicant? Are there any questions from the Commission for the applicant? Yes. Yes, and we do have a question for the staff as well. We can use that as well.

COMMISSIONER JOHNSON: So is now the only time that we are will be have the opportunity to ask questions of the applicant or may we do that throughout for instance in response to a claim or evidence presented by parties with standing. We could then ask the applicant to clarify it. Would that be allowed?

ATTORNEY BOYD: Chair and Commissioner Johnson, I believe that it's your prerogative to decide the manner of questioning of the parties proceeds as the Commission. If you all want to ask questions of the parties as they present, that's fine. If you want to ask your questions at the end of the day, that's fine. But I think that it's, you know, from for purposes of economizing on time there are pros and cons to either approach in terms of you might have repeat questions throughout the day if you go as the presentations unfold but then you might forget and retread previous matters if you're if you're asking questions of someone who's presented four hours ago for example. So it's up to you to decide amongst yourselves and you could deliberate on that as well if you want to do that.

CHAIR BUSTAMANTE: Would you like to discuss this offline or we can discuss this now in session? The opportunity if there's been a presentation and you have a question that comes up, we can hold our questions at that time and then ask either staff or the applicants when it's our time to question the parties with standing or we can wait till the end of the day. I do hear Attorney Boyd saying that's kind of longer time, but what would your what would your preference? And I'll look to the whole Commission for this.

COMMISSIONER JOHNSON: Yeah, I'll defer to the other

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Commissioners or at least hear them out. But I think both. I just wanted to make sure that now was not the only time. Thank you.

CHAIR BUSTAMANTE: Now will not be the only time for sure. Yes. Okay. Are there any questions of the applicant at this time? Go ahead, Commissioner Johnson.

COMMISSIONER JOHNSON: Okay. So, I do have one and that's about defensible space. So, you know, a couple other things I certainly need to mull over.

In both staff application and in the presentation by the applicant, there was the defensible space plan, specifically in the staff presentation referenced defensible space 10 feet part of 30 feet. And I just wanted clarification on that. I don't quite understand how that was phrased.

CHAIR BUSTAMANTE: Staff, Chief.

FIRE MARSHAL BLAY: Madam Chair, Commissioner Johnson, 10 feet is what's required by the code. IFC code requires 10 feet. The Wild and Urban Interface Code requires 30 feet and that's why we are going with a more restrictive which is 30 feet.

COMMISSIONER CACARI STONE: So the defensible space will be 30 feet.

FIRE MARSHAL BLAY: Thank you, Chief Blay.

CHAIR BUSTAMANTE: Thank you. Any other questions? Commissioner Cacari Stone?

COMMISSIONER CACARI STONE: Thank you, Chair Bustamante. First of all, I want to just first time we're speaking here. I appreciate everybody's effort to make this a successful open space for comment and equal participation. So, I just want to appreciate that.

I've been reading through a lot of the materials, all of the materials actually, and absorbing it. And I'm just going to ask some technical questions first and then I have other questions for the staff as they relate to the AES presentation as it relates to our staffing and our codes and what we have on the books with the county. And it's all related to the CUP. I just want to be clear. All my questions as well, I want to express my transparent commitment that this -- I see this and we know this is what we're here for is we're looking at the CUP, the conditional use permit, but this is not at all arguing the core value of renewable energy and solar energy. So, I just want to be sure that I'm clear and that I'm putting out that out that message as an elected official.

So I for AES, I just have a question. What's different about this warehouse design? I know you presented it, but you could you compare your design to the design you did in California as well as in Arizona and maybe clarify what's different, what you're proposing for Santa Fe.

MR. SIMPSON: Yes, of course. Thank you for the question. I think the first item to note is that those systems were not designed by the engineers at AES. Those systems were designed by third parties and the systems were then operated by AES in California and Arizona. We have several facilities so I'm assuming you're referencing ones that had a thermal event. But the systems designed by AES have not. The other major difference is those systems, the three fires that have been referenced all included a different technology. It was a different physical cell structure. It was a different

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assembly. Again, those were installed in large buildings where a single failure could transpire. Several other differences in the engineering of those systems including the hazard mitigation process and the codes and standards that were applied to those systems -- well, basically the codes and standards applied to this system and the AES specified systems have all been in place whereas they were not in place at the time of those other systems. Is that answering your question?

COMMISSIONER CACARI STONE: Yes, thank you. I appreciate your response. And do codes of standards that are applied, have you applied various practices that are different based on the locality of codes by states or counties?

MR. SIMPSON: Yes, and how we go beyond the codes and standards. So in how we approach the codes and standards in each state or in each jurisdiction rather the authority having jurisdiction which in many cases is for the fire code is often the fire department or it could be building department in certain jurisdictions. There are some subjective interpretations of the code and so we will adapt to that but we always start with the foundation of what we understand as the common interpretation of those codes and standards and then we typically will go above and beyond when certain requirements demand that or if we learn that there is a better method while still adhering to the codes and standards we can take steps beyond that as in this case we added the NFPA69 compliance system about a year ago, a year and a half ago, and it's only now making it into the newer HMA.

COMMISSIONER CACARI STONE: Thank you very much. My other question and of course you're the engineer, there seems to be in all the packet materials in these binders we have in front of us the issue around chemistry disclosures. Cell chemistry is key and I know you thoroughly and visually explained to a certain extent how you manage preventing thermal runaway. In terms of cell chemistry what's needed to assess the thermos safety and fire and toxic risk of a particular area? You hadn't mentioned the chemistry and can you explain for myself and the public why this is so important and what you're willing to disclose?

MR. SIMPSON: Yeah, of course. First of all, I'd like to clarify that we don't prevent thermal runaway. We do inhibit it through the passive safety mechanisms. but we also mitigate it from propagating. So, I guess it's twofold there. The chemistry is extremely important. The chemistry is what determines how much heat is released when these failures do happen, what types of gases can be released and the way we assess it just like any hazard is by testing it, monitoring it and using that data. Much like you would have crash testing in a car. No one wants to be in a car crash. The automotive manufacturers don't expect there to be a certain minimum number. They try to prevent it. But you test for it and understand. And so similarly, we play devil's advocate ask what is the worst possible thing to go wrong and then what can go wrong beyond that. We issue testing of those scenarios and then we design mitigations for whatever hazard we observe. Did I answer your question?

COMMISSIONER CACARI STONE: Yes, somewhat. Thank you. Okay. And please Madam Chair, if I may do a couple more technical questions. This is so important.

You did talk a little bit about the thermal run runaway and how you're trying to contain the fire escape. How have you managed thermal runaway incidences in other

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facilities and mitigated the hazards of them?

MR. SIMPSON: Fortunately we have not had thermal runaway incidents in any of the AES specified plants to date. And so we've not had to manage those. We continue to test for it and build our plans around it and we're fortunate not to have used those.

COMMISSIONER CACARI STONE: Thank you very much. I have a couple other questions here. PFAS is PFAS and in Santa Fe County many stakeholders and folks have been impacted in different ways. So it has I read all the documents. We have about over a thousand emails from stakeholders pro and con as well as I looked at the testimonies in the minutes and details provided from other public hearings. So it has come up as an issue. You mentioned FK5-1-12 was approved by the EPA, but you didn't mention scientific studies in peer-reviewed journals that shows that there's no risk to this. Can you speak to that? Have you actually looked at scientific, for example, all systematic reviews, all studies that have looked at the risk since it's fairly new and what are these risks?

MR. MAYER: I'll first answer and then I might invite my colleague to perhaps elaborate. So again I want to initially state that this is a non PBT. So there's tens of thousands of PFAS. They're not all the same. So, we're talking specifically about FK112. It is a non-persistent, nonbioaccumulative, non-toxic, clean agent. That is what it's categorized as. Furthermore, it is approved by the EPA for use data centers, libraries, hospitals, and we found it to be the most effective and the most environmentally friendly clean agent fire suppressant for this application.

MR. SIMPSON: And I'll just add that in terms of the peer review study, there's one cited on slide 40, is that 43 of the presentation that Joshua presented. And that was collected online available to the public. The source is the IPCC and I believe that was peer-reviewed.

COMMISSIONER CACARI STONE: Okay, I'll look for that in more detail. I'm going to shift to -- as we think long term about the future and sitting up here as commissioners, we have to think about our next generation and certainly we want solar and renewable energy to be in our space for our children. But I want to ask about decommission of batteries. I see different year life here in all the materials. I see 25, 30; what's the actual year life of this current battery that you're proposing?

MR. MAYER: So, our initial contractual time period is 20 years and we engineer the system to perform at what the contract terms would be so that we have the same amount of capacity over that full 20-year period. We fully expect the system to be able to continue to operate to 25 years with the battery energy storage. It's just that there is degradation over time of the capacity capability of the batteries. So it'd be at a lesser amount until year 25. At year 25 there effectively would be an assessment of the commercial situation. And we would either repower it by building a new energy storage facility or replacing it at that time. But the initial install would be expected to operate for 25 years. Solar on the other hand the expected lifetime is 35 years to even 40 years.

COMMISSIONER CACARI STONE: Okay, thank you Josh or is it Ryan?

MR. MAYER: Joshua.

COMMISSIONER CACARI STONE: Yes, thank you. So in terms of

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decommission, there was no details that said how the batteries and where they will be decomposed of. And can you talk about the risk? Do you pick a local area to decompose of it? What are the risks? Or do you take it somewhere? Are there toxic sites that absorb these for pay? Talk a little bit about what the commitment would be here for AES to take these out of our area.

MR. SIMPSON: That's a great question. So I'll revisit something that we said earlier, which is that we'll start out, of course by ensuring that we comply by all federal, state, and local requirements. But more specifically, these systems are inherently extremely – their recyclability is quite high. We are pleased to have a partnership with a company that that can take all the solar modules and recycle those. Today we have that in place. And in fact, we're working on some circular economy programs to be able to bring that recycled material back into the workflow for additional solar modules in the future. Batteries, I've personally witnessed the recycling of lithium-ion batteries. They are exceptionally recyclable. They do require, especially used batteries, do require special handling. I think we all know that from our appliances. But fortunately there are many codes and standards on the transportation of these systems as well like UN38 and other regulations.

So we comply with all those and transporting these. Well, the first step is assessing the status of the system when it's being decommissioned. I've observed a few decommissioning events. This is typically voltage monitor, voltage monitoring data collection. And then there's mechanical disassembly of those systems. This is basically just the reverse of what happens in the field during construction. This is not taking apart like an Apple Mac Book or something like that. It's just doing the exact reverse of what did happen during construction and then transporting those systems under those regulations to the recycling facilities. Today there are a few recycling methods for lithium-ion batteries but one of the more dominant ones is literally shredding these in a controlled environment and then separating out the plastics from the metals. The metals can be smelted and returned into the supply chain as can the plastics be recycled as well. And so we are working on similar programs for energy storage as we have currently with with solar. Fortunately with energy storage, our suppliers currently take any infant mortality or modules that fail during construction and they are recycling them and in the future we expect to be a major recycler as these plants be are decommissioned in large scale.

COMMISSIONER CACARI STONE: Thank you. Thank you for your answer. And I just have something specific around what you're proposing in terms of the impact on the County. And I see cited in different parts of the binder and the BoardDocs somewhere between 34,000 and 37,000 Santa Fe County residents could benefit or households. Is that all in Santa Fe County? I just want to be clear. Or is that in the area?

MR. MAYER: So I would like to say that that is a number that we are communicating to provide an equivalent right. Because when we put the power in the grid the grid does not distinguish if the electron is going to a residence or to a commercial business or to industrial business. So because, especially for folks outside of the energy industry, we try and communicate in terms that make 96 megawatts mean something or the 271 gigawatt hours mean something. We felt that the most appropriate parallel was to represent that in the estimate of based on average numbers, how many

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homes could be powered with the output of the facility. So the equivalent is about the 34,000 annual, like total energy usage from a household. Of course, the facility operates during certain times and has a certain amount of battery capacity. So it can be providing power to all sorts of commercial, industrial, residential uses but if we quantify the total amount that's what it's roughly equivalent to. So hopefully that answers your question.

COMMISSIONER CACARI STONE: Okay. Thank you. And if we stuck with oranges and oranges in terms of equivalent, so that'd be about 21 percent of Santa Fe County residents because we currently have about 158,000 residents in the county. So we're looking at this project impacting or possibly benefiting, but it has to also include businesses and other commercial possibly at the amount of 34,000.

MR. MAYER: And so those are households. So my understanding was there was like 56,000 households in the whole county. So it goes towards a pretty significant amount of the overall residential population, but again it's going to be utilized by the entire community as it's sourced from the grid.

COMMISSIONER CACARI STONE: Okay. Thank you. And most of my questions, I might have more as Commissioner Johnson noted, but I'm focusing on the CUP approval and the health, safety and general welfare. I did look at the biology report regarding wildlife and it did state the impact. According to the report there's a large-scale habitat and wildlife impact in the area and I could pull it up but you seem to in your presentation sort of overshadow that those findings in terms of the owl in terms of our other habitat there, in terms of the impact on the land. If you're going to be clearing like 700 – thousands of acres that's going to impact. It mentioned that you there should not be building between March and October during bird migration season, during different other seasons. And I don't see how you not building is that going to happen that you won't be building to mitigate between March and October and talk a little bit about what you understood will be the impact of developing the solar here.

MR. MAYER: Sure. I'll initiate the answer and then I might also call my colleague Matt Gordon to perhaps elaborate. So it's true that development of any sort has some degree of impact, right? But what we look at is based on applicable local laws and regulations are the impacts exceeding what is otherwise allowable? And so based on our biological surveys there was not the detection of any threat endangered species. There was deemed the possibility for the burrowing owl based on the presence of prairie dog colonies. And so there's two effective measures that we are taking. The first one is avoidance. So the prominent prairie dog colony is located in the southwest. Actually quite conveniently nearest to the nearest residents. And so we are simply avoiding that area. So it's not included within our footprint, our development footprint. So we are simply not going to impact that area to further diminish the likelihood that there may be burrowing owls there. When we then take our second mitigation measure, which is prior to construction, we perform a preconstruction avian survey. So we then go to the field and prior to ground disturbance we double check that there is in fact not the existence of this burrowing owl. So we hope that that will certainly not be the case by avoiding it entirely but then we double check by performing a survey prior to ground disturbance. And I would also want to again elaborate that as a package with this project, the effort to set aside the transfer development rights on 5 almost 6,000 acres of buffer land around the 680 acres target for development. So that's effectively

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unprecedented as far as a conservation effort in tandem with the solar development in the country.

COMMISSIONER CACARI STONE: Well, thank you for your response around the owl. I did note too that in the report that there was a big impact also on the prairie dogs. They're protected here, of course they're part of the circle of life and feed on other animals and it was the wildlife was part of the concerns of like I said over a thousand emails coming from different opponents of this. So I just want to recognize that.

The other report that was done from the plume study. Let me just pull it up real quick. I have a big binder here. So, thank you for your patience with me trying to do my due diligence. This is the executive summary from the plume analysis. And in the executive summary they did two modelings and it states plume modeling results of the pre-combustion phases scenario indicates that gas concentrations will exceed the limit required to cause health effects in unprotected persons including sensitive individuals at distances closer than 86 feet. The pre-combustion event scenario results in a flash fire hazard at distances closer than six feet and does not pose a discernible vapor cloud explosion hazard, but gas concentrations will exceed the limit required to cause health effects and unprotected persons again sensitive individuals. So that brought my attention in the executive summary. You didn't -- you seem to not mention this at all. Can you can you speak to the plume hazards please?

MR. SIMPSON: Yes, absolutely. And we talk about the exact conclusion that you mentioned on slide 34. So I'll direct you to that, but I'm happy to treat it again and take any further questions on it. What we show is that there are -- we've envisioned multiple failure scenarios. Again all of these that we're talking about in the plume study are only after all of the redundant safety or the hazard mitigation mechanisms have been defeated. So we don't imagine how but, you know, you can envision well you know someone gets out there with a shotgun and starts shooting lots of these things or something to that effect. Right. Well, if the two most common that we that we have seen in evidence and that we can dream up are either a cell undergoing thermal runaway which results in a buildup of gases inside the cell. If it ruptures without igniting, right? So there's no spark during that rupture or other spark source. Then you have a buildup of gases, right? And the second scenario is there's a spark and the gases ignite and then they're combusted but you get a fire. Those are, you know, bas basically filtering it down into two options. And so the one that you mentioned where there's gases carried up to 87 feet at concentrations that would pose an exposure hazard to humans. Again, that's detailed on slide 34, the intent was to treat that as it was treated in the report. And basically what we do is we assume that that would be -- if we detect that event which we can detect through gas detectors. There's also audible horn and strobe for anyone in the area to evacuate. First responders can then assist in that evacuation as can experts within AES staff and ensure that those exposures are not reached to those people.

Did I answer your question completely?

COMMISSIONER CACARI STONE: Yes. Thank you. I'm just and I'm asking these questions because this was one of the criteria for the CIP approval. And it says there's no health, safety or hazards posing to the community. My other questions are mostly –

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MR. MAYER: Can we just elaborate on your last point? So the part of the takeaway that we wanted to demonstrate was that through evaluating even these most worst case of all scenarios the distances when even applied conservatively at ground level when in actuality they're simulated to be tens to hundreds of feet in the air. So actually not at human level. But that even under these most conservative of assumptions they are still at the closest less than a third of the distance to the nearest residence. So, we're trying to demonstrate that there is in fact a substantial safety setback.

MR. SIMPSON: I'd also like to indicate that these sites are not attended sites. That's another difference between the original large buildings of enclosures that required people to be inside operating them. These are all systems that are effectively unattended, remotely monitored, but available 24/7 for live response. And it seems that the CUP is focused on a – that it would not be approved if it will tend to cause a potential hazard for fire. And I think we've demonstrated that there's no tendency for this. These are only under extreme circumstances that this would ever happen.

COMMISSIONER CACARI STONE: Thank you so much. And I just have one more question. The other questions are for the staff. So I'll wait until Chair Bustamante deems it the appropriate time to ask those.

This question is in regards to the other report. I've been looking through all the evidence that's in front of us and that's sort of the cultural, historic, spiritual landscape as you know is very important to New Mexicans. That's what makes us who we are. But it mentions that there's I believe there was 15 cultural sacred sites, but this assessment really looked at the superficial. It didn't look under the soil. And your report or your response in your PowerPoint said that well you will report anything you see right away. How do you handle that with other communities because there are very appropriate protocols and if nobody's out there at the site, how will the workers even know? Can you speak to that? And have you ran into this before?

MR. SIMPSON: And I'll invite my colleagues to add to this, but we are very familiar with the requirements locally as well in pretty much all of our sites, we have something similar. Maybe a good analogy might be we are a large developer and owner and operator of plants on Hawaii as well in which, you know, obviously it's different but there are some similarities between some of the culture requirements. We do bring in third-party experts in these types of scenarios and ensure that we're adhering to this. Ultimately, we are occupying these sites for decades and it's important to our success as a company to be directly in line with our community stakeholders, abiding by all of these requirements. We're here to deliver clean energy at a reasonable cost and it involves all these requirements.

[Duly sworn, Matt Gordon, testified as follows:]

MATT GORDON: Yes. I'm Matt Gordon. My address is 282 Century Replace Sweet 2000, Louisville, Colorado 80027. And I understand that I'm under oath.

And, yeah, thanks, Mike. I just want to add that we did complete cultural resources evaluations. Those surveys were provided to the State Historic Preservation Officer and the State Historic Preservation Officer did issue concurrence letter concurrence with the avoidance measures that we proposed for the project. As far as the potential for unanticipated discovery, the highest likelihood for that to occur would be during construction during the ground disturbing activity and that we would have

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construction monitors on site. So that if in the event of an unanticipated discovery, the work would be stopped at that location and coordination with the State Historic Preservation Officer would occur, manage it the resource appropriately.

COMMISSIONER CACARI STONE: Thank you. That completes my questions right now for AES, and I'll
hold my questions for the County staff later when it's appropriate.

CHAIR BUSTAMANTE: Do we have any other questions from the Commission for AES? I have one question. The use of flow batteries was brought up. What is the reason to choose the methods that you have instead of the flow battery technology?

MR. SIMPSON: Currently – there's several reasons. Currently flow batteries have not been deployed at a scale to make them cost effective. And so it drives the cost of energy higher even when we look at variable hazards. And I'd like to clarify that I don't believe that flow batteries have fewer hazards, but they do have different hazards. One common hazard of flow batteries is that many of them, not all of them, but many of them will consistently emit hydrogen. That's a hazard you can mitigate, but we've also learned that we can mitigate successfully the hazards of lithium-ion batteries. And so even when we take these systems and we design them in a robust way, just like you would take a car, which is not inherently safe, but you would build it with the crumple zones that we mentioned earlier and automated driving and driver assist, you know, capabilities, airbags. We add in these redundant measures to energy storage systems as well. Those all cost money, but we're finding that that is a very cost-effective, very sustainable, and it's a much more mature approach because we're doing it at a scale that is many orders of magnitude greater than flow batteries. We have a great deal of experience with these. We so we can state these claims with confidence based on actual experience. And with flow batteries, we're not at that level of maturity yet or what some people might call a technology readiness level. It's much lower.

CHAIR BUSTAMANTE: Thank you. That's all the questioning that I have. If there are no further questions for AES, Commissioner Cacari Stone has questions for staff.

COMMISSIONER CACARI STONE: First, I just want to thank the team and for your presentation and I know a lot a lot of work has gone in the last year especially and what you've been doing.

I'll just start with again with what's before us is the core questions. Have conditions been met for the conditional use, for the CUP? And I want to go back to you mentioned that the Sustainable Development Code Ordinance number 2022-05 was passed and it includes the definition of community solar. What I didn't see in this was the definition of commercial mass solar project. Is that anywhere? I know it's not in our current hard copy of the codes, but is that anywhere online? Has a commercial code been passed the definitions and specificity been included like it [microphone cutout] has been for community solar.

MR. SISNEROS: Madam Chair, Commissioner Cacari Stone. So, ordinance number 2022-05 does have commercial solar energy production facility defined in there as well as a renewable energy production facility that uses sunlight to generate and may store energy for sale or profit.

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COMMISSIONER CACARI STONE: Thank you so much. And I do see that. Thank you. But I saw in Appendix A it references there's more detail around community solar facility but I don't see much detail in our sustainable development code around commercial solar. Is that something the County has been working on? And is there anything else in our sustainable development codes that is modernized that aligns with the regulations, the technology because it was built on land use, right? But not on solar. And my question is what is and is not in our sustainable development codes that would be adequate guidelines to respond to a mass commercial solar development?

MS. LADD: Madam Chair, members of the Commission, I think you're hitting on an important point in that the bulk of our code was written 10 years ago and we are in a process of doing some updates and we certainly see areas where we could be a little more specific regarding these projects. But I think the really important thing to note is in terms of a conditional use permit, the condition for these projects to even get a permit is that they're meeting all applicable codes and regulations and that's everything. So they're going to -- the technology, the building, the construction drawings, those are all going to be reviewed by the Construction Industries Division. All of the fire code, all of the other safety codes are applied by other regulating entities. So, our job as the Land Use Department is to make sure that all of those other codes and regulations are that the project's compliant with all of those.

COMMISSIONER CACARI STONE: Right. So, thank you so much and I understand that. But again, in looking at what we have, my question is what do you think needs to be as we move forward to happen with the County to have more comprehensive codes that are modernized that align with the conditions that we're speaking of that are very complex for these commercial and community solar developments?

MS. LADD: Madam Chair, members of the Commission, I would say that the number of studies that this project that were not specifically required under the code, but that this project has complied with in addition to what's specified is probably appropriate for these kinds of projects. So, you know, right now we're kind of negotiating this extra work, this extra step because it seems to be the way we can determine that our code is being met. An example that I would point you to and I'm not a expert in this area so obviously we need to do more research and spend some more time on this but there's a whole section about wireless communications towers that was added or it wasn't added it was written into the code but that's sort of an example of technology that where language was added later or made more specific later to address an emerging technology. It's not emerging anymore. So that's kind of how I would imagine we would move forward, which is not really changing anything, but just being more specific to call it out a little bit clearer.

COMMISSIONER CACARI STONE: Thank you. And you're the experts. I just wanted to ask, I saw state law, New Mexico state law cited throughout all the evidence and would you say there is in fact no dedicated state law or zoning code that uniquely regulates large-scale lithium ion storage systems in New Mexico from the state of New Mexico or is there? Or even administrative codes or statutes.

ATTORNEY BOYD: Chair and Commissioner Cacari Stone, I believe that there was been discussion of the Community Solar Act but to the extent that that

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you're looking for something germane to this specific type of facility I guess the distinction we're talking about here is something neighborhood scale versus something commercial certainly we can develop that research for you and provide it to you. But I don't think that any legal staff here is prepared to say yes or no whether there's something in the entirety of New Mexico Statutes Annotated or the New Mexico Administrative Code that touches on this.

COMMISSIONER CACARI STONE: So to our knowledge right now there's no guidelines from the state of New Mexico that establishes BESS specific safety standards which is why we're here. The onus is on the County and I guess I just want to ask you know if we don't have specific sustainable development codes that really guide the activities and the regulatory activities are really on us. It seems like we sort of the December hearing in which the CUP was denied actually cites that, that Santa Fe County were not up to date with our guidelines, regulatory codes and standards that really is readily available to deem a CUP for this size of project. That's what I read. I'm again just going back to the evidence and I don't know if the staff have any response to that or any clarifications.

CHAIR BUSTAMANTE: Thank you, Ms. Ladd.

MS. LADD: Madam Chair, members of the Commission, I think the fire code that we've discussed a lot is very, very specific to the regulation of how the systems work and what applies to the systems/to the technology. The land use code is specific to how the land is used. So where the fences are, how wide the roads are, etc., you know, how much traffic is generated. So, I don't necessarily agree that we don't have the rules in place in terms of how the land itself is being used. So, where the land use code is very specific about how the land is being changed and altered and the fire code is very specific about the safety of the systems. And then the Constructions Industry Division, if they issue the building permit, they're going to be very specific about whether what's built is consistent with the International Building Code. So it's not unregulated, is my point.

COMMISSIONER CACARI STONE: Okay. Thank you. And certainly we're always trying to evolve to the changing times. And thank you for bringing up codes because hazardous threats was brought up quite a bit through all the evidence. Whether it's real or perceived or a combination of both. And let's talk about the Santa Fe County Mitigation Hazard Plan and in that plan did the County staff look at that and how it aligns and refers to anything around the storage or battery or the hazards of what they call by humans and not natural hazards. Did you look at those codes at all?

FIRE MARSHAL BLAY: Madam Chair, Commissioner Cacari Stone, I am not part of that plan. We have our emergency manager here that may be able to speak to it.

COMMISSIONER CACARI STONE: Yes, thank you. Mr. Brad Call, is it okay if Mr. Brad Call responds to that then? So the question is, is there a reference at all to the storage of batteries and the hazards in our new and approved June 2025 Santa Fe County Hazardous Mitigation Plan? Okay, thank you.

CHAIR BUSTAMANTE: I'm sorry that not adequate. If we can please make sure that we come to the microphone when we're going to answer. I think we'll register this as a, "no, ma'am".

COMMISSIONER CACARI STONE: Thank you. Chair Bustamante, I

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have other questions but I'll hold off because I want to respect everyone's time, but thank you so much. I'm just doing my due diligence and thank you.

MR. SISNEROS: Madam Chair, Commissioner Cacari Stone, I just wanted to go back to the preservation of those archaeological sites. At the application for the development permit, once a development permit is approved, staff does actually also have conditions for the development permit approval and, that is including a discovery clause for any items that are found with any contact information for SHPO and what to do in those instances where any items are found during construction.

COMMISSIONER CACARI STONE: Okay. Thank you. I appreciate. I just want to conclude that my questions revolve around the CUP and the provisional acceptance of whether there's a conditional use permit around number one, especially, the health, safety and general welfare of our public and also around number three, to create potential hazards and alleviate those for fire or danger as well as be consistent with other purposes of the County. So, those questions and it seems like your answers kind of leave it a little bit inconclusive to me right now, but I'll keep listening and I'll keep looking and listening to the evidence. Thanks.

CHAIR BUSTAMANTE: Thank you. Are there any other questions from the Commission?

Seeing none, we will break for lunch. We will be back at 2 o'clock.

[The meeting recessed from 12:45 to 2:00]

CHAIR BUSTAMANTE: We'll call this meeting back into session. I do want to state that the Commissioners did sit at the same table during the noon hour, during the lunch break. and nothing was discussed regarding this matter.

We will start with our presentations with our parties -- we will start with our presentations by the parties and we are starting with New Mexicans for Responsible Renewable Energy and remember to state your name when you come to the podium. If you have not been sworn in, please make sure that you're sworn in.

C. New Mexicans for Responsible Renewable Energy

SELMA EIKELENBOOM SCHIEVELD: One thing. I asked I went up to the podium unannounced but the problem is Friday at 3:00 we all received the third noise report and through the weekend I did my best to look at it.

CHAIR BUSTAMANTE: Sorry that would be part of the testimony. So this would this would actually affect your time. Okay. Anything that you have to present to us is under the umbrella of the time that's been allotted in this meeting.

MS. EIKELENBOOM: Okay.

CHAIR BUSTAMANTE: Okay. So, if we can go ahead and say our name and if you've already been sworn in you can say so.

MS. EIKELENBOOM: Okay. My name is Dr. Eikelenboom Schieveld and I have been sworn in so I know I'm still under oath.

I wanted to point out that Friday at 3:00 we all received the third noise report and I studied it again. I studied it in during the weekend and I made a short presentation and I didn't know what AES was going to do with it but both the County and AES brought it up and I would like to react to that because it's an important item but I don't want to

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spend my 60 minutes on it and I think because the report came way after the deadline. I think I should be entitled to have like four minutes to react. So extra four extra minutes to react on the report.

CHAIR BUSTAMANTE: I ask for the opinion of the Board to extend four minutes having that we just received this. Now, she's asking for an extension of four minutes to her time given that we just received this and she wants to comment on this. Four minutes extended to the time. If there is no if there is no objection to this, I would --

COMMISSIONER GREENE: I'll make the motion to extend you four minutes.

CHAIR BUSTAMANTE: Is that amendable to the other parties?

COMMISSIONER JOHNSON: Second.

CHAIR BUSTAMANTE: I don't know that we needed a vote on it. No, we don't need a vote. That's okay. All right. You will have four additional minutes and your time is starting now. Thank you.

[For clarity, Ms. Selma Eikelenboom's testimony was edited to remove repetitive phrases/words]

MS. EIKELENBOOM: Thank you. I've been studying this project for about three years now. Now, almost three years. And since I'm only allowed one hour to make my case, I will have to hurry through the slides. And I want to bring your attention to a subject that has hardly been getting any noticed, and that's the solar farm fires. And here you can see some of some examples of that. And next one, and, if you look at these pictures, you can see that there are no houses anywhere near these big –

CHAIR BUSTAMANTE: My apologies. We're not seeing this on the screen for some reason. Okay, you are. Are you able to? Okay, we'll get it. Okay, go ahead and proceed. Thank you.

MS. EIKELENBOOM: Okay, so you can see that the location of these big farms and there has been a global under reporting about the solar farm fire. So I'm not talking about the BESS. I'm only talking about the 200,000 solar panels and there has been a notably increase in the recent years and it's an emission that in the recent smoke and plume analysis fires in the solar panel field were not included and the main causes of these fires are electrical component failures, like DC isolators, connectors, inverters, poor installation and insulation and maintenance can ignite a small fire which can spread under dry conditions like we have here in Santa Fe and 25 percent are caused by the solar panels themselves and these are serious fires difficult to extinguish and spread beyond the air beyond the area and solar farms in vegetated wild prone areas are at risk both from and to wildfires. Here are some examples in October 27, '24, 17,000 solar panels and 38 on the farm were on fire and the wind was terrible up there. And another one in February 2025 in Australia where the inverters caught fire and set the whole thing on fire. And here you can see in the vicinities of these fires there are no houses. And this is a fire that within limited time went from 20 to 100 acres and ultimately to almost 600 acres before it was contained. And this was one of the reasons for the Hearing Officer to object against this project and she said it was too big and too close to communities. Now for AES that's probably not a problem because the BESS was 1.5 miles and the solar and my

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house is the nearest I have to say, is very close to the solar arrays and 20 homes are within one miles and these houses are at danger. They are at direct danger and also the houses further away.

Now, we got a message from PNM a couple of months ago and they said clearly you live in a high fire risk area. So, AES can say, Oh, no, there's no problem. It's very low risk. PNM is obviously not of that opinion.

So the Hearing Officer really said that 200 panels were a risk factor. And I want to point out that there was a meeting in the Board of County Commissioners in 2023 where the Fire Department held a presentation about the insurance service office ratings and they are depending on the on the quality and the amount of people. I'm sorry to call it quality, but the equipment, and the number of people they have at the Fire Department. And what I understand is that the Fire Department is low on new applications and low on dispatch staff and that means that if the county grows, if the risk grows, then it will decrease the ISO score. And that's important because if that score decreases, there will be problems with getting coverage for housing and especially with the with the record setting wildfires we have here. And now they want to put a hybrid installation far from water resources and the 30,000 gallon water tank that AES proposes to put there. It will be empty very quickly. And what happens if there's a fire in for instance the solar field or in the in the vicinity there that will threaten both the BESS and the houses which one would get priority?

Another worry from the Hearing Officer was the concern with the safety and the previous incidents and AES said that previous incidents were earlier generation deployments lacking evolved safety features and that the standards are now updated but as far as I know they still haven't got the certifications for the UL 9540. It's not on the website. So, they said they had it, but the certification is not visible for us. And Atar Fire said, however, all of the items in this review must be satisfactory addressed prior to commission of the facility. We are not sure there will not be any more issues since not all the documentations we need to give a complete review are available and I think we are entitled to all the review and all the documents.

And in another meeting -- in another minutes of meetings I found that Shaffer mentioned the lack of capacity at the fire at the Fire Marshal department as well as growth management to inspect properties and the compromise struck was that they these houses and these properties had to do self certification. Now our fear is that if AES is left to do self certification then we are not very sure that this will take the right course that we that it will be okay.

Another, AES mentioned that already that the Hearing Officer said the proposed system is older less safe type of technology and AES said that was the latest technology and it was UL954 tested but in the Atar Fire review it said a draft copy of the UL954 listing report has been reviewed certification is not complete. Completion of this project is contingent upon successful UL9540 certification. So where is that certification?

This is a slide that you've all seen as well and it says here no battery fires in over six year of AES specs with the BESS operation. So that meant as I understood it that in facilities where they had these advanced specs BESS that there were no fires and then we're talking about six year but the fire I wonder why didn't they put that those new technologies in Arizona, in Chandler, in Escondido because those were a few years ago

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so within the six years if this technology is so safe why didn't they put it in there?

And then the potential for wildfire which was which was a problem for the Hearing Officer. AES says the UL 954A is an insulation level test did not result in propagation of a thermal runaway event from the failure of a single cell. No flaming or flying debris was observed outside the enclosure. Well, that asks some—that needs some clarification. The UL954 A test has four levels. Cell, module, unit, and insulation. And at the cell level and the module level, AES had thermal runaway, had fire, it did expand to other cells. It was just on the unit and the installation level that that wasn't. And that means that we have to be depending on the fire mitigation equipment they have or on the battery manage management system they have and those systems are known to fail. So that means that their technology is not as safe as it is. And there are a lot of companies if they do the 95408 testing, they make it the cell level is okay, the module level is okay, unit level is okay, and if you have one of those three, if they succeed, then you don't have to do an installation test. AES failed. They had to do the installation test because the first three they failed. And even the installation test was not really successful because they had to -- if you can Oh yeah, I don't Do you see it on your on your screen or no? Only here. Okay.

So, here you can see that the redactions in this case are overwhelming. And here is at installation level. They had to redact it because it was too high. It's only supposed to be 120 degrees and they were at 670. So even at the installation level they did not met the requirement requirements. Now, they showed us the glamorous video test, but I mean, it's fine, but I would like to see what were the written results? Because when they did one of those tests earlier for this application, they blacked out, they redacted a whole lot of interesting information that you can see at the cell level, they had problems. At the module level, at the unit level, they have problems. So this video testing doesn't mean anything. I would like to see those reports.

And here again, this is what PNM said sent us a few weeks ago. You live in a high fire risk area. And that was one of the worries of the Hearing Officers as well that there is this potential for wildfire. And AES shows you this to show you how barren the land is where we are. 30 percent according to them is barren. Well, it doesn't look so barren now. And this was a few weeks ago. And if you look at it now, it's like a jungle, but this will dry out. And why on heaven's name would you put a 3 point 2 point 3 point no 2.3 line gen-tie inside that PNM wants to wants to u switch off because it's so dangerous. They have this emergency power shut off because these power lines are dangerous in this in this vicinity. So why would you do that? And I would like to point out a warning from County Manager Shaffer in July 25, 2023, that with unusual hot temperatures, frequent lightning, strong gusty down downburst winds, everyone should be cautioned with outdoor flames and it doesn't take much to start a brush fire and we've had several in recent days and weeks and they can get out of control quite rapidly. So I think the worries of the Hearing Officer and our worries are really not exaggerated.

Okay, now we get to the difficult part. This is the noise study. This company CSWCA I will call them AES now, did now three studies and it looks very difficult but it's not. If you just bear with me, I can explain this to you. What's important is the ambient noise. The ambient noise is the day-to-day noise that we have around us. The point is that the ambient noise plus the noise from any operations should not exceed the

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number of the ambient noise plus 5 decibel. I'll keep it simple. Now, they made a report based on NC. And NC is the documentation that you use as companies to do estimations about noise. And they said this is in the report the noise report the NC document organized as land use within six categories based on an analysis of the area surrounding the project. The noise at the property line of most interest would be represented by onsite category 5 quiet suburban residential areas with an ambient daytime noise level of approximately 48 decibel and an ambient nighttime noise level of approximately 42 decibel. Now if we look at the chart that goes with it quiet residential suburban daytime level 45 they say 48 it says 45. Why would you say take 48 and the nighttime level 39 and they say 42. The point is AES is going to going to make the ambient noise as high as possible because that's the most beneficial for them. So this was their first report and then they reported how well this is will how well this would comply with the regulations. Here you can see the background noise. We saw that just 48 decibel. Now the daytime, the permitted noise level in Santa Fe is the ambient plus five. The daytime is 48. We add five, then we get 53. And the actual noise, that's what they have here, is 48.3. No problem. We are complying. Nighttime 42. That's what they had from the literature, the scientific literature. 42 + 5 is 47. And the actual noise is 43.5. This is what it's going to be. The actual noise is 53. And so this is what it's going to be in the nighttime and this is what it's allowed to be. So they're way under it. Now, the average daytime noise level recorded by the County was 38.4 because people said this can't be right. So, they protested. So, the County then did a measurement of their own and then it was 38.4 level and they called it slightly below NC category 6 and remember they the AES said that we are that we were category 5. So it turned out that when the when the County did a measurement they were even lower 10 decibel lower than what end what AES reported. So then you have a problem. Okay. So they went back and did it again and they said okay the what we have here is 38.4. Now if you look at what they now said on their sec in the second report, oh jeez, in the second report in November because they understood that they had a problem based on the analysis they now say it was NC category 6 very quiet suburban and residential areas. Which assume a daytime level of 40 decibels. So now they did exactly what was in the table and an ambient nighttime noise of 34. That's exactly what was in the table, but the County measured 38.4. So even lower. So they did a recalculation to show how compliant they were. Here we have the background noise 38.4. this is important. This is the noise they expect to get from the project. The operation noise that is 36.5 and you cannot just add that you have to do it with using a logarithm. That's a mathematical method and that's scientific proof and that's no problem. So this sound and this sounds the total calculated noise is 40.6 that that is allowed. It's going to the actual noise that they expect from the project noise and the ambient noise is 40.6. So there's no problem. Daytime noise, I repeat it, 38.4 + 5 is 43.4. The actual noise is 40.6. So there's no problem. We're okay. In the nighttime, they expect 34 decibel. That's what they had from the literature. If you if you add five decibel then you come to 39 and the actual noise is 38.4. So this is allowed and this is what it is. No problem.

But we still think that it's too high. And why is that? They said themselves the project is located in a rural setting with predominantly under underdeveloped range land and based on their NC the first one on the NC category 5 quiet suburban they had to leave that that was not good so they went lower it was very quiet residential and rural that

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wasn't good enough but we are not a very quiet suburban and rural residential we are predominantly undeveloped rangeland rural setting, So we are even lower. There should be scale here which isn't there. And they say in this kind of area, residential and suburban you have like 200 people per square mile. But I looked at the census and there's only 115 people per square mile. So there's much less people here and that means much less noise. And if you look at the numbers from the Federal Highway Authority, they have their estimations about the noise and they say that in an area where we are then the night noise the night noise is between 20 and 30 decibel and not what AES said 34. No, we're lower than the 34. We're in the 2030 areas. So AES said the daytime is 38.4 night is 34. NC the scientific literature said okay daytime is about 40 nighttime is about 34. The Federal Highway Authority said we expect there the ambient noise there to be between 30 and 40 and the nighttime between 20 and 30. We did our own measurements and during the day we found numbers between 22 and 33 and at night between 20 and 30. So quite significantly lower than the AES reports.

Now if you look at it again it's -- what's the ambient noise? Well if we take for instance a number like 28 decibel for the night what we measured and what the Federal Highway Authority said. Okay the ambient noise is 28. What's the noise from the project operations? They came up twice with 36.5. What's the total noise? The total noise if you calculate them logarithmic is 37.1. What is allowed? 28 + 5 is 33. The ambient is 28 that we have here. The maximum is 33. 33. We have that here. And factually it's 3 37.1. This is too high. 9.1 increase in noise and that's almost doubling. So under if we have a night noise of 28, this is not allowed. Take 30 and that's a reasonable assumption for the nighttime as well. Then 30 is the ambient noise from the project 36.5. The total noise added is 37.4. Allowed is 30 + 5 is 35. The ambient is 30. The maxim is 35. And factually it's 37.4, not allowed. And then at night if you look at our numbers 28 + 30 that's what we have here. It's not allowed. And the County says 38.4 and at night 34. But these numbers are not are not correct. They're still too high. Now then during the weekend they came with a new report. And when I thought they did actually did a new reading and their readings were significantly lower than they came in the first place. So this is this is -- these are the old numbers the 48 they came with the 38 from the project noise at night 36 and at night 42. This is from the project noise and this is from the ambient noise. The second report this was already gone from 48 to 36, 38 and the noise from the operations was still the same and the nighttime they adjusted to the literature 34. So those were the first two reports and now suddenly they come up with new readings. They did the 24-hour readings and they took the 30 least loud hour least loud minutes. That's what they're supposed to do. And they come up with 32.4. That's about what I predicted. And at night 30.2 also around what I predicted. And what's interesting is that now they came with a project contributions from 35.1. And when I noticed this, I knew they had a problem because with this with the amount of noise they put forward in their first two reports, they would never be able to get to the compliance with the regulation. So the only thing they could do was lower the project contribution. And that's exactly what they did. They lowered it to 35.1 during the day and to 21.3 at night. And they came up with something else. Suddenly they had this from 6:00 to 7:00 at night. Well, because the birds wake up and the insects wake up so we have more noise then. So we shouldn't look at we shouldn't look at this so stringent and that is because if the sun

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comes up the solar panels start working and we get the noise from the operations and because it's between six and seven it's not allowed. So they had to come up with some kind of reason why that was why that was not just not another not a problem but it is a problem because 6:00 at in the morning you should not have noise from any operations.

So what they did is oh let me see if you have a project participation or noise from 36.5 but they had in their first two reports and the new numbers they came up with the 32.4 for during the day the ambient noise if that's the ambient noise if the noise from the operations is that then the total noise is 37.9 and if you have the ambient noise plus five to know what's allowed so allowed is 37.4 but the actual noise is 37.9. So with these new measures, they're not allowed to have this to have this CUP. I mean, and it's a deal breaker. They either do not get the CUP or they put up a berm. But what they do is just beat the numbers into submission. So what they did is okay, we accept the 32.4 because they couldn't beat those numbers up, but let's just reduce the number the noise from the projects 35.1. And then if you have the total noise that's 32.4 + 5 is 37.4 and maximum what is allowed is 37.4 and factually it's 37. So we're there we comply at night. If you look at my numbers they have said okay at night 30.2 decibel the project operations because that's what they came up with themselves in the first two report at night as well 36.5 because these things work at night not so much but there is noise and the total noise is then 37.4 and the allowed maximum is 30.2 from the ambient noise plus the five is 35.2 so the maximum is 35.2 and the factually it's 37.4; no game. But if you use their numbers so at night 30.2 the operations we reduce that at to 35 now it's certainly okay now the -- let me see do I said no this – no, I'm wrong. 32.2 is the ambient noise. The noise from the operations is their lesser noise from 35.1. The total noise is 36.3. Maximum is allowed. The ambient noise plus 5 is 35.2 and the factual noise is 36.3. So at night they will exceed it as well. So all in all they're just not allowed to build it. not on not on two on two reasons because the -- it's not very credible to say that suddenly the noise from the operations is less and the fact that it starts at 6:00 in the morning is no problem at all. So they should not be allowed to do that. And if you write three reports and your numbers go from 48 to 38 to 30.2 2 and at night time from 42 to 34 that 30.2 and the operational noise goes down from 36 to 51. I mean how trustworthy are these reports? If I would write a report like that, I would lose my accreditation.

And it's the other -- there was this company that looked at what Glorieta had done and they said guys you do have to have a 24-hour reading and they said you have to take the lowest 30 minutes reading and that's it. We're not going to say from 6:00 till 7 well you know let's just count that out because it doesn't fit us. You either do it according to the rules or you don't. So, and the rules are very simple. They will not be able to comply only unless they really come with incredible numbers and try to fool us all.

Now, what happened with the County? I just want to show you how important it is that you as County Commissioner make up your own mind and do not listen too much to the people who advise you because when this all started and the numbers became clear Penny Ellis Green the woman before Alexandra Ladd promised one of our residents we have requested that AES respond to this and make sure that submittal is correct. Errors and discrepancies will need to be addressed. A noise study has been requested. And then Yutzy says, wouldn't the base levels be included in AES assessment

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of the area? I don't see us needing an expert unless the levels they have in their report seem out of range. And the level in their report was 48. I think that's quite out of range. And then Yutzy said okay we are going to take a reading near the house I feel the number used is correct the 48 number is correct and we will see the actual numbers are a little higher the actual numbers are way lower. So Yutzy has no idea what's going on there. So then they came up with okay it's 38 and then when I noticed there was a report I started asking about the report. Can I please see it? I mean it's public record. I want to know how it was done. Hundreds of documents through open records request and then finally I got this. There was no report by staff. We did the recording. I wrote the number down and we send it off to AES to have the number updated in their report. That is how the County handles this kind of stuff. And you know I came across an ordinance where they clearly state how a sound measure should be done by what kind of equipment and by people who are who are qualified to do it. So why this took such a strange road is not clear and -- now okay let's skip this – and I want to show you this is the correspondence when I didn't get response from the County I tried to contact Abby Guidry the scientist from Glorieta myself and that she didn't respond and I got a very angry email from Mr. Prucino that it was not allowed to do that. And if you see this correspondence, you get an idea why he didn't want me to do that because Abby said to the County, however, I just want to make it clear that I'm by no means a specialist in many of the topics. I guess that I'm still unclear about what the exact scope is and how it seems like the County is unclear on that as well. This is the person who has to do a second or a third review on the environmental impact report. And then Jordan reacts with well reports like this are always full of assumptions. We just need to verify the assumptions make sense. That is not a way to go about with something that's so important that has such implications for the people. And then Alexandra said, Well, Glorieta is going to do a review and if they determine that the ambient sound assumptions were not correct, we will ensure that updated information is used. Now, they did, Glorieta did a review and what these are the only pages where noise was mentioned. Noise, vibrations, excessive [inaudible] to traffic. Nothing about the ambient noise and the demands from the from the from the SLDC.

Okay. Now, it's going to be painful. This is a different subject. When I started looking into this case and one of the first Hours with Hank that I went to Hank said like well there's coming all kinds of projects our way and we have to make very sure that this goes ahead because it's very important we can't have big industrial complexes in our area and that's area and that's district five. Now let's see how Mr. Hughes prepared himself on June 26, 2023. He put forward a resolution and the resolution says large scale renewable energy projects will have effect on the landscape and have the potential to negatively impact neighboring properties. And it's -- we have to encourage new renewable energy in a way that is safe and minimize any negative impacts and consistent well thought of -- a consistent well thought of process for the approval of new large solar scale projects energy projects provided safeguards for the community and recommend a consistent process for the review and approval of large-scale renewable energy projects include an analysis of the advantages and disadvantages of including large scale renewable energy projects as development of countrywide impact, DCI, completely okay nothing wrong with -- and then he talked to Manager Shaffer I think he's going to write a letter to the San Marcos Association which is the place that requested that we

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make large scale utility projects, renewable or not, into development of countrywide impact and I may also want to bring that up in a little bit more official way because I think it was pointed out to me that regardless of what projects may be coming forth this year, there's going to be more and we should be organized in how we evaluate these projects and I think we'll probably learn a lot from the current one that is going through as to what sort of things you want to look for and maybe we want to tweak some of our regulations. I think we want to look into that. And Anna Hamilton, one of the other country commissioners says, Great start And I think we can all agree. Commissioner Hamilton, I mean, they were not alone. Commissioner Hamilton, I just wanted to really thank both the chief and assistant chief and everybody who worked with them for doing all the work on this because it actually is really an advancing our cause in terms of having appropriate regulations and trying to improve the way things are done. And I wouldn't mind making a motion to approve. And then Ms. Bustamante, she asks Shaffer, do we have an advisory committee that can provide a science-based evidentiary report on the risk to health and the environment from large scale battery energy storage system for renewable energy and other sources. And Justin Greene says, In general, I support community solar projects and but also feel there should be better impact assessments and mitigation for such large scale projects. It's an emergent -- it's an emergent issue and happy if we address it as soon as possible. So all the noises are on the same wave.

And then there's this article in the *New Mexican* and it turns out that there's talk about community solar and commercial solar and large solar is placed, is put in there as well. So some panic is emerging and she says to Shaffer I'm concerned about the fact that this was added to the Community Solar Act. I think that is a problem. And why did land use do this? Large scale solar needs to be a special category not included in community solar. And I just put this picture in so you can see this is going to be the effect. This is a 250 acre and okay, it's in China but still, it's large and you can see how small this all is. This project's going to be three times as big. So it's going to be a tremendous eyesore for the people in the foothills. It's going to be the business cards for Santa Fe if you come down the I-25 or the N-14.

So another draft is proposed in a couple of weeks later of months. This was June and this is September. The file name is more than five megawatt large scale solar resolution draft and it was proposed by Mr. Hughes and Mrs. Hamilton and it sounds it sounds different: Whereas large scale solar, so more than five megawatts, renewable energy projects may – it was changed from will it was first will but now it's may -- will have effects on the landscape and wildlife and have the potential to positively or negatively impact both neighboring properties and the entire community. And another pieces that is safe removed is responsible It was first that is responsible. It's now it's safe. Responsible is removed. Minimize negative impact and risk to our sensitive environment and nearby communities is removed. So you can see that anything that's dangerous is taken out there. Santa Fe County desires to be leader in a national model in fire safety given the nature of our open spaces and the insurance of industry's high risk destination. Left out. Santa Fe County understands that countywide discussions about such project will lead to more responsible development. Left out. So you can see that a lot of the things that first were important are taken out. But still the five megawatt

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and the large scale solar is still in there and then the discussion starts and you get the discussion and just listen to it. Commissioner Greene, Jeff, can you clarify one thing is commercial solar so there's commercial solar there's community solar is commercial solar covered in the same community solar ordinance and then Mr. Young answers. So the ordinance amended a section of the SLDC or sections of the SLDC and so the amendments was done generally to the SLDC to change the definition of community solar, change the definition of commercial solar that it also added certain requirements for community solar and so that's what's going on with the ordinance. It was amended to the SLDC and then Greene says again and then are those two totally separate things in the SLDC and then Young says the definitions are in the section but in terms of the community solar pieces that added new requirements for community solar or community production that's a non-answer the question is simple is it the same or not and Commissioner says first of all I was at a meeting where we voted on community solar and I can assure everybody that there was no intent to mislead anybody. We were very excited about community solar. We wanted to get it moving as quickly as possible and as our attorney mentioned, we just went along with stuff recommendation that the two definitions are in parallel. I also want to say that while I agree very much with our attorney in his recommendation and we usually go with our attorney's recommendations that we did violate the Open Meetings Act, that doesn't mean that we're not concerned about the potential danger posed by lithium batteries. And we have procedures which we can follow to look at the issues when it's starting to come before us which will be very shortly. So now suddenly the whole large scale solar is out of the picture and I think that has to do with the fact that the draft that that Hank and Mrs. Hamilton put forward a resolution to address regulation of large-scale renewable energy project in Santa Fe. It was sent to Jeff and Greg for review and they send it back here. Here's our review and then that's redacted. Now, what on earth could there be that we're not supposed to see?

So we went from a resolution to address regulations of large-scale solar renewable projects in Santa Fe County to a resolution directing staff to engage with experts consultants regarding commercial renewable energy projects in Santa Fe County and post information concerning conditional use permit applications for such projects on the County website. There's nothing in there about large-scale solar. And what happened here is that the commercial solar was put in there. And when commercial solar was put in there, they shoved large scale solar in there as well. And nobody had the guts to say like people, we shouldn't do that. And what happened then is that there that Mr. Shaffer came he had to explain himself because this was not the direction they wanted to go to. But he had -- he had some -- he could explain, he could explain why there was a difference between the one resolution and the other one and all the comments that that came on the new on the new resolutions on the new ordinance. So he came up with an explanation. This memo explains the changes between the original draft and the revised draft for adoption. And that's very it explains a lot changes between the September 12 draft and the current draft. He says the SLDC does not do size and the distinguished characteristic is whether or not it's for sale or for profit. So the SLDC might not do size but the SGMP which is the framework does do size. It differentiates between residential to commercial. So then we have already two sizes and the potential for large

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scale solar electric generation exists. So now we have three forms. Large scale solar is a third based on size type of solar and it's it says also the SMGP that impact on the few historic and archaeological resources would have to be considered in future development proposal in order to preserve the integrity of the landscape. So the SLDC, the SGMP clearly says, Okay, we can do large scale solar but be very careful where you place it and ensure that potential land use compatibilities and environmental conflicts are taken into consideration in the locations of utility uses like power lines and substations and solar and wind power generation sites. So they clearly state that they have a priority in getting renewable energy but also in preserving the landscape and make sure where you place it. So it's not only about money, it's also about preserving the typically atmosphere of Santa Fe.

And then he comes with the second reason why things are changed and he compares, Shaffer compares it with large scale wind energy and he says the SLDC says the large scale wind energy meets size criterion and it's also for profit but it there there are some criteria some size criteria in excess of 90 feet in height measures from the ground how point blah blah blah. Now if you -- and at large scale wind facilities have specific regulations. Now if large scale wind has size issues and specific regulations, why not large-scale solar? And then he says imposing a moratorium on commercial solar energy production facilities; the suggestion was not adopted in the proposed resolution because the conditional use approval criteria especially when supported by independent experts ensure that all relevant factors are considered on a sight specific basis. In addition, if the conditional use is approved, the SLDC authorizes appropriate standard conditions or mitigation requirements to be imposed in response to site specific. It sounds beautiful, but the moment the County Commissioners asked for special for special things for regulations, Shaffer shut it down. So what does it mean if you say like, okay, the SLDC really authorizes it. There are all kinds of criteria in place that we can use because if they ask for it, they don't get it. And then he says the sponsors do not and the sponsors are Hughes and Hamilton the sponsors do not believe at this time the DCI designations is necessary. They asked for it. So why now say pointing to somebody else the sponsors don't want it. No, he didn't want it. The sponsors wanted it. All right.
Oh yeah. And this is this is fun. Our opinion on this recommendation is also guided by the Sustainable Growth Management Plan commitment to renewable energy and energy efficiency as well as the reality that the [inaudible] of the status quo dependency on fossil fuel our
countrywide and worldwide creating additional hurdles to the necessary transition to renewable energy would be inconsistent with that commitment and reality. Now it's not us who are putting up the hurdles. The County is putting up hurdles against the Linea proposal that's three times as big as this and they don't need a 2.3 gen-tie line but they have to they have to fulfill all kinds of criteria that the County doesn't put on AES. So who is obstructing here?

And then we come to this to the famous email from Shaffer to Dennis Kurtz from the SMI from the San Marcos Association. Now in a presentation we had for the community one of the questions that was made was why are commercial solar facility not addressed at the same level of detail as community solar and that's the million-dollar question. And the answer was that in a letter state dated July 24, '23 from Manager

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Shaffer it was stated that the Board of County Commissioners wishes to have large scale solar with BESS as a conditional use permit. This was evident by the adoption of the SLDC in 2016 and the corresponding use matrix giving large-scale solar use by a CUP. It's not in there. In the letter there's nothing mentioned about that, but we'll just put it out there for the for the people to read and say, guys, that's why we don't do this. It's not it's not in the letter. But even more, I don't think the County I don't think that the Board of County Commissioners wished for large-scale solar as a conditional use per permit. So what I did is I asked Hughes, did you ever did you or any other County Commissioner in the company of County Manager Shaffer ever decided you wanted large scale solar to be eligible for a CUP? And the answer was no conversation on a particular issue came up. And then he says renewable energy projects of any size are eligible to apply for a CUP. We didn't -- we did not discuss changing that. And this is worrisome because it means that Shaffer is just making things up and Mr. Hughes thinks that there is some kind of regulation that allows renewable projects of any size to be applicable for a CUP which is not true. So there's a regulation he mentions that doesn't exist.

So then I asked I sent a letter to Mr. Shaffer and I asked him these questions. Can you explain to me the discrepancy between what is stated in the slide at the meeting and the contents of your letter to Mr. Kurtz. Can you please explain when, where, how, and which County Commissioners communicated to you that they wish to have large-scale solar with BESS? If there is any minutes of that meeting, I would like to receive a copy. Could you please explain the discrepancy between what is stated in the slide at the meeting and the contents of Resolutions 2023 093? Can you please direct me to where it's evident in the 2016 SLDC that large-scale solar is a conditional use permit and where in the use matrix large-scale solar is given use by a CUP? Can you please explain how a slide with this amount of conflicting information could end up in a public meeting to inform the public on a subject that stirs the emotions up high? I send it first class. I send him email reminders. Nothing. No answer.

And then I sent a an email to Mrs. Ladd and she did answer and she was in the meeting as well and there was this slide shown and it says in the red in the red area in rural residential zoning this use is allowed under a CUP appendix as a CUP under appendix B use metrics blah, blah, blah which identifies commercial solar as energy product facilities in this zoning district. Rural residential zoning allows for commercial use as per the correspondence from County Manager Greg Shaffer in a letter. The letter always pops up. But if you look, rural residential, commercial solar, an X that means no. By the way, we're not in rural residential, we're in rural fringe. And the third problem there, nothing in the letter of Greg Shaffer mentions that. And that this is the level of knowledge of due diligence from the people who are going to advise you County Commissioners on how to vote on this. And during that meeting she made the and I'm sorry but it you said it and I loved it. She said I would rather face this project than a coal plant. And that I mean she apologized profoundly and I understand it but it it's not something you can unsay, certainly not in this case and the County would not permit a coal plant in this location and neither should they permit large-scale solar.

So that's how we ended up from a resolution with the Resolution 2023 093 with platitudes. We engaged with experts. Well, we know how the experts work with the fire with the with the noise with the hazard mitigation. It was it was all flawed. It was all it all

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went wrong. It was not it was not correct. So but it's well we have experts looking at this. We're going to set up a website. We have the safeguards. Renewable are potentially allowed. Cannot be detrimental or inconsistent. All fake. And without what the County Commissioner specifically requested. Recognition of this being a large scale in need of special category with a potential to negatively impact landscape wildlife and communities and providing meaningful safeguards for the community. That was all taken out.

Now, is the 10 minutes is that with the four minutes extra or not? This is what it was all about with the confidentiality. This was an email that Mr. Prucino sent two days before the meeting of the County of the Planning Committee and it was about that, we can within the SLDC use matrix under the heading of utilities there are two separate uses one titled gas or electric and in the other commercial energy production facility. We can conclude therefore that when adopting the SLDC, the County Board of County Commissioners affirmably elected to treat Linea solar facilities differently than other types of energy production. There's no record to explain why the BCC made that decision. They might have felt that solar facilities are not as fiscally disruptive or that solar facilities do not present the same risk hazards as similar fossil fuels. Or maybe they just wanted to promote the adoption of use of solar energy productions as a matter of public
policy. Now let's look at that. In 2016, the solar use was just going to be exploding. Here they made the decision to write the new SLDC. They could not seriously set at that level, okay, we know exactly where we're going with solar and this is how we're going to do it. So, it's pure speculation to think what they what they what they were planning. And it's funny that that Mr. Shaffer was one of the persons who signed it, but he never said anything about what the County Commissioners thought when they when they signed the SLDC. And then about that it's not going to be visually disruptive. This is from the from the official impact report provided by AES and they had two categories were applicable to our situations either moderate or high and the landscape would appear to be substantially or severely altered. The project would introduce form line color texture or scale not common in the landscape and would be visual prominent moderate strong contrast. So prominent, moderate or strong contrast the project would attract or demand attention. So if it's moderate would it would attract and if it's high it would demand. Project would begin moderate or dominate the visual setting. So don't tell me this is not going to affect our visual joy in what we see and about the about the risk between 2011 and mid 2025 there were 96 battery energy storage failures worldwide and from 2019 to mid 2025 35 other energy storage failure incidents. So it's not as safe as they try to make it look. Well, this we already discussed.

And then yeah, this is funny. Smothering the discussion. I think they had some plan in influencing the Planning Committee and they several arguments. So the first is it was all chosen by the then Board of County Commissioners and then you come up with argument that smother the discussion and he said ultimately the BBC reasoning is not germane. They made the affirmative choice to distinguish between solar energy production facilities. They incorporated that distinction in the SLDC. That distinction is binding on all party and taking and tasking with interpreting and forcing the SLDC. So, we're not going to talk about it. This is how we're going to do it. And then they point out,

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okay, this is not so interesting. The whole -- I have other stuff. Okay, this is this is interesting. What happened is I think they tried to manipulate the Planning Committee. There was a staff recommendation that they wanted to reappoint Erik Abboe for district 4 and reappoint Ruben Mendoza on district 5. And then in on January 17, Prucino tried to remove Ruben Mendoza from the Planning Committee because his wife signed a simple petition two years ago on his behalf against this project. He was not involved in any action or expression of his opinion in those two years. He was highly qualified to be a member with 40 years career in city management, investment banking, and as a financial advisor in public finance to cities and counties in the southwest, including Santa Fe County. His colleagues on the Planning Committee agreed he could stay on. Staff recommended his reappoint, but when Prucino could not get to reappoint him, when Prucino could not get to recluse himself, Hughes decided not to reappoint Mr. Mendoza because he thought he had a conflict of interest. Now if we look at Mr. Abboe on the other side, he was chair of the Planning Committee and he serves as deputy director in the New Mexico Renewable Energy Transmission Authority. They help private developers in planning, financing and developing energy and energy storage projects. Now don't tell
me that this is not a huge conflict of interest and he could stay on. He was even planning it and Mr. Mendoza had to be recused and when he didn't want to recuse he wasn't reappointed even though his colleague supported him and how biased Abboe was is very clear in the planning committee session the proponents get 6 hours and 27 minutes and the opponents we got 2 hour and 47 minutes and Mr. Abboe even managed to call Mr. Thompson to extensively testify and he closed Thompson's statements with telling him, Thank you so much. I appreciate your long-term perspective. Thanks. The Planning Committee is supposed to be independent and not biased.

And then as cherry, the cherry on the cake is that when the Planning Committee went into closed session, Mr. Prucino was there. So the writer of the memo was there and together with Mr. Abboe I think they, the members for the Planning Committee had no chance and the vote was not 7 to1 but 6 to1 but after 45 minutes that can't be much of a discussion the CUP was granted. So Prucino was present. Abboe was directing and the goal was to get the CUP granted there was no balanced weighing of the evidence no consideration was given to the arguments of the Hearing Officer the decision of the Planning Committee is a 14-point description of the process and the four conclusions are presented without any explanation or substantiation. No discussion of the arguments brought up by hundreds of residents and I think that shows disrespect for all the residents.

Okay, now this I believe – this we've had – oh, this is this is interesting. Mr. Mayer showed you how carefully they were with having a 1.5, mile distance between any resident. Well, not even from the BESS . Okay, my house is here, as you can imagine. And 1.5 mile from the BESS and here, look, they have this BESS straight in the city. So, here's a picture of that. Here is this BESS is coming, but this is a standalone BESS on 9 acre and the fire department of Santa Fe is well prepared; it's one of the best in the country they have a HAZMAT they have everything and if you compare that to the Turquoise Trail Fire Department who has who has shortage of people shortage of equipment they have to rely on a 30,000 gallon tank with water. This is not a the correct representation. This is not the same. And this is for the 350. They showed, they showed

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in the last, in the last session that this is how it's going to look. But they don't take into account that 20 acres per dwelling. This is not 20 acres per dwelling. So if you want to make sure that that you that you paint a picture of how disastrous the development is going to be, make sure that you take the right measurements.

And what I miss in the environmental groups that are here, I mean, you can say that this is our choice. It's going to be bleak or this. But how about the people who are suffering from getting the lithium out of the ground? And we're all responsible for this. look what happens in their backyard. But as long as I don't have to go into the pit, I don't care where they get it from.

Another thing I quickly want to point to you is that this project 11 years after the opening, it was supposed to go to 2039. They had to close it because it was because it was obsolete. And here the Sierra Club strongly was for in favor of closing it. And now they are in favor of putting up a big one here. So they agree that not every renewable energy project is created equal. But you have to look very careful about what the circumstances are where you put it. And if you look at this project, the linear project here, we have this is where we are. We have one dwelling per 20 acres. And where the Linea project that is three times as large as Moss acreage photoellic and BESS, this –

CHAIR BUSTAMANTE: You're running, I just wanted to let you know you have –

MS. EIKELENBOOM: Yeah okay, thank you. This will serve the climate goals for the County and New Mexico better than AES and here they have one dwelling per 160 acres so there's quite a difference.

Okay that's it I can go on about the appraisal study that's not but you can read that for yourself. It's very clear.

CHAIR BUSTAMANTE: Thank you. Are there any parties with standing who would like to cross-examine Ms. Eikelenboom? Any parties with standing who would like to cross-examine today? Okay. Not seeing any, questions from the Commissioners? Commissioner Hughes.

COMMISSIONER HUGHES: I just want to respond to what you said. And by the way, I heard everything because I was listening on the –

MS. EIKELENBOOM: I know. I know.

COMMISSIONER HUGHES: -- the microphone downstairs. I'm glad you went through our development of all that stuff. I think that shows how much concerned I was about the project. Also, I was a sort of a new commissioner, so I took a lot of advice from Greg, but I was very happy with what we ended up. We were going to be able to hire consultants, as we have here, to evaluate the project. I also was glad that we were able to update the fire code to the latest thing, which everyone responded to, the latest fire code. I just want to say that.

Also in terms of reappointing Mr. Mendoza, I'm sorry I couldn't reappoint him because he was so close to expressing a concern ahead of time. I appointed someone else who actually voted the same way and so I don't think it changed the vote on the County Commission. But I was sorry to lose him from the County Commission. And that's it.

CHAIR BUSTAMANTE: Thank you, Commissioner Hughes. Any other questions from the Commission for Miss Eikelenboom.

MS. EIKELENBOOM: Can I shortly react to what Mr. Hughes said.

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CHAIR BUSTAMANTE: Unless it has relevance to the proceedings.

MS. EIKELENBOOM: Yeah. Yeah. Just one remark. He said about the fire codes appendix G is not accepted while the AES doesn't have to abide by appendix G from the fire code and Linea has to and that's so I'm not so happy about that. That's it.

CHAIR BUSTAMANTE: Any questions? Commissioner Johnson.

COMMISSIONER JOHNSON: Thank you and thank you for your presentation. I am allowed to ask just for our mutual clarification questions that was raised by New Mexicans for
Responsible Renewable Energies to the applicant. Is that correct, Chair?

CHAIR BUSTAMANTE: Yes.

COMMISSIONER JOHNSON: So in the presentation the certification for UL 9540 was brought up and another claim that was that was made by this party with standing was regarding the maximum surface temperature of the wall and I just wonder if the applicant could respond to those concerns if possible.

MR. SIMPSON: Sure. The temperatures and I'm not recalling exactly which of the four reports the that specific temperature came from, but the temperatures recorded are relevant to the criteria for whether or not the next sequence and testing occurs. So the numbers provided were the numbers in the reports. I don't dispute that. I think the conclusion is that these are the impacts on the wall. But the impacts which we're most concerned about are the impacts beyond the walls to the public as well as other assets. And the ability of a wall to sustain temperatures is related to obviously how high the temperature is but also how long that temperature is exposed to the wall and then how much total energy really is exposed to the wall. So what we found was that in our testing without the proper thermal runaway propagation the temperatures were higher than we wanted and it meant that we needed to proceed into the next round of testing and with that testing we identified that the mitigation measures implemented were sufficient. So the numbers are very important and we've used those numbers to design the hazard mitigation features of this system. Is that answering your question?

COMMISSIONER JOHNSON: So, and is that I guess related to the standards – and I may be mixing up which one and the number, but is that -- does the sort of national body recognize that variation and consider that to be within acceptable limits for the duration of exposure of heat to a panel?

MR. SIMPSON: So, as I mentioned, UL 954)A isn't about an acceptance by some other body. It's just about testing to identify what the hazards are. And then it's up to -- what is required is to provide all of that information to responsible authority having jurisdiction to review. Usually it uses an expert like a fire protection engineer to review that data and then assess whether or not that is acceptable for that community. And I would just like to take the opportunity also to identify the date on which we did receive UL 9540 certification. So this is not 9540A but 9540 itself which requires the testing in 9540A that was received for this specific product on May 6 of 2025.

COMMISSIONER CACARI STONE: Okay. Thank you. So, this is a question for the Fire Department. I guess I'd like to hear, the party makes a claim about the fire department being underprepared for this and the decrease in the ISO score. Can you respond to that?

FIRE MARSHAL BLAY: Madame Chair, Commissioner Johnson,

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I don't think that we are ill-prepared to respond to any emergency in Santa Fe County. I think we have a very good, well-qualified department to respond to any emergency. As far as ISO, ISO basically takes fire department equipment and personnel and training, water capability or water uh amounts or capacity, public education. They look at dispatch center. So, I'm not sure how this project could affect in one way or another an ISO review or rate.

COMMISSIONER CACARI STONE: Okay. Thank you. And thank you, Ms, Eikelenboom, for your testimony.

CHAIR BUSTAMANTE: Thank you, Commissioner. Anyone else? Thank you very much for your testimony. Any other questions from the Commission?

F. The San Marcos Association

[Duly sworn, Dennis Kurtz, testified as follows:]

DENNIS KURTZ: My name is Dennis Kurtz, K-u-r-t-z. I live at 42 San Marcos Road West in Santa Fe, 87508, And I am under oath.

Thank you everybody. I know this is a long experience is only like 1 percent over for you and but I really appreciate you taking the time and listening to all the people in the in the community. I have a solution though for you actually in a few minutes that could we could we could end this real quickly because I have the solution. But nevertheless, I'm Dennis Kurtz. I'm president of the San Marcos Association. And the San Marcos Association is a group that's been around since the mid 1980s. Currently, the SLDC was adopted in 2016 and they codified a concept called registered organizations to promote community input. And so we're a registered organization now. But since the mid1 1980s, we've been advocating for this area that you see on the map here, which includes up in here where the solar project would be located. And it's really important that to understand a lot of things have the word San Marcos in them. We're this group that looks over this whole area. We work with the people in Cerrillos. We work with the people in Madrid. work with the people in Rancho Alegra all in all these different areas and we're not a single issue organization. This solar project is just one thing out of the many, many things that we look at and that we work at. We work on traffic safety and I know some of you know me and you know we worked on traffic safety. We were working with the County on the nuisance abatement ordinance in order to get that passed and in place and to get those hearings started. We've been since the mid1 1980s and up until today we're still working dealing with the gold mine at the end of Gold Mine Road. So we do lots of different things and this solar project is just one of them. But because we do lots of different things, we look at things in a much bigger way. I've been in your position in my former life, not as a commissioner, but as you know, working with school boards and so forth. It's really tempting in this situation to get focused on the one thing that's in front of you. In this case, just this project. This project to us is like an indicator light. There's a much, much bigger picture. And I'm going to invite you to think about that bigger picture during my testimony as opposed to lots of nitty-gritty data points because that's really where we're coming from. How this whole project is handled is going to send a message to the community

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about county governance, county management, about how the public welfare is maintained and how it's thought about how the SLDC is interpreted and those are important big picture things even though this is the item right before us.

In terms of the big picture, the San Marcos Association, we also call ourselves SMA because so much San Marcos around, we're trying to brand ourselves a little bit. But SMA believed that the SLDC was written philosophically at its deepest level to encourage and to enforce sustainable development and to protect the community and the residents from irresponsible development. And so that's what we're always looking at. When we hear about development is it in that spirit. We're not against solar. We're not against obviously we're obviously in favor of fighting climate change and all those sorts of things. Those big ideas are the what. What we're thinking about and what I'll be focusing a lot on today is the how. Because the what everyone probably agrees on the what the how is something different. I'm talking but I'm not moving the slide. So our mission is to serve as a trusted resource for the community by listening to community concerns, sharing information and influencing policy and decisions affecting all of us in this big way from this big picture perspective.

This is an appeals hearing and so I thought I had to frame everything in terms of an appeal. So we're appealing the CPC decision to approve this conditional use permit application for three reasons. One, we feel like they ignored the facts that we presented facts that would have in our view dictated the opposite decision. We feel like they instead of using the facts that we presented, they used opinions instead of facts. And we don't feel like that's good governance. And so we're appealing that. And finally, we asked them to consider requesting an independent fiscal analysis of this whole project before they made a decision. yet they made a decision as you've heard in something like 45 minutes when just like you guys they didn't have to make it that day. So, what you've been listening to and what you're going to hear more of are two kinds of facts. Going to hear supporting facts, facts that people string together in order to come to some conclusion, but it's important. I'm a scientist. That conclusion is not a fact. It's just an opinion. Might be based on facts, but it's just an opinion. But you're also going to hear fundamental facts. Fundamental facts are their own truth. They stand alone. They don't lead you anywhere. The five of you are sitting here right now today. You hear testimony about this issue. That's a fundamental fact and it dictates my actions. If I want to talk to you about this, I got to be here today. I can't do it next week. I've got I can't be someplace else. That's a fundamental fact. And so I'm going to start with some fundamental facts about this first appeal because these are the facts that we present to the Hearing Officer who agreed with our way of looking at it and to the CPC.

Fact, Rancho Solar Project is a gas or electric power generating facility. I made sure you all had a copy. This is the use matrix which I'm sure you're familiar with. This is appendix B of the SLDC. It lists all the uses that you can do in the County and how you whether they're permitted or not in different zoning areas. If you want to build a power plant in Santa Fe County, that's the use. There's no use on here that says power plant. The use that covers power plants according to the land based classification standard 6400, the use that covers power plants is called gas or electric power generating facility. People like big words. That's what this is. Nobody denies that. Nobody has ever said this facility is not a power plant. Nobody has ever said it's not a gas or electric power generating

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facility. That is a fact.

The second fact. Fact, under LBCS code, these power plants are all kinds of power plants. There's not a separate code for a coal power plant or a nuclear power plant. They're all in this same use, including solar. Solar has its own subcode, 6460. That's a fact. This power plant is totally included within this use. It is a solar version, not a coal or not hydroelectric or something. A solar gas or electric power plant. Fact. It is said to be located, it is planned to be located in the Rural Fringe. Nobody debates that. That's just a fact. It's in the Rural Fringe. Rural Fringe has been discussed and there have been other slides about this but just to reiterate these are areas from according to SLDC 8.6.3.1 26.3.1 areas suitable for a combination of estate type residential development, agricultural uses and other compatible uses. And then some of these compatible uses are things like ecotourism, equestrian, and renewable resource-based activities. Now, there was a slide earlier today I noticed it said that same they didn't have it in quotes but listed those different things and it made it said oh rural fringe renewable resources but it didn't say compatible. The activities in the rural fringe need to be compatible with estate type residential development agricultural uses with those kinds of uses that are already happening in the rural fringe. Power plant. Don't know fact. Gas or electric power generating facilities including solar installations are prohibited in the rural fringe. You look on, if you dig down through this and the way to do it it's not in alphabetical order any logical order but if you look under the structure codes and follow down till you hit 6400 you'll see gas or electric power generating facilities and you'll see I made a shot of it here so you could look at it gas or electric power generating facilities, right there here's rural fringe X. X is prohibited over here in this part of the slide. You see P means permitted. Okay, we you can do that there. X is prohibited. C means you can maybe you can apply for a conditional use permit. Doesn't mean you'll get one. The SLDC specifically says a developer has no inherent right for a conditional use permit. You don't have a right for it. You just have the right to apply for it. But if there's X, it's prohibited. There's no C. There's no provision in the rural fringe for a gas or electric power generation facility to have to apply for a conditional use permit. Conditional use permits are not an option where the use is prohibited. It's not just -- this isn't just my opinion. SLDC 4.9.6.2 says, quote, only those uses that are enumerated as conditional uses in a zoning district as set forth in the use matrix – this thing – may be authorized by the planning committee.

The Planning Commission ignored these facts. This is a prohibited development. It's not conditional. There's not a provision for be it being conditional.
We're we explained this to them just like I'm explaining it here and they ignore that. CPC made no mention of the indisputable fundamental facts that I just went through. You wouldn't know if you read their findings of fact that we ever spoke or ever said any of these things. They just blew right past it and ignored them. We made these same arguments to the Hearing Officer and the Hearing Officer agreed with us and she her phrasing was that this project was inconsistent because of the facts I presented inconsistent with the purposes of the property zoning classification and with the spirit and the intent of the SLDC or the SGMP. The Hearing Officer has a lot of experience with the SLDC, probably a lot more than the Planning Commission commissioners have.

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So, we're appealing this decision to ignore the facts, fundamental facts, just like you're sitting here, because it was incorrect. It was wrong, and it did not serve the public good. We feel like not only should this CUP been denied, it should have been dismissed. And that's our recommendation. Dismiss this CUP application. Denying it makes it sound like it had a right to exist. It does not have any right, near as we can see, based on the facts I just presented to even be there. There's no need. There's no provision for a CUP. That's not the way to go about this. If people want this to be built, they need to change the laws or do something different. But a CUP is not the mechanism to make this happen. And so why I jurist prudentially or whatever this is throw this out of court. This should be just dismissed. It does it has no real basis. And I've looked and looked I can't find any facts that lead to a different course of action. Big picture in terms of governance and making decisions and leadership and all that. The San Marcos Association feels like facts should be what guide those decisions. The CPC ignored them.

Number two. Fact, the CPC not only ignored the facts I just presented, they used opinions to make their decision. As far as we're concerned, opinions, they might be nice opinions, they might be opinions like all that, but they don't override facts. The CPC went with opinions and as pointed out in just a few minutes after days of testimony went and made their decision. So we're appealing that as being incorrect. We think it was wrong. We don't think it in any way served the public good.

Okay, this is the a slide of just the cover page so to speak of the memo. I wasn't really going to discuss this except to point out big picture-wise just to make sure that you understand, you know, I'm named in this memo. I'm on the attorney client enemies list. Sam Marcos Association is named in this memo. And this was written just three days before the hearing for the CPC. And they provided them with a whole bunch of opinions which are clearly labeled in this memo as opinions by the author of the memo. San Marcos Association were never given a chance to rebut them. I'll do a little bit of that today, but it that's not really the point. The point is you guys run the show. Is this how it's supposed to happen. I get it. If you go into your executive session and you have legal questions, yeah, you have attorneys for that. But for an attorney to just write this memo without you even asking for it for the County Planning Commission, that's a debatable proposition. But the most important thing is they clearly state that all of the things in that memo are opinions. They're not facts, they're opinions. They were given to the CPC and the CPC knew they were opinions and used them instead of the facts that I just presented. There's two.

This little button doesn't always work. I might put to point it now. It's going to work backwards. Dead in the water here. I'm going to keep talking or do I go back? This is. [referring to the powerpoint clicker]

Okay, in that memo the opinions basically our analysis is flawed. Okay, there's two big sets of opinions here. The opinion of staff in that memo and the on behalf the memo was written on behalf of the applicant is that this solar project is a quote commercial solar energy production facility. It's another use that's in here. Commercial energy solar energy production facility can be a solar a power plant. That's that opinion. It's just an opinion. Our opinion is that this use commercial solar energy is for something completely different. Has no bearing on this project at all. It as different as saying it's a bed and breakfast. It's a different thing. It has nice words in it commercial and solar and

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all that but it's different. And we made that opinion. We expressed it all to the Hearing Officer. The Hearing Officer agreed. So it's not a flawed or fanciful or frivolous opinion in our view. But those are the two things. I'm not going to argue staff side. They can argue that for themselves, but I'm going to argue our side a little bit here. If I can get this to move. Okay.

Staff opinion. This is really important. It may well be that the solar facility at issue is both a gas or electric power generating facility and a commercial solar energy production facility. The latter category appear to be a subset of the former. This is a really dangerous assertion. Our view is that the people who wrote the framers of the SLDC wrote this document so that these things were mutually exclusive. You can't you don't otherwise developers could game the system. They could dig around in the use matrix and say, Oh, I want to be oh, this one's easier to get approved. Well, let's do that one. You're either this or you're that, they're not both. The idea and if and if in the end this all goes in such a way that that statement is true that they that a use can be both I don't know what the ramifications are going to be in the future for future development won't even be sold it'll be something else where some developer says oh we're not this we're going to be that, No, we feel like they're two separate things. This is a power plant prohibited commercial solar energy production facility is something completely different. It was never intended to be a 96 million watt power plant.

Commercial. Commercial is defined in the SLDC as for sale or profit. I think my sixth graders I used to teach could come up with that. I'm going to get back to that. But in the SGMP, the philosophical document that underlies this, there's a whole section on renewable infrastructure. And in it, it says there should be infrastructure. Infrastructure is not just pipelines and roads and stuff. It's a legal infrastructure. It's a financial infrastructure. It's an educational infrastructure. Be an infrastructure that allows residential and commercial property owners to be able to make renewable energy improvements in an accessible and affordable manner. I got solar on my house to run my washing machine and my vacuum cleaner and stuff, but I have a home business and I want more solar for that home business. How do I get that? There's a distinct difference between commercial solar for that part of my business and residential solar for my house. The SGMP envisioned that. They in effect defined it here in this section. And so it was intended to be compatible of so-called neighborhood scale. And five years ago, even recently, the County basically agreed with that. In Exhibit 15, an email between the County communication director and a reporter states that the commercial solar facility is quote intended to benefit one or more business users and is typically located on the roof or on the ground next to the intended user. End quote. It's like, you know, it's just like I have a business. I'm going to put it out in my behind the barn or wherever it is and it's intended to augment my commercial assets. It's not to build a power plant. And of course, it's going to be whatever the scale is of the neighborhood that we're in. It's going to be reasonable that you would expect your neighbors to have some input into that. That's what a conditional use permit does. This is not for building these giant power plants. Four or five years ago when I was on the Planning Commission for the San Marcos and I'm assuming you all know that process. We were given this worksheet and this worksheet clearly shows commercial solar energy production facilities were considered by the County in those days to be of neighborhood scale. Now they've since expanded

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that definition to include power plants. I don't know about that. That's an opinion as far as we're concerned and it's an opinion as stated in the memo that was brought up before. So the other thing is that under the general power plant category there's a whole bunch of different subcategories. One of them is geothermal. If you look on this list right underneath commercial solar energy production facility is geothermal facility. They pulled that one out back when the SLDC was written. They said, No, we want geothermal power plants to be their own separate line, separate from all the other kinds. And they used the 6450 for the geothermal power plant. It's right there. They didn't say commercial geothermal power plant. They just said geothermal power plant. They could have done the same thing with solar, but they didn't. Why not? But that's not what they meant. I want to look at the word commercial in this use matrix. Commercial. There's commercial zoning district and there's a commercial section in there like for stores and gas stations and so forth. But the word commercial as an adjective rarely comes up in the 250 or so uses. It comes up with commercial airports. Well, what other kinds of airports are there? Well, there are private airports. Jeffrey Epstein had a private airfield out in his place down in the prairie there. Commercial greenhouses. Well, aren't all No, you can have a private greenhouse for your personal growing needs of whatever crop it is you want. Commercial dog breeding, commercial horse breed -- commercial is used as an adjective only a few places in this use matrix to distinguish between things that are for profit or sale and things that are not things that are private, residential, military, governmental, whatever they might be. So commercial solar is something different? No commercial solar that energy production was meant for existing businesses to augment their assets by adding some solar panels to their roof or out there by the side of the building or whatnot of a scale similar to but distinct from residential. Commercial in this sense is nonresidential to exist to improve existing commercial properties. That all follows logically from the SGMP. Nothing in the definition, nothing in the revised definition of commercial solar, nothing contradicts that. It makes perfect, it makes perfect sense from a logical standpoint.

So, this is our opinion. It's just as good an opinion as staff's opinion that this is for a power plant, but it's an opinion. I want you to think though about one more thing. If you take staff's logic that this is what it's for, commercial solar energy production facility is why you can build this out there when it's a power plant that otherwise is prohibited. But it's okay because it's commercial. Let's just imagine that I represent a church and the people in the congregation believe from the powers up above that they have been directed and ordered to fight climate change. And they've been ordered to fight climate change by building a 96 million watt solar power plant in a rural fringe field off yonder and generate electricity for the City of Santa Fe and the County and people all around. and they've been directed to do that and give it away for free. Not going to earn a penny in 35 years. Going to pay all the taxes, all the fees, all the insurance, all the construction, everything. Not going to earn one cent. Well, then it's not commercial solar. You can't do that. It's prohibited. Is that what the people who wrote the SLDC meant that you could only build a solar power plant if it was for money? If that's if that's what they meant, well, that's what that's what in effect you all will be saying if you approve this because that doesn't make any sense. In the memo, the secret private memo, it says specifically things like there's no record of what the county

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people were thinking. It's not germane as to what they meant when they wrote the SLDC. SMA totally disagrees. From preschoolers to the Pope, it matters what your intentions were. We don't think that the intentions of the framers of the SLDC was to say you can only build a solar power plant out here if it's for money, which is the logical conclusion from it having it being okay. That's the get-around from a prohibited power plant to this commercial power plant.

So we're recommending dismissing the CUP on that basis. Act. This project has not been the subject of an independent fiscal analysis that made been made available to the public. Heard all kinds of numbers from the applicant and I'm not ever going to say that they're making them up or something. Okay, they've done their work, but the public deserved an independent fiscal analysis. Way back at the beginning of these arguments that we've been saying, this big picture view, we've had this since before this was even a conditional use permit application. Back before then, we wrote and you saw some of the back and forth and you've got all the letters. We suggested that it be that, not it, but projects like this because we knew there would be more and there are more all around here in this county and next door in other counties that they be considered developments of countywide impact DCIs. Looked at it. It was seriously considered I think but it didn't it didn't happen. One of the reasons it didn't happen, at least in the letter we received from the County, was that it would making projects like this a DCI would create hurdles to development. Well, some people's hurdles are other people's guard rails and the DCI process was codified to protect the public. One of the hurdles that would have been put in place per the SLDC would have been a fiscal analysis. It would have been required had this project or projects like this been DCIs. Now, I'm not a financial person, but whenever I've had to make a big decision, buying a house or a car or investment decisions or, you know, this or that, and most people, you do some kind of financial analysis. Maybe it's maybe we're not as good as others, but mine aren't as good as others, but we do something. This is a $200 million project at least that has at least arguably is going to be adding risk to this area. What are the pros? What are the cons? What are the benefits? What are the opposite of benefits? People ask me questions like, What's going to happen to my property taxes or my home values? What's going to happen to my insurance? I don't know, but I feel like people deserve an independent analysis. We feel like SMA feels like that. Talked about industrial revenue bonds. I don't know IRBs exactly what is that is are the County residents going to be on the hook somehow for $200 million of industry -- No, I don't know. Maybe they're a wonderful thing. Maybe they have probably everything. Just like everything, they have pluses and minuses. What happens if the applicant today decides in 10 years to sell this or they get bought? You know, those are all kinds of questions that I we feel like the public has a right to know. We brought them to the CPC Planning Commission and they didn't answer them. What happens to the County's credit rating? The County's credit rating of course is the cost of money. Cost for the County to borrow money. You know, it's just something that again I'm not an expert on, but it seems like it would be a prudent approach to look at this and include some kind of assessment of the factors that could be applicable to the county's credit rating. What I mean, we talked about a lot about habitat or some you'll hear more, I'm sure, adverse visual impacts. You know, this is a place driven by tourism. You'll be able to see this from Aspen Vista. You walk out in Aspen Vista and look out

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through that view, this will be right there, you'll be able to see it. Does that matter? Is that something that matters with the credit rating? What if there lawsuits if there is, god forbid, some kind of fire? What, you know, all these kind of things? I don't know. Perhaps this is these are non-issues. Is the industrial revenue bond going to impact us well or badly? Don't know. But the public deserved to know. We made that request, gave permission, so to speak, that the County Planning Commission didn't have to decide right then and there that they could do this and come back in a few weeks or months and decide. And they ignored it. And so we feel like that was incorrect, wrong, and it wasn't in the public interest that we in our minds think the County Planning Commission is there for.

CPC ignored the facts. We're appealing that. They not only ignored the facts, they went on opinions over facts, which we feel like is not the way that governance should be taking place. And they, the CPC, did not require or ask for not even a condition of approval that there'd be some independent fiscal analysis of this. No, they gave them an extra year extension, but they didn't ask for any kind of fiscal analysis of this project. So, big picture, it's an indicator light. I've talked a lot about this project, but it's really how do you look at the whole thing in a big way to make your decisions and that's what the public is really going to be watching long term. So, thank you again for your time and for listening to me as I stumbled through all this. I'm going to devote the rest of the time, whatever. You can click it there to the CEC. They can have it afterwards, but I'll stand for questions now. Anyone who wants to ask.

CHAIR BUSTAMANTE: Thank you, Mr. Kurtz. Do we have any parties with standing cross-examination? Any other parties with standing who would like to cross-examine Mr. Kurtz? Hearing no other. Does the commission have any questions of Mr. Kurtz? Commissioner Greene.

COMMISSIONER GREENE: Thank you, Madam Chair. Thank you for the presentation. I want to just sort of follow on what your questions were and just to get some clarification from our staff here about the process between whether this should have been a CUP or the other processes and so it's not necessarily cross-examination of you but there might be some participation.

At what point did these determinations and how does that determination happen? Is that an administration decision? Is there a board that is -- like how does this go? Was this a prior administrator who made those decisions? And at what point did that route decision get made?

MS. LADD: Madame Chair, Commissioners, Commissioner Greene, many decisions were made before my time. As you all know, I've only been here for a year. A commercial solar facility is an allowable use in the SLDC table and it is permissible through the conditional use permit process.

COMMISSIONER GREENE: What administrative or prior to a public hearing decisions were made? Were they legal decision from our legal department? Were they an administrative or a combination of the two? Was it your predecessor? Was it how -- did that routing?

MR. SISNEROS: Madam Chair, Commissioner Greene. So in 2016, it had always been indicated as a conditional use permit. The community solar use is a permit by right. Therefore, the commercial solar use is more restrictive, demands more

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requirements and conditions for the approval. The process for the SLDC in 2016, I think went through a rigorous process with the former land use administrator and our planning department, which all happened prior to many of us that are here today.

CHAIR BUSTAMANTE: If there are no further questions, I do wonder if we have questions of legal and if we would want to just with regard to some things that have been pointed out and I have a sense that I know that I would have some questions and I don't know if this is something I would I would like to ask these questions in close session.

ATTORNEY BOYD: Chair Bustamante and Commissioners, of course you are entitled under the Open Meetings Act to enter into a closed session to deliberate on a quasi judicial matter like this. That's your prerogative. Certainly, with respect to the question just asked by Commissioner Greene and with all due respect to Mr. Kurtz, I don't view this as a fact. This is a law question, right? This is what does the Sustainable Land Use Development Code say? And so you know neither I nor growth management can speak to the determination that was made by staff in the past about you know what analysis they employed to make the classification of this as of CUP proceeding. However, we can speak to the law side and you've seen it on the board. The issue is the difference between the broader categorization of electrical – gas or electric generating facilities and the more specific issue of a commercial solar generation facility. And so that's that distinction set forth in the use matrix is what gives rise to the staff determination to treat this in the way it was treated and which has led here.

CHAIR BUSTAMANTE: Thank you, Attorney Boyd. That does help with my question. Commissioner Greene.

COMMISSIONER GREENE: So let me continue down that for a second. So commercial solar might just be solar panels. Energy generation might be adding batteries. Just throwing it out there. That might be a certain difference in classification that might not have been foreseen back in 2016. Maybe solar panels were what people expected and battery storage was still in its, you know, pre-infancy sort of thing. Is that is that a route and a different classification in this that could have been -- might complicate things? I'm just trying to get like was this not so clearly laid out and maybe that's where things get complicated.

ATTORNEY BOYD: Chair and Commissioner Greene, you know, the use matrix doesn't specifically call out, batteries, right? I mean, the distinction that the parties have focused on is this distinction between gas and electric generating facilities on the one hand and commercial solar generating facilities on the other hand. Certainly, you could open up the question of all of these classifications right and you could look at any other particular use and talk about. I mean to use Mr. Kurtz's example, a church-based unlimited solar, not for-profit solar energy production facility that's not provided for in the use matrix. I mean this is all based on a set of classifications made and ultimately you know you all have to apply the CUP factors down downstream of that categorization but ultimately you're making the health, safety and other CUP factors apply and using your judgment for this for this proceeding.

COMMISSIONER GREENE: I'll think more about this and we'll get back to you. Thanks.

CHAIR BUSTAMANTE: Thank you. Any further cross-examination to

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Mr. Kurtz or questions of staff and the applicant before. I'm sorry the parties with standing part has already passed. If you have questions for Mr. Kurtz. I'm sorry. We have to have you please – of it's a question to the microphone and please state your name. Thank you.

JILL CLIBURN: Hi, I'm Jill Cliburn. I'm testifying for the Green Chamber of Commerce and I believe I've already been sworn in. My procedural question is this. I'm testifying for the Green Chamber of Commerce and I intended to bring this issue up and present my testimony and my evidence which could shed some important light on this question. If you all are going to address this question and close the matter now, then I would not have an opportunity to present on it later this evening.

CHAIR BUSTAMANTE: Ms. Cliburn, we won't have any closure on a particular topic. If it's pertinent to the conversation, you may address it at the time of your presentation.

MS. CLIBURN: All right. I just want to make sure that I have a chance to present.

CHAIR BUSTAMANTE: Certainly. Thank you. Anything else from the Commission? Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Thank you, Chair Bustamante. Thank you for your presentation and the previous woman as well. I appreciate all the efforts everyone's putting into this. For the sake of being redundant, I just want to clarify and ask the staff here. When making the decision around the commercial solar energy production facility, in fact, the area that this is being proposed to be at is considered in the rural fringe. Okay. So, how does the staff interpret that that the rural fringe is not allowed, according to this evidence and presentation here, that it even went forth to be considered? Because I'm looking at the matrix and it's an X commercial solar energy production facility is not allowed in -- oh, it's rural fringe as well as rural residential fringe. So, it could go in either of these categories, correct?

MR. SISNEROS: Madam Chair, Commissioner Cacari Stone, this property zoned rule fringe, so it is a conditional use permit for this property. That is the correct zoning.

COMMISSIONER CACARI STONE: But is it also considered rural residential? Are there are there some -- the land is so massive. Are there some areas where it just overlaps across columns of the matrix? I'm just asking how you make these determinations.

MR. SISNEROS: Madam Chair, Commissioner Cacari Stone, there is no split zoning for this property. So this zoning is mainly rural fringe.

COMMISSIONER CACARI STONE: Okay. So all of it is official according to the zoning and rural fringe.

MR. SISNEROS: That is correct.

COMMISSIONER CACARI STONE: All right. Thank you for that clarification.

CHAIR BUSTAMANTE: Thank you, Commissioner. Anything else? Commissioner, I'm sorry. Commissioner Cacari Stone still has a floor; are you done?

COMMISSIONER CACARI STONE: I'm done for now.

CHAIR BUSTAMANTE: Commissioner Johnson.

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COMMISSIONER JOHNSON: Thank you. Thank you, Mr. Kurtz you brought up a lot of very interesting points and I want to thank you for your approach in the presentation. I suppose I'm wondering what neighborhood scale means? I think that's a question for growth management staff. So in his presentation, Mr. Kurtz referenced the Appendix A having a specific call out for neighborhood scale.

MR. KURTZ: Are you asking me?

COMMISSIONER JOHNSON: No, I'm sort of seeking clarification because I don't have all the documents.

CHAIR BUSTAMANTE: Commissioner Johnson, would it help? Is this an answer that we would get from Growth Management?

COMMISSIONER JOHNSON: Yes, and I am directing this towards Growth Management.

MS. LADD: Madam Chair. Commissioner Johnson, do you mean exhibit B? I guess I'm confused where you're coming from.

COMMISSIONER JOHNSON: I don't have the let me get the presentation.

MR. SISNEROS: Madam Chair, Commissioner Johnson, are you referring to community scale?

COMMISSIONER JOHNSON: So, I'm going to refer to -- maybe I'm going to reframe my question. So, I'm looking at slide 18 of Mr. Kurtz's presentation. If that could be brought up, that'd be helpful.

MS. LADD: Madam Chair, Commissioner Johnson, I don't believe neighborhood scale is an official term in the SLDC. I think it's been used, a lot of these terms, to be honest, have been used a little bit interchangeably over time. And I think that's part of what's leading to some of the confusion about the early sort of process for these projects. So I don't know what to say because it's not a real term.

COMMISSIONER JOHNSON: These terms, you know, commercial can't capture everything. In fact Mr. Kurtz makes this point in his presentation and as Attorney Boyd has pointed out there are ways to interpret this. It would be impossible and to prolix to capture every single right so this is, as he says, a matter of interpretation.

This is a question for Mr. Kurtz, did you, was this sort of classification what you, contend as a classification error brought forth to the Planning Commission and how did they respond if so --

MR. KURTZ: They ignored it. I did not receive a single question about this element of my presentation. So they did not ask any question about this. And like I said, I feel like, we feel like, they ignored these things. And if I may, as far as neighborhood scale, that's a term kind of like common sense. It's used, people sort of know it when they see it, but it doesn't have a legal definition. So just –

COMMISSIONER JOHNSON: So that is part of your contention that they used opinions as opposed to facts.

MR. KURTZ: Oh, that's that is and as far as we're concerned that is a fact because they ignored the facts and they were given this memo and told how to think about my testimony. That's what the memo basically says is this is how you treat the San Marcos Association testimony in three days. So we feel and that memo says clearly these are opinions, opinions of staff. So, our feeling is, yeah, they took the opinions of staff

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over the facts that we presented and, you know, I mean, and we don't feel like that's good a good way to do to govern and that's really our point.

COMMISSIONER CACARI STONE: Okay. Thank you, Mr. Kurtz.

CHAIR BUSTAMANTE: Thank you, Commissioner Johnson, Mr. Kurtz. Anyone else? Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Thank you, Chair Bustamante. This is a question more for the staff. Could you is describe a little bit more from your opinion on the process of authority and decision making as you go through these requests and applications in terms of how staff is trained to make decisions? Do you make it as a team? Is it made through a process of hierarchy of approvals within yourselves? Because some of these presentations are bringing evidence to light which is the truth around governance is there's always latitude and authority and frontline discretion around jobs and it's just bringing to question the decisions you're making along the way. Not that it's wrong or right, but going back to codes and how things are interpreted. So maybe you can just describe in this process to what latitude has there been authority in decision making and how nebulous has it been?

MR. SISNEROS: So, Madame Chair, Commissioner Cacari Stone, any non-residential project that comes forward to Santa Fe County in the Growth Management Department goes through a pre-application technical advisory committee meeting where it's a mutual effort with multiple departments within Santa Fe County where we review these projects and determine if the use is compatible with what the applicant is requesting. We then issue a follow-up letter and describe any type of requirements, studies ,reports and assessments that are required at that time. And so typically that's how that determination in that process works.

MS. LADD: And if I if I could add to that a little bit, once staff has evaluated the project and the application, there's a lot of back and forth with the applicant. You need to do this, fix that, add this and then at some point once staff determines that the application is complete then it goes into the packet goes in front of the Hearing Officer . And I guess the point I'm trying to make is that these processes are pretty iterative. So it goes to the Hearing Officer the Hearing Officer asks questions maybe there's public testimony at the during the Hearing Officer where another issue comes up. Sometimes the applicant will agree, oh, okay, we'll make that fence lower or we'll, you know, pull the driveway in. We didn't realize that, whatever, you know. So, it sort of evolves a little bit during the hearing process. And then at the Planning Commission, same thing happens again. So, the decision-m is not staff ever. We're making a determination. We're making a recommendation. We're putting forth what we think is a reasonable interpretation. It's never staff's decision.

COMMISSIONER CACARI STONE: Thank you. And it and it's come up three times or three different presentations in the materials is the development of countywide impact and if you could say a little bit more what determines a project that would go in that direction versus with the decisions made here. Thank you.

MR. SISNEROS: So a department countywide impact project would typically be like a mining project. Those that are really essential to be even more stringent of requirements go through a more rigorous of a process that we know can be you know more of a impact to the community and to the County. So that's kind of the

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difference between the two. Even though this is a conditional use permit, this still went through a pretty rigorous and complex process and does require numerous studies, reports and assessments and even more so that the applicant had provided even though they weren't required as well. But typically a DCI is going to require every single SRA study report and assessment.

COMMISSIONER CACARI STONE: Thank you. So, I have some other questions. I'm going to hold them. Thank you so much,

CHAIR BUSTAMANTE: Attorney Boyd.

ATTORNEY BOYD: Chair, I have little to add beyond what Dominic has said. Just pointing out that the definition of a development of countywide impacts, states that it has the potential to affect the environment and public health, safety, and welfare beyond the impacts on immediately neighboring properties, including adverse noise, light, odor, and vibration, etc., etc. But ultimately you all are applying the law to the facts. And so this argument about CUP versus development of countywide impact, it was in front of the Planning Commission. The Planning Commission did make a finding that this was a commercial solar project and therefore subject to the CUP process. But it's again it's before you again and you all are making that decision. So nothing about what staff decided earlier on in this project ties your hands in terms of what you decide in the end.

CHAIR BUSTAMANTE: Thank you for that clarification. And we do have an opportunity for rebuttal from our presenter for San Marcos. Please Mr. Kurtz, did you anything you wanted to say?

MR. KURTZ: I just wanted to point out that in the SGMP under the DCI chapter or section, solar facilities are specifically listed as candidates for DCIs. So this wasn't just out of the blue. So that's you know what their reasoning was back in then I don't know but they're specifically listed.

CHAIR BUSTAMANTE: Thank you sir. If there are no other questions. We will take a break.

MR. KURTZ: So, when I'm finished now, is it and others, is it safe to assume that there will be no more questions for us if we have to leave early or something like that?

CHAIR BUSTAMANTE: There will be no more cross-examination to you.

MR. KURTZ: Okay. I'm not leaving, but other, thank you.

CHAIR BUSTAMANTE: Certainly. At this time before we take the break, I need to ask for the purpose of making sure that our timers are working well. Is there anyone else who wants to defer time to anyone who plans on ceding of time to another party? Is there any other party with standing that knows that they will be ceding time to another party with standing? Okay. All right. We will take a break and we will be back in 10 minutes.

[A break from 4:12 to 4:23 occurred]

CHAIR BUSTAMANTE: If we can please be seated. Okay, we are reconvening our meeting and our next party with standing is Ashley Schannauer.

D. Ashley C. Schannauer

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ASHLEY SCHANNAUER: Good afternoon. My name's Ashley Schannauer and I'm testifying and representing myself in this hearing. Oh, yes. I think I was sworn earlier today. Yes. I'm still under oath. I recognize that.

Okay, I'd like to start with an outline of my presentation. This is an appeal. I mean, this is this is an appeal of the Planning Commission's order. And so the first point that I'm making is that the Planning Commission's order fails the requirements of the SLDC. And then I go into the Hearing Officer's findings that resulting from the December hearings and then I deal with the application and the Planning Commission's order failing the SLDC criteria for a CUP and with a number of issues there relating to the criteria detrimental to the health, safety, general safety and general welfare and potential hazard for fire, panic or other danger to deal with the AES fires and some warnings about that. And then I deal with some water and traffic issues that have just come up really since the December hearings. Then the other one is that it's, this project is inconsistent with the County's Sustainable Growth Management Plan. And then more particularly I deal with some actual legal issues because I am a lawyer and I deal with how the application and the order violate the SLDC's permitting requirements and then get into due process violations that are related to this proceeding and the way it's been structured and then finally deal with this claim that the project is needed to transition New Mexico to carbon-free generation resources. I question that.

My background, why am I doing this on my own? Why am I representing myself? Why aren't I a part of CEC or any of the other organizations that are dealing with this? And the reason is that I have a unique background. I worked – I practiced public utility law and environmental law since 1980. That was 42 years until I retired in 2022. I worked for the state PRC from 2005 to 2022. Initially litigating cases in front of the commission and then I became a hearing examiner and became chief hearing examiner. the last three years of my work there and as a hearing examiner I dealt with -- I conducted quasi judicial proceedings the same kinds of proceedings that you folks are dealing with today. I heard evidence in favor and in opposition to projects, utility procurements and siting of power plants and I made recommendations to the commission on those issues. I was not an advocate in those. I was an advocate as a staff attorney but not an advocate as a hearing examiner. And that's very important for everyone to realize. There needs to be a separation between advocacy and decision making. Between advocacy and advisory functions that staff has been performing for the Commission. And I'll get into that in more detail.

So the first issue, the Planning Commission's order fails the requirements of the SLDC. It makes no findings of fact. No findings of fact. That's amazing, isn't it? The Hearing Officer spent pages on findings of fact and the Planning Commission's order makes no findings of fact. That violates section 4.3.2. of the SLDC. And the decision violates the SLDC criteria for a CUP. It violates permitting requirements in County ordinance and SLDC requirements, and it approves the CUP with 19 permit conditions to be – well, now I think it's 22 permit conditions – some of which must be addressed by the BCC and before a CUP is approved as required by the SLDC. Those have to be addressed by you folks before you approve the CUP. That's what section 6.3.10.2 requires.

The Hearing Officer's findings of fact: These were not addressed by the Planning

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Commission. This was a very important one. The consequences of a fire from the project could be catastrophic because of its proximity to the surrounding communities of Eldorado, Rancho San Marcos, and Rancho Viejo, an area with an estimated 10,000 homes and approximately 25,000 residents. She also found that it was the most hazard, that it would be the most hazardous commercial or industrial facility in Santa Fe County. The most hazardous. At the hearing, when asked if there was any commercial or industrial facility in the County that posed a comparable degree of hazard as the proposed project, staff responded that it was not aware of any past, present, or future projects that posed such hazard as the proposed project.

CHAIR BUSTAMANTE: Mr. Schannauer, if I may just remind you, if we can pause this for a second. We've heard testimony and what we're hearing today are the facts as provided to us. So, I don't know that we want to spend a lot of time unless it's something that's going to bring further consideration for the BCC, but to assure that we're making those considerations, but to discuss activities that have happened prior under different conditions may or may not be relevant. So, I hope that when those are brought before us, it's not so much as what happened in previous hearings as to what we need to know to make this decision and I'll leave that up to you and how you know you determine whether or not that's happened.

MR. SCHANNAUER: Well, with all due respect, I think there's been a misunderstanding, a fundamental misunderstanding of what this case is about. I think staff has told you that this is a de novo hearing. We're starting from scratch. That's not the case. The SLDC requires/provides that this is an appeal of the Planning Commission's decision and that Planning Commission's decision should have been informed by what the Hearing Officer determined. So that is a very fundamental issue here. We, all the parties including myself, filed letters of intent which identified the issues that we want to and that we believe should be addressed in this appeal. And in that regard that is one of these are some of the issues that the Planning Commission ignored the Hearing Officer's findings of fact. We think that's very relevant.

CHAIR BUSTAMANTE: Thank you.

MR. SCHANNAUER: And that that's why I'm going through this.

CHAIR BUSTAMANTE: I understand that. And that's fine. That'll work.

MR. SCHANNAUER: So My point is the Planning Commission should have been looking at these issues. Should have been making findings contrary findings to what the Hearing Officer found and the Planning Commission ignored what the Hearing Officer did. And so I think it's important for this Commission to understand what it was that the Hearing Officer did.

CHAIR BUSTAMANTE: Okay, proceed with your time.

MR. SCHANNAUER: Okay, thank you. So yes, the Hearing Officer made a number of other findings. The first two are what I thought were the most important ones, the most significant ones. But she goes on to talk about you know the size of the project and how close it is to the residential communities. She talks about the project system being less safe than safer forums to which the industry is in evolving. That's an important finding. She talks about the issue of remote monitoring. That's an important issue. That's an important issue and I'll get into that and the fact that the County does not have a hazardous material team.

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She also dealt with the first responder mitigation guidelines. The warnings that were identified there and the fire suppressant with the PFAS materials and that the project could have a negative impact on home values and access to home insurance. And then concluding that the evidence indicates that the project would be detrimental to the health, safety and general welfare of the area and that would create a potential hazard for fire, panic or other danger and it's inconsistent with the purposes of the properties zoning classification and inconsistent with the spirit and intent of the SLDC and SGMP. Those are all findings that were made by an experienced Hearing Officer after a long hearing. And they were not addressed by the Planning Commission. They should have been addressed by the Planning Commission and that's one reason why the Planning Commission's order should be reversed and this application denied.

So yeah, I think I think we've been over the criteria in the SLDC for a conditional use permit. And people have been focusing on the fire hazards which relate to criteria one and three and also number seven about the zoning classification.

But I'm also wanted wanting to address two other criteria. The traffic issue and the water issue. Those are related and I'll get into those. But first, I wanted to add some to the discussion about the fire hazards. AES has had a lot of fires, explosions and toxic gas releases. The first the first accident 2019 in Surprise, Arizona. You can see the list of injuries there. Traumatic brain injury, spine damage, eye injury, broken ribs, broken scapula. another person traumatic brain injury, collapsed lung, broken ribs, broken leg. That's important. You know, three years later in Chandler, Arizona, the fire started on April 18 and was considered extinguished on May 1. No reported injuries, but the nearest freeway was closed and the city of Chandler notified nearby businesses to evacuate. AES and Fluence Energy that one of their subsidiaries had collaborated to build and operate the facility. Last September in Escondido, California, evacuations were ordered for 500 businesses, school closures and shelter in place recommendations for residents. It was built by AES for San Diego Gas and Electric and Fluence again as the AES subsidiary provided long-term maintenance and service. Then in just in January of this year, we have the huge fire in Moss Landing, California. Evacuations, road closures, plumes of toxic smoke. And I think we're learning more recently that also contaminants of heavy metals have been found in soils around in the area of the facility. Here we go, in this case it closed US Highway 1, 1500 evacuations, smoke plume, residents not evacuating were advised to stay indoors, keep windows and doors closed, turn off ventilation systems and limit outdoor exposure. Heavy metals were discovered in near nearby soil samples and it reignited on February 18 and Fluence was the engineering contractor for the project and those agencies that I've listed there they are all still evaluating the impact of the project and remediation measures and human health risk assessment. These are the county officials in Monterey County talking about that accident. Supervisor Glenn Church: there's no way to sugarcoat it. This is a disaster is what it is. it's a major incident. All the resources in the county and our neighboring jurisdictions have been deployed to assist with this incident. And Glenn Church again: I was personally assured and I know other county officials too that this was not going to happen that there were safety protocols in place. Well, obviously that failed and I think that just shows the nature that no one knows what we're really dealing with in this technology.

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And lawsuits, now residents and businesses are suing for damages as a result of that accident and at least four lawsuits that I've read about with more than 300 residents and businesses are plaintiffs. And before I go away from there, I think you might remember that on June 17th I asked for a motion to compel discovery regarding damages that were related to AES accidents. And the Board said, No, you can't do that. We don't allow discovery, but you can make a request for the Board/ the BCC to ask for that information at the hearing. Well, I filed a motion later to follow up on that, asking the Board to ask/ to require that information to be supplied by AES. And that motion has not been ruled on. But the result is we don't have any – the result right now is we don't have any information about the extent of the damages that resulted from that from those fires and accidents.

Now this is an interesting slide. This is an interesting event. February 25 of this year, there was a AES project went before the county commissioners of Moffat County in Colorado and it was denied. There were two pieces to that. One piece, the first piece, was to change the zoning in the area from agriculture to heavy industrial. Heavy industrial, okay, that's what we're talking about here. That's what they were talking about in Moffat County, heavy industrial. Here, we're talking about it as something else, something that's really beneficial and should be considered consistent with the uses in a rural fringe area. But in Moffat County, they said, No, we're not going to do that. The second one was then the application for the conditional use permit and that was denied.

One other interesting matter is that during that hearing, an AES representative was asked how AES has responded to fires in the past. And the AES representative said that AES has had eight equipment failures at AES facilities in the last two years that resulted in fires. That's not what we're hearing today. But that's what they said. And in that case there were a lot of residents concerned about the project and their concerns were about fires, emergency response times, equipment failure, water construction and traffic noise and reclamation.

Okay, given all this, with the impacts of a fire or an accident, the Planning Commission order does not require any insurance. The Planning Commission order requires a decommissioning bond, but does not specify an amount. AES says it will provide a $7.6 million decommissioning bond. But that bond assumes that the end that it will be – that the plant will be decommissioned at the end of its normal operating life. It does not provide any kind of assurance that funds will be available at the end of an accident that contaminates -- that ends the project in that way. It only estimates and included in that $7.6 million estimate for decommissioning costs is $500,000 for battery and container removals and $850,000 for site restoration. Anyone who thinks that that is enough to deal with the remediation of a plant after there's been a big fire, that's not going to work. That is not enough money to deal with it.

Then who is Rancho Viejo Solar LLC? You know as you know as the application says that Rancho Viejo Solar LLC will own and operate the facility. But who are the members and investors? Does it have financial resources to compensate victims of any accidents? Is its role to isolate the upstream entities such as AES and Rancho Viejo limited partnership from liabilities resulting from accidents? That was another of the questions that I wanted to get discovery about and that my motion to you folks asked that you require AES to provide information about and that information has not been

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provided.

Warnings. There have been warnings from AES, San Diego County, the US EPA and the Electrical Power Research Institute that indicate that the technological improvements that AES is talking about and the new regulatory standards are not sufficient to address the risks of these facilities. This was I think mentioned earlier today. This is a warning in AES's annual reports that first was inserted in an annual report after the fires in Arizona and it's still there. While more recent design developments for our storage projects seek to minimize the impact of such events, these events are inherent risks of our battery storage operations. They're inherent risks. The hazards described above along with other safety hazards associated with our operations can cause significant personal injury or loss of life, severe damage to and destruction of property, plant, and equipment, contamination of or damage to the environment, and suspension of operations. The occurrence of any one of these events may result in our being named as a defendant in lawsuits, asserting claims for substantial damages, environmental cleanup costs, personal injury, and fines, and/or penalties.

That's one of the questions I was trying to get discovery on. That's one of the questions I've asked the BCC to require AES to produce, and we don't know what those damages were.

This is from AES's first responder guidelines for the project. Section 5.1 deals with fire hazards. And even under normal conditions, it says fire hazards are present from potential electrical equipment failure and thermal runaway. And then under abnormal conditions, thermal runaway can result in ejection of gas, shrapnel, and other particulates,, violent cell venting, and extremely high temperatures. Under abnormal conditions, batteries may be subject to the production of off gases to include but not limited to hydrogen, hydrogen fluoride, hydrogen chloride, carbon monoxide, methane, ethane, and ethylene gases which may result in smoke, fire, and or explosion. This the this warning, these warnings are contained in the revised responder guidelines that AES was saying that, you know, the hearing examiner missed. They were in there in on October 10. There was a section in these guidelines that addressed the, I guess maybe, the potential reduction of risk associated with the direct injection system that direct injection fire suppression system. But this is still in there. They're still saying this. This is still a warning for first responders.

Santa Fe San Diego County, they enacted new guidelines in December of 2024. They had three BESS fires in 13 months. You know, ASE is saying no, BESS fires aren't happening anymore. San Diego County, they've been happening in San Diego County. from September '23 to September '24, they had three fires and they established some guidelines in December of 2024. While NFPA standards and Underwriters Laboratory guidelines provide some safety measures, they do not fully account for the specific hazards of lithium ion batteries. As a result, local authorities must consider additional safety protocols, including plume modeling for toxic gas dispersion and expanded setbacks from property lines to ensure fire fighting operations and minimize exposure to toxic fumes. They, AES has conducted a plume modeling study and submitted it what like three weeks ago and there's not been time for anyone to review it. But one of the things it does not address in particular is heavy metals. It addresses toxic gases. It does not address particulates including any heavy metals and that is one of the problems

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in Moss Landing.

The US EPA this is their regional administrator for the Pacific Southwest. This is a news release that the EPA issued after the after they reached a settlement with a company regarding one of those San Diego fires. And the regional administrator said that calling a tech a technology green energy does not mean that there are no environmental impacts. This is an issue of growing concern. I am alarmed by the incidents and impacts of utility grade battery fires on first responders, specifically the professional firefighters who are exposed to horrible toxic conditions when batteries catch fire. This settlement action is a step in the right direction, but the broader battery storage fire issue requires additional attention and EPA enforcement. This is a result of an Electric Power Research Institute report that was done in 2024. EPRI has a database, maintains a database of accidents involving BESS facilities and examined the root causes of 26 of the 81 incidents in the database. Those were those 26 were the only ones that for which they could find enough information to be able to assign a root cause. Developers of these projects normally try to keep their information confidential, proprietary and you know, one of the questions I asked was trying to get information on in discovery was what were the causes of the AES fires that we've been talk that I was talking about earlier. There's nothing in there about what those causes were. There was one public report that identified a manufacturing defect for that first fire, but we don't know what the other causes were. If we don't know what the causes were, how do we know that the new the new technology that they're proposing is going to address the problems that led to those accidents? How do we know that?

Design was really only out of those 26, design was identified only as six of those issues as six being responsible for six of those incidents. The rest had other causes and AES design actually test results acknowledge some continue continuing risks.

These next slides -- well before I get to this slide, there's this is a slide that deals with a test they did on June 14. What you saw earlier today in their video was a test they did on June 13. And you know they showed you how it worked, how their directed injection system worked and how successful it was. But, we actually, I and others had to go to district court file a lawsuit to get access to the test report results. And we did we succeeded in get getting those and that's really why they're being talked about now. But the June 13 test, I think Mr. Bartlett misspoke earlier today. He said that the test was conducted in conformance with the standards for UL 9540A. And if you actually look at the test results, I mean he said that the test passed the results by having the test last for six hours that the fire was suppressed within six hours and did not reignite. Well, the requirements of UL 9540A as is stated in this test report indicate that the requirements of UL 9540A require a 24-hour observation period which did not occur. Remember, we're talking about the possibility for re-ignition of these fires. And this test on June 13 was only tested for 6 hours. This is a test that was done the next day on June 14. And this is what you saw in AES's presentation. This is what the result was of what they call deflogration which is explosion. And you can see the result but they didn't show you this one. That's the fire that led to that result.

Water and traffic issues. There are you know two additional criteria that I'm identifying that had not been addressed before because we didn't know anything about them before at least not prior to – we didn't know about them in December we didn't

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know about them at the January hearing in front of the Planning Commission. The August application that that AES filed said that water during used during construction will be delivered to the project site by water trucks. That was in August 30. December 4, Glorieta Geoscience, who is not here today, said, This magnitude of water hauling requires a much more in depth analysis of traffic and air quality impacts resulting from the water truck traffic. As a result of that in January unbeknownst to anyone except AES and staff, AES proposed to staff a combination of water hauling and piped water from a county fire hydrant on Route 14 for the 12-month construction period. Said from April through September the majority of the water would be piped from the County fire hydrant and October through March the majority would be trucked to the site. But there's no public notice of that and no formal amendment proposed to the CUP application that was amending the application. The application says that it's all going to be trucked and we have an ordinance, County ordinance, which says, To ensure proper operation of fire hydrants, no water shall be drawn through any fire hydrant for any other purpose than fire protection except as provided by a special permit issued by Santa Fe County Utility. And then in a January 29, 2025 report after AES made that proposal to staff, Glorieta Geoscience recommended some permit conditions that were requiring a number of things: lease agreement, State Engineer permit, County Utilities Department letter stating that the system has the capacity and capability to provide that much water and an NMED groundwater discharge permit if reclaimed water is piped directly to the project. Staff's report to the Planning Commission did not address AES's change or the Glorieta Geoscience recommendations that were made . And instead the staff's report said continued to say that Santa Fe County utility water is not available as there is no nearby connection, no well use is being proposed, and there is no existing on-site well. Water will be delivered to the project site by water trucks. Staff didn't inform the Planning Commission of that change of the change that was proposed by AES and it didn't mention the permit or include any permit conditions recommended by Glorieta Geoscience. So we have some violations here.

AES can't amend its CUP application without public notice or filing. And the CUP that was approved by the Planning Commission does not allow the use of the County fire hydrant. And deferring the approval of that water supply to some future date is going to violate Section 6.3.10.2 of the SLDC. And then the question is what happens? I mean none of this has been evaluated in any environmental impact report. And is this going to be a permanent solution to the water use that AES is needing for the project? And how will we know? How will the public know? This is all being done in behind the scenes and it needs to be done and it needs to be decided by you folks before you issue a CUP permit. All this information until, finally January 31, we got a report was made public from Glorieta that started to deal with this. But all this other stuff was only obtained through IPRA requests.

The application is inconsistent with the Santa Fe County Growth Management Plan. People and staff and AES refer to Chapter 7 of the Growth Management Plan which deals with the County's interest in promoting renewable energy in the County. But there's another chapter in the Growth Management Plan, Chapter nine which deals with public safety. And public safety is important. And it says the current emergency response system is not sufficient to service our population today. In the case of a large-

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scale emergency where large numbers of county residents would have to be evacuated or hospitalized, the County and provider infrastructure and resources would be insufficient. County lacks an all hazardous hazard emergency response plan. That's required by state law. And the County lacks hazardous material response team.

Violations of permitting requirements. I'm going to talk about the SLDC, County ordinance, another specific County ordinance and NFPA 855. First one, there's no discussion in AES's application of AES's accidents and that violates Section 6.3.1. The Section 6.3.1 requires environmental impact reports to identify and discuss significant environmental impacts that may result from the project. AES's environmental impact report omits any discussion of the fires, explosions, and toxic gas releases that have occurred at BESS systems of AES and other BESS contractors and suppliers. Now they they've brought up some they've made some comments in hearings about how their proposed system is different from prior systems other systems. But that's not that's not how you do it. You're supposed to have an analysis of that in the environmental impact report. And as I've said before, there's no description of, AES never describes what the problems were with those other -- with the facilities that were involved in those other accidents. How does anyone, how can anyone really be sure that the problems that affected those other accidents will not affect these? It's not all related to it's not necessarily related to design. We don't know. But that EPRI report that I talked about said that design isn't really the major factor in the root cause of accidents. So that's a problem. So there's no analysis in staff reports about it and there's no analysis either in Atar's reports about those other accidents.

Also, AES violated the pre-application review requirement of the SLDC. It's in Section 4.4.2. It requires a pre-application review by the County's technical advisory committee or TAC for short for CUP applications. It did not seek a TAC review for the August 2024 CUP application. It relied on a TAC review that it did in November 2021 for its previous application, but in the meantime, the County adopted updated permitting requirements in December 2023. So AES's reliance on the November 2021 TAC review avoided the incorporation of updated permitting requirements such as consideration of project and site specific issues and staff allowed that. Staff instead in August of 2024 did apply those updated permitting requirements to another facility that's being proposed here in Santa Fe County. The Linea application that there are those updated requirements are being applied to that project but not to this project here.

And this is really one of the requirements that was is required for Linea that's not required for AES. There's an annex G to the 2023 edition of NFPA 855 and it's titled, Guide for Suppression and Safety of Lithium Ion Battery Energy Storage Systems and its purpose as it says is to help stakeholders designers and authorities having jurisdiction understand and implement minimum safety requirements through a permitting and inspection process to ensure efficiency, transparency, and safety in their local communities. It is annex G stated as not being mandatory. It's being advisory. But why would the company and the County not insist that these this guide be required? Are you just looking and I think we've heard it earlier that Atar is saying we're just looking at what the codes require the minimum. We're not looking at things like this and the County is not requiring this for AES although it's requiring it for Linea. As a result, the hazard mitigation analysis that AES prepared does not address project and site specific

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issues. The hazard mitigation analysis that was submitted with its application looks at risks to facility workers and equipment at the project. Facility workers and equipment. What about the public around that project? There was no discussion of project and site specific impacts to adjacent residential lands. No discussion of the history of accidents. Well there might have been a little bit of discussion of the qualifications and limited presence of on-site personnel. They're going to be operations and maintenance people. They're not going to be people who can deal with a fire. They're going to be there during normal business hours, Monday through Friday and then otherwise the reliability of remote monitoring. There's going to be remote monitoring we're told but how reliable is it going to be? How reliable has it been? Dry windy weather conditions in that area. Potential exposures to toxic gases. That is something that it was addressed in this plume model report that we were provided with what three weeks ago. But you know nothing prior to that. Potential groundwater contamination. And there's no analysis of this you know we have some testimony about it but there wasn't the analysis of the issue that's required by this annex G or by the SLDC for an environmental impact report. There's nothing about the natural gas transmission line on the western edge of Eldorado. What about the risk associated with a fire you know hitting that and there's no real discussion about the capabilities and response times of emergency responders. There was discussion about response times but those response times were not very heartening You know, we're talking about, I don't have the numbers in front of me, but the number of people that could be available to respond to a fire out there quickly is very small. And if we're talking about a Hazmat team from the City of Santa Fe, you know, they say 24 minutes. Well, that's if the City of Santa Fe's HAZMAT team is available. You know, they're busy, too. They may not be available. And 24 minutes is, you know, probably pretty optimistic, you might say.

Here is a very important one, a very important violation. Section 6.3.10.2 says that formulation of mitigation measures shall be identified at the first discretionary approval, which is this. And under no circumstances -- under no circumstances -- deferred until the ministerial development process which is fire code review that these guys are talking about happening after the conditional use permit is approved. And this is what the environmental impact report says that this preliminary hazard mitigation analysis has been prepared. A final analysis will be performed as part of the detailed engineering process. That will not be available for you folks. That's not available now. So, what we're talking about in terms of violations of that section are mitigation measures that are going to be addressed after the CUP is approved by you folks. And it won't be addressed by you.

The final hazard mitigation analysis is going to be completed and likely be reviewed by the Fire Department and Atar after the CUP is issued. It should be reviewed by you. The smoke and plume model is going to be reviewed by the Santa Fe County Fire Prevention Division. Should be by you after, but it's going to be done after the issuance of the CUP. The water supply and truck traffic issues that I mentioned, they're going to be resolved after the conditional use permit is issued and by the County Water Utilities Division, not by you. Those things should be addressed. They need to be addressed. Under no circumstances shall they be deferred until the ministerial development process. That's what the SLDC says.

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And here we get to alternatives. Section 6.3.11.1 requires that the environmental impact report describe a range of reasonable alternatives to the project which would avoid or substantially lessen the significant and adverse impacts or effects of the project and evaluate the comparative merits of the alternatives. AES's environmental impact report does not address any battery alternatives in the application. All it does is address different locations, potential locations for the solar array. It doesn't, but it doesn't talk about batteries and alternatives. Alternative types that might be safer. This is an example of the problem.

PNM, who I'm familiar with in my background at the commission, seems to be transitioning to safer lithium-ion phosphate batteries and the first case in which PNM did That, they said that the chemistry that we're proposing is lithium iron phosphate that has less -- it's a more stable chemistry and less prone to fires. That was their director of generation engineering. So that was in the case of those two six megawatt batteries for the distribution system. Since then, they have done, they've approved, they've entered into purchase power agreements with the Quail Ranch hybrid project, the standalone Sandia battery project and Sunbelt hybrid project. All of those projects have lithium iron phosphate batteries.

And this is also very interesting. This morning, AES had a slide that showed how PNM had approved a battery project in the west side of Albuquerque and that showed that showed that residents, residents, I don't know if you could tell that, but that there were residents and other buildings in the area. Well, that project, that's the Sun Lasso project. That project's being developed by a company named APPA Power and they use lithium iron phosphate batteries. They use the safer batteries. That's what's going in that particular neighborhood. This is from their website and their description of what they do that they use those in their designs and has advantages over other lithium ion chemistries. And they are known for their low cost and improved safety compared to other lithium ion chemistries and are environmentally friendly as they do not contain toxic materials like cobalt and can be recycled upon reaching the systems end of life. That's the system that AES was pointing to.

And this is also interesting. This was from the hearing in before the Planning Commission in February. One of Mr. Bartlett's colleagues testified there and he described the difference. He was asked by Commissioner Pava why they -- well, the issue came up and Mr. LeBerge who is the colleague of Mr. Bartlett said lithium ion phosphate is one of the six of the family. It is similar in many respects. It's the calm cool Aunt Mabel who never gets excited. Other battery -- other battery types are the wild Uncle Frank who is always excited. So there's a range of potential to go into thermal runaway and the effects thereof depending on which type of battery chemistry is in use. And this is a portion of the complaint that was filed in regard to the Moss Landing project. And one of their allegations is that lithium nickel, manganese, cobalt oxide batteries are more prone to thermal instability than newer alternatives like lithium ion phosphate because they are safer most energy storage projects around the world have been transitioning to LFP batteries.

And Fluence, one of AES's subsidiaries, recently opened a battery manufacturing plant in Tennessee. And it's manufacturing lithium ion phosphate batteries. So it says in the near term we anticipate that lithium iron phosphate batteries will continue to

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dominate the energy storage landscape. Key advancements are emerging in cell and enclosure density life cycle and overall performance enhancing the robustness and efficiency of LFP. That's what Fluence said. And this is where the question from Commissioner Pava at the February 4th hearing asked why AES chose its proposed battery chemistry while PNM has recently chosen LFP chemistry. And Mr. Simpson said, So we look at total cost build up all of the capital costs, all of the operating costs amortized over those 25 years and then we make that comparison. And this is the one that we found most cost effective for New Mexico. Cost effective, not the safest, the most cost effective.

Due process violations: this is an issue that I went into some length in the filing that I made on May the 2nd and it deals with you know problems in this proceeding in which County staff has acted as both an advocate and a decision maker in the same case. You can't do that. The comingling of functions like that in public and private roles. The public roles, you know, when they show up here and they make recommendations to you and the private roles when they, you know, file confidential materials for you and participate in the executive session discussions privately, you know, apart from the public, that's not allowed. And that's essentially what was discussed in the Kerr McGee case that I cite in those materials and similar decisions in California, Iowa, Nebraska, and Pennsylvania. And the restrictions on discovery and cross-examination have prevented opposing parties like me from obtaining relevant evidence.

Finally, this project is not needed to transition New Mexico to carbon-free generation resources. What you start to look at is the New Mexico's renewable energy requirements. And you can see in this slide what the requirements are. They go from 20 percent in 2020 and then incrementally up to 100 percent by 2045 and 80 percent by 2040. And the PRC recently estimated that although they were supposed to be they needed to be you know at a minimum at 40 percent by 2025 they were estimating they would that PNM would be at 73.3 percent in 2025. So they're already passed they'd already satisfied the requirement for 2030. PNM has plans to achieve this transition. They have an integrated resource plan that identifies how they plan to do it and they're making progress in it. They're already exceeding the requirements of the renewable portfolio standard.

This is just a general comment is that decarbonization is accomplished with the plan to retire fossil fuel plants. That's how you get rid of carbon. You retire plants. You don't get rid of carbon by building renewable plants. You replace what you've retired with renewable plants. But the focus is on retiring the fossil fuel plants and there this is what PNM is looking at in terms of its sitings. Under the Energy Transition Act when they closed the San Juan generating station which I was involved in that case they were required to locate some facilities up in San Juan County to replace the tax base and employment that was being lost up there. And PNM has some transmission line limitations. And so what PNM does is it looks to locate plants in areas where transmission capacity is being freed up. So that's what they've been doing. They've been locating facilities in the Four Corners area and they've been locating facilities in Bernalillo County. And coming up in 2030 and 2031 there are two plants that are going, two additional plants, that are going to be retired. And the other thing is they site close to where there's increasing customer demand and we all know that Facebook is really

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building down there in Los Luna and Intel which I think used to be PNM's biggest customer has been expanding their manufacturing facility. Although they've been reducing workforce, they still have an expanded facility.

Here shows, this table shows what the impending requirements are in northern and central New Mexico. The Reeves plant is scheduled to close in 2030. That Reeves plant is located right in the middle of Albuquerque and likely that's going to be replaced by something in the Albuquerque area and that's really one of the needs that is being evaluated in the current RFP, request for proposals, that PMM has issued is what do we do about the Reeves plant? How do we do we keep it going? Do we retire it as we're planning? And if we do, what are we going to replace it with? Four Corners, that's a coal plant that's going to be closing in 2031. That's another issue that is being -- will be discussed and analyzed in this request for proposals. And, of course, then you know the pressure is going to again be to locate a replacement resource up there to replace the employment and the taxes that are being lost when that plant is closed. The others, those are the other three, in northern New Mexico they're going to be going until 2039. But PNM has plans to do it in 2039. Building renewable more renewables than PNM needs or wants right now is not going to transition New Mexico to a carbon-free resource. It's got to be done in this context.

And I guess related to all this is that PNM has rejected the Rancho Viejo project at least three times. Those are the three cases that I've found where there have been proposals submitted by AES and they have not been selected in any of those.

So I, you know, running out of time. Just focusing finishing on these key Hearing Officer findings that should have been addressed by the Planning Commission and were not. And are really fodder for you folks to examine. Thank you.

CHAIR BUSTAMANTE: Thank you, Mr. Schannauer. Do we have any parties with standing who would like to cross-examine, Mr. Schannauer. Okay, sir. If you will please state your name and have you been sworn in.

DANIEL BAKER: Hi, I have not been sworn in yet.

[Duly sworn, Daniel Baker, testified as follows:]

DANIEL BAKER: Daniel Baker, I'm appearing on behalf of 350.org. My address is 32 Camino Mariquita, Santa Fe, New Mexico 87508. And now I understand I'm under oath. Thank you.

CHAIR BUSTAMANTE: And you will be cross-examining the party with standing?

MR. BAKER: Yes, thank you. So during Mr. Schannauer's presentation/ testimony, he used the word toxic with reference to gas and heavy metals at various fires. And I have a question just to ask whether you have submitted any materials and documentation as evidence support the use of the word toxic when referring to the emissions to air, ground or groundwater from any UL9540 certified BESS container fire? This is kind of a yes or no answer.

CHAIR BUSTAMANTE: Mr. Schannauer, have you? If you can please go to the microphone.

MR. SCHANNAUER: What I have is information from AES's own plume study that identifies a whole list of toxic gases that are expected to result and normally result from these types of fires. That plume study does not address whether the

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facilities that emit those toxic gases have been UL 9540 certified, but the evidence is right in the smoke plume study. I could pull it out and read you the list of toxic chemicals, the toxic gases that were included in there.

CHAIR BUSTAMANTE: I'm sorry. If you can please approach the podium. Clarification of the question?

MR. BAKER: Yes, clarification. So, use of the word toxic means hazardous to human health and I was asking if you have submitted any materials establishing toxic concentrations of any hazardous materials in any BESS fires? So, yes or no?

MR. SCHANNAUER: Yes.

MR. BAKER: Do you have – can you tell them what document that is?

MR. SCHANNAUER: I have news reports that indicate that in Monterey County we have all those agencies that I mentioned they're all examining the extent to which there was there were concentrations of heavy metals in particular in soil, in soil nearby And I also have those same similar news reports that deal with the issue of toxic gases that that were – that are still being evaluated that that the results of those the monitoring is still being evaluated. It's a long process to determine the extent of contamination that results from an accident like that. I wish that the data could be conclusive, you know, that you snap your fingers and you get that data. But they got initial data and the data was suggestive that that initial what they call screening guidelines that relate to human health risk assessment were exceeded. And because that data showed that, they're now doing further evaluations, further studies, further plans to examine the results of the data they've collected and to do more analysis of soil data.

CHAIR BUSTAMANTE: Additional question.

MR. BAKER: Madam Chair, if I may, just a little clarification. First of all, that was not an answer to the question and it was not yes or no because Moss Landing was not a UL 9540 certified installation. So that's all I have. Thank you.

MR. SCHANNAUER: I think what I'll add to that is UL 9540 does not guarantee that an accident won't happen. It does not guarantee that an accident won't happen. 9540 tests and certifications are done on essentially pristine conditions. You know they are done under controlled circumstances and they as the EPRI report identified design is only a minor cause of accidents. So 9540 is not really the key here. The key is what is the impact of when an accident happens. And the battery chemistry in Moss Landing contained cobalt and nickel. The battery chemistry for this project contains cobalt and nickel. The same materials.

CHAIR BUSTAMANTE: Do we have additional questions from parties with standing for Mr. Schannauer? Hearing none, we will open it for questions from the Commission. Commissioner Greene, Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Chair, could I ask a clarifying question to something that Mr. Schannauer brought up to AES at this time?

CHAIR BUSTAMANTE: Absolutely. AES is here to answer our questions as well.

COMMISSIONER CACARI STONE: All right. So earlier I believe Josh I wrote down that you had presented there were no battery fires in the last six years; however, Mr. Schannauer just presented that there were at least eight in the last two

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years. Is that correct, Mr. Schannauer?

MR. SCHANNAUER: Yes.

COMMISSIONER CACARI STONE: So what is the fact?

MR. MAYER: So there's different things being talked about. I believe your question is in reference to the excerpt that he took from a project hearing for a project in Moffat County, Colorado. The eight fires that were referenced in that testimony, none of those were battery fires. They were largely restricted to inverters or my understanding is perhaps combiner boxes. These were mild events, no property damage, no injuries. It's like just seeing a metallic box that a rat went into and was fried. So these were not -- none of those eight instances mentioned in that hearing were actually of significance.

COMMISSIONER CACARI STONE: Okay. Thank you. It sounded like conflicting information. I wanted to be sure. I understood what the facts were on each side. Thank you. And then Mr. Schannauer, you said there were injuries to accidents due to fires. Were these related to anything that Joshua is mentioning or can you clarify what these injuries were due to? What kind of fires?

MR. SCHANNAUER: Well, the u the injuries in the first explosion in Surprise, Arizona I had that list of injuries to like four or five firefighters, personal injuries. And so that's one injury. The other injuries I mean that's well we have injuries in Moss Landing that people are suing to get compensation for and those injuries included their claims of health impacts and business losses and people were evacuated. They incurred expenses in evacuating. They lost money. And I believe you're going to hear more about that in the next presentation. But, that is actually what I'm trying to understand. I mean, I've been trying to get information about what the damages really were that that resulted from these accidents and you know, we don't get any response to that.

COMMISSIONER CACARI STONE: Okay. Thank you. Thank you both.

CHAIR BUSTAMANTE: Additional, Commissioner Greene.

COMMISSIONER GREENE: Thank you, Madam Chair. Thank you, Ashley. A question for staff. The appellant here is asking or is stating that the Hearing Officer's findings were not utilized in the Planning Commission's process. Is that normal? Is that every case that goes to the Planning Commission from a Hearing Officer, those findings of facts are not presented as a base at the beginning or somewhere along the process?

MR. SISNEROS: Madam Chair, Commissioner Greene. So, the Hearing Officer's recommended order is submitted as part of the packet for the Planning Commission. They utilize the recommended order to make a determination, but they don't base their determination solely off of that recommended order.

COMMISSIONER GREENE: So is there a findings of fact process on the Hearing Officer?

MR. SISNEROS: Madam Chair, Commissioner Greene, yes, there is.

COMMISSIONER GREENE: And so those are presented to the Planning Commission. Is it part of the process read into the record or just a part of the passive sort of read it and take it as you wish?

MR. SISNEROS: It's a part of their recommended order as an exhibit.

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COMMISSIONER GREENE: And do they incorporate that into their findings as well or and refute these individual findings of facts? Because if they're findings of facts, there should be there was some process behind them.

MR. SISNEROS: Madame Chair, Commissioner Greene, so the Planning Commission bases their decision, you know, off they'll make their own findings of fact. They base their own decision off the case facts, the exhibits, and you know public interest as well.

COMMISSIONER GREENE: Okay, thanks.

CHAIR BUSTAMANTE: Thank you. Additional questions. I have a few questions. My first question Glorieta Geoscience, has the water, there was a concern that was stated with regard to water transportation. Have those concerns been addressed?

MR. SISNEROS: Madame Chair, Commissioner Greene, before Abby with Gloria Geoscience come up, I do want to make a couple clarifications. We have recently received a letter from Utilities saying that they are not ready, willing, and able to provide potable water for the construction of the project. They are directing the applicant to use reclaimed effluent water from the City of Santa Fe. I know the applicant is looking into effluent water from the City of Santa Fe as well as the Ranchland utility company. Once they have made a decision or determination of how much effluent water they can provide then they can reapply for a ready willing enable letter with Santa Fe County Utilities at a later time. That is one of the reasons why conditions 22 and 23 are imposed. And I also just want to bring to attention with the conditional use permit, even with an approval of a conditional use permit, there's still a conditional use permit site development plan that needs to be recorded. If that document is not recorded with those conditions imposed, then no permits can be obtained. So there's no incentive for an applicant not to meet those conditions.

COMMISSIONER GREENE: Thank you. I appreciate that. Sorry there, Mr. Lazarus.

MR. SCHANNAUER: None of that has been made available publicly until today.

CHAIR BUSTAMANTE: This is why I'm as asking the question. Thank you and thank you for bringing it up so that we can ask the question. I have to the next question with Captain Blay. The Hazmat team, do you feel confident that Santa Fe County has the capability to respond to the hazards that have been disclosed? And what HAZMAT team would be available for a response to the situation that has been described to us by the applicant.

FIRE MARSHAL BLAY: Madam Chair, Commissioners, Santa Fe County Fire Department is capable of responding to any emergency in the case of a hazardous materials spill or incident then we have other resources at our disposal. City of Santa Fe, state fire, state police department and Los Alamos. We do not have a hazardous materials team even though we are training on it and it's part of our training. Are we capable of responding to this event, I mean of a potential incident? Absolutely. That's what we do day in day out. We respond, we adapt, we learn, we practice. We will create pre-incident plans, emergency response plans, emergency operations plans. If you're asking me if we are capable, yes, we are capable.

CHAIR BUSTAMANTE: Thank you, Captain. Question for the

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applicant. Question for the applicant regarding your hazardous response plan. Internal to your processes, do you have a plan that would be provided and available to the county hazardous response team?

MR. SIMPSON: Madam Chair, yes, for all of our sites, we create a sight specific emergency response plan. I believe we've provided drafts right now. And that's all done in coordination with the fire departments and first responders locally.

CHAIR BUSTAMANTE: Thank you. My next question, this is for staff just to answer the question, Ms. Ladd, there was a statement that staff has not analyzed or did not provide an analysis of the Hearing Officers and the County's third party and we did hear an answer as to how it is integrated into the packets that have come before you. But to what end do you analyze that to determine the applicability for a decision? So in understanding how the process starts and the information that is gathered when an application is put in, what is the process for integrating findings as you proceed through the process?

MS. LADD: Madam Chair, members of the Commission, staff's role is to ensure that the findings of fact capture the Hearing Officer's recommendation accurately and include all of the points. The Hearing Officer writes the findings of fact themselves, which is a little bit different than the Planning Commission. Because staff is not in the decision-making seat here. The information is provided to the to the Planning Commission and it is up to the Planning Commission's discretion which parts of that recommendation they agree with don't agree with and at that point they may and sometimes they agree with everything and it moves through the Planning Commission more or less on the same lines but then they will maybe they will create a new condition of approval or a new -- some other requirement based on what the Hearing Officer has said. Sometimes that happens, too. So, it's not staff's role to do that. It's up to the Planning Commission.

CHAIR BUSTAMANTE: Thank you very much. And this question is for Mr. Bartlett. Understanding your expertise in batteries, the hazards associated with them, and the examples that were provided to us for safer batteries, what would be your analysis on the batteries that are being proposed for use? And the picture that has been provided to us with regard to the potential for hazard.

MR. BARLETT: Well, my role here is to assess code compliance and NFP855 and the International Fire Code are national consensus standards developed by hundreds of different perspectives and stakeholders and nationwide those provide the generally accepted criteria for what is safe. Now everybody's personal opinion of safe is different. So my analysis has only been in accordance with does this project meet those requirements or does it not meet those requirements and so I have to be objective in nature. I mean this is not an opinion of mine. So there are still items that need to be addressed and the Fire Marshal's office is legally required to ensure that everything in those consensus standards is adhered to. So I hope that answers your question.

CHAIR BUSTAMANTE: It does. Thank you, Mr. Bartlett. And for the applicant, what is the reason for not using the lithium phosphate battery?

MR. SIMPSON: Thank you, Madam Chair. There's several reasons and I think Mr. Schannauer covered a few of them. There is several publicly available documents describing the hazards with all kinds of different energy storage technologies.

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Lithium iron phosphate is not unique. It also inherently poses fire and explosion risks but can also be appropriately mitigated through a lot of the same mechanisms that can be used for the nickel manganese cobalt varieties.

What we found is, yes, there's cost effectiveness as Mr. Schannauer said. What I want to add to that is that before cost effectiveness ever comes into play, we first mandate an acceptable level of hazard mitigation. That's not a judgment. It's not a spectrum. As Mr. Bartlett just said, it's a relatively objective assessment against these consensus standards. And we require that for our plants no matter what we deploy. We do have plants where we have deployed lithium iron phosphate and we have plants where we have deployed nickel manganese cobalt based lithium ion chemistries both in accordance with these standards and only then do we optimize for cost.

Once we get to that stage we say both of these can be compliant with the standards. What we find is that in comparison the advantages of nickel manganese cobalt is that it degrades much less over the lifetime which means we have to buy fewer batteries to deliver the same service to the community and that saves a lot of money. The batteries are the most expensive part of these plants. I hope that answers the question but I'm happy to elaborate.

CHAIR BUSTAMANTE: That answers my question. Thank you. And then my last question does PNM still reject this plan?

MR. MAYER: The RFP is still under process.

CHAIR BUSTAMANTE: Thank you. Thank you. Anything that you would like to reply to Mr. Schannauer?

MR. SCHANNAUER: Well, I just want to emphasize that the codes that Atar and AES and staff are talking about are minimum requirements. Minimum requirements. There are best practices that exceed those minimum requirements. San Diego County has adopted best practices that exceed those minimum requirements. Annex G which is not mandatory, exceeds those minimum requirements. And so the question is why would Santa Fe County not want to try and adopt the best, require the adoption of the best practices? Why would Santa Fe County want to just settle for the minimum requirements?

CHAIR BUSTAMANTE: Thank you. Question for the applicant. Does AES meet or exceed the requirements of the regulations that stand?

MR. SIMPSON: I would argue that we are exceeding those requirements and we've demonstrated through some of the additional hazard mitigation measures like the thermal runaway propagation protection system. We have added you know belt and suspenders type approaches to these ensuring that we have both compliance with NFPA68 and 69 where either or was required at the time of submittal and we are constantly going above and beyond testing. I think another example is there was a bit of a misrepresentation that Mr. Schannauer had of the testing and this is relevant to the point here, where he mentioned a deflogration picture as a fire but it was actually different and it made me realize we should identify that deflogration testing is not required. We have done that for the last several years we continue to do that UL9548 testing is required that test happened about a week later and then following that test we did the full large scale fire test which again was not required by codes or standards at the time. So two out of three tests went above and beyond and I would argue that as we

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look forward we're continuing to test working with some of the independent research agencies to develop a new test protocol to identify what the exposure level limits of some of these heavy metals that Mr. Schannauer identified could actually be there because currently there's no conclusive evidence.

CHAIR BUSTAMANTE: Thank you. Mr. Schannauer.

MR. SCHANNAUER: Just one more point. There, you know, the AES and staff are talking and Atar are talking about AES proposing measures that exceed the requirements of the code. But on the other hand Atar has been very clear that if AES satisfies the requirements of the code they're going to get a permit. They're legally entitled to a permit. So if somewhere down the line between today and the time that this thing gets approved by the Fire Department in the future, AES could change its mind and say, you know what, maybe we don't need these things. They're not required by the code. And what would happen then? They would still be entitled to the permit because the code – the only thing these extra additional requirements are not required in by the CUP and so the only thing is that's really going to be at issue going down the road is the minimums.

CHAIR BUSTAMANTE: Thank you Mr. Schannauer. I appreciate that. Commissioner Greene,

COMMISSIONER GREENE: Thank you. Question for Nicholas, at any time did staff ask, are there any best practices or recommendations you would improve upon? Well, it's actually for you, but it's -- I'll restate it. Were there any best practices or recommendations that you would make to improve this design that you're aware of within the industry, in the country, globally? You're an expert. The first question I guess is, I'm asking are there better practices? And then my first question is did staff ask that or did they purely just measure it to what our code was?

MR. BARTLETT: Yeah, absolutely. Fire Marshal Blay and I did have very clear discussions at some point early on this project. What can we do to exceed the minimum requirements? And one of those very specific items was the NFPA69 combustible concentration reduction system. The redundant explosion control system which Fire Marshall Blay explicitly required came out of those discussions.

So yes, those discussions did happen.

COMMISSIONER GREENE: And are there other best practices that you could see being implemented that have come online that are emergent or –

MR. BARTLETT: I mean, I don't think so. I think -- I've done projects in other states in other jurisdictions and to be honest not many projects are using these TRPP thermal runaway propagation protection systems. It's not common at all. So in my professional opinion, that's kind of the future of where this needs to go for lithium ion technologies. There are other types of systems that accomplish the exact same thing, right? They're just designed one particular type of system that that minimizes the propagation from cell to cell. I personally think that should be on every single system that's installed in the US. That's my personal opinion. Whether or not the codes and standards want to move that way, that's a completely different story, but I personally was pleased to see that they were going to be providing such a system on this because I haven't seen it on that many projects.

COMMISSIONER GREENE: And then the San Diego project that it was

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referred to by Mr. Schannauer, are there aspects of that that could be implemented in this that you would recommend or you think those are apples and oranges? There's something that it's just not pertinent to this situation.

MR. BARTLETT: I haven't read that San Diego report for a long time. I know they had a third party consultant come up with a whole report which they actually ended up uh repealing and then deferring to the fire chief of the district. So as it pertains to other measures, I mean, they have a they've planned a fire alarm cabinet in every single container. They have a sitewide fire panel. They're going to be required to do training for the fire department. It's required by NFPA55, on-site fire department training. I would recommend that that's not only the fire department. That is the emergency managers, that is the sheriffs, that's everybody that could conceivably respond to an incident if there ever was one to occur. I would recommend that.

COMMISSIONER GREENE: So like including responding like City of Santa Fe because if the emergency Hazmat –

MR. BARTLETT: Absolutely. And that should be done annually because shifts change. You need to do every single shift. This is something that is required and it should be an ongoing thing for the life of the system.

COMMISSIONER GREENE: Okay. Thank you.

MR. SCHANNAUER: I just have one point to add to that. One item that the San Diego County guidelines establish is a requirement that hazard mitigation analyses examine more than one type of failure. They require that the mitigation analysis examine multiple failure problems. And so the types of analyses that satisfy the code only address one. San Diego County goes further and requires more extensive analysis.

CHAIR BUSTAMANTE: Thank you. Commissioner Hughes.

COMMISSIONER HUGHES: This is just for staff. I want to confirm that any conditional uses you put on the project have to be complied with before you issue the conditional use permit.

MR. SISNEROS: Madam Chair, Commissioner Hughes. Yes, that is correct. So every condition that is recommended by staff and therefore approved by the BCC or Planning Commission, those conditions go on the CUP site development plan. And if they're to be done prior to recordation, we ensure that that's done prior to recordation such as finding alternate water source and identifying those other reviews to be done by the third party reviewers. We ensure that those are done prior to the recordation and prior to any type of development permit being issued, that CUP site development plan has to be filed into the Clerk's Office and recorded.

COMMISSIONER HUGHES: Right. And our conditions that you've recommended are that it comply with all the fire recommendations in our in our code, our current fire code.

MR. SISNEROS: That is correct.

CHAIR BUSTAMANTE: Thank you, Mr. Sisneros. Mr. Schannauer.

MR. SCHANNAUER: Those issues don't come back to you before the conditional use permits issued. You issue the conditional use permit and then others you know examine whether some of these conditions have been satisfied. Section 6.3.10.2 of the SLDC says it's your job. You cannot under any circumstances defer

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significant issues like that for someone other than you.

CHAIR BUSTAMANTE: Understood. Thank you. Any other questions? Hearing none, we will have another -- one more and then we will be breaking for dinner. So, let's hear from Camilla Brom.

ATTORNEY BOYD: Chair I believe that –

CHAIR BUSTAMANTE: Oh, I'm sorry. The Clean Energy Coalition. Please approach the podium and state your name and that you have been -- that you understand that you are under oath.

LUKE PIERPONT (Counsel for AES): Madam Chair, Commissioners, before Mr. Stranahan begins. We just want to renew our objection to the testimony of Brian Rowley and Don Smith all regarding Moss Landing. We're out of time, but I want I want to note that we are not waving that objection. Thank you.

CHAIR BUSTAMANTE: Understood. Thank you very much.

MR. STRANAHAN: Are you going to be ruling on that before we do our presentation or –

CHAIR BUSTAMANTE: Attorney Boyd?

ATTORNEY BOYD: Chair and Commissioners, yes, you would you will need to rule on this. If you allow the witness testimony, you will be denying the motion. You don't need to make a take a formal vote on this, but if a Commissioner wants to make a motion to grant that request for relief, you can do that. But if the sense of the Commission is to allow this testimony to proceed, then the effect of that would be the denial of the applicant's motion.

CHAIR BUSTAMANTE: Okay. Hearing that we have an objection for the entry of that information. Do we hear the proposal, I mean a motion to go with the objection?

COMMISSIONER HUGHES: Madam, I would I would propose that we deny the objection and hear from the people they want to interview. Any witnesses? But I don't know what other people feel.

COMMISSIONER JOHNSON: I second that.

CHAIR BUSTAMANTE: We have a motion from Commissioner Hughes to not go with the objection. A second from Commissioner Johnson. Can we have a roll call vote, please?

The motion passed by unanimous [5-0] roll call vote as follows:

Commissioner Justin Greene	Yes
Commissioner Hank Hughes	Yes
Commissioner Adam Johnson	Yes
Commissioner Lisa Cacari Stone	Yes
Commissioner Camilla Bustamante	Yes

E. The Clean Energy Coalition

CHAIR BUSTAMANTE: Okay. Can you please ask your question to someone to see if this is something -- this would be out of line with the meeting? Thank you. Go ahead. Yes. If you can go ahead and proceed.

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MR. STRANAHAN: Should I go ahead and start?

CHAIR BUSTAMANTE: Yes, please. Thank you.

MR. STRANAHAN: My name is Robert Stranahan. I'm counsel for CEC and I have been placed under oath prior to this.

To give you a little background on myself and how I came to represent CEC, my background is I've had a lot of government and production experience. I was counsel for Governor Johnson for his second term. I was the chief counsel for the Land Office for almost a decade and have operated as a judge, a hearing officer, and a commissioner. And so I've certainly understand your plight. I'd like to thank all of you for going through all this. I know this has been a long day and I know it's difficult. This is pretty dry material. I appreciate the County's participation as well as the public members.

We kind of have what is a classic conundrum here. We have a political policy in favor of renewable energy and trying to do a transition as expeditiously as possible. I support that. The residents of Eldorado support that. The residents of San Marcos support that. So, it's strange that you have such overwhelming opposition to a renewable energy project when these communities are largely pro renewable energy.

I think the biggest problem here is that there aren't regulations specific to this kind of project. We have found a way to put a round peg in a square hole or however you know square peg and a round hole and so we're using regulations to site this facility that really weren't meant for this facility or the BESS battery array that goes with it. A lot of the jurisdictions that have dealt with fires that are a result of BESS technology have actually changed and begun to promulgate rules and regulations specifically for these systems. And they're doing that because these systems are by definition inherently dangerous. AES has said that in their statements. The County has said it. Everybody acknowledges this technology is dangerous. And it's also not contestable that there are safer types of technology. Now, they're not as efficient. They're -- you can't -- they don't have as large a capacity, so they're not as effective and they cost more. And there's the rub. They cost more.

As a resident of this county, I don't want our decisions made purely on cost. I want to put in safeguards or guard rails that can protect the community and at least site these types of dangerous projects under regulations that are specifically designed and tailored for that purpose. And unfortunately that's not, you know, what has happened. The County and I've really enjoyed working with the County. They're great people. I think they've lost their way as far as what their role is in this. The County's role is and always should be protect the constituency. So, their job should be not to advocate for this. We all love green energy. We all advocate for it. But in this case, they need to be the scrutinizer. They need to be the party that is saying, Okay, thanks for meeting the minimum requirements. We're going to ask more of you. That's what we want our government to do to protect us. And I think in this case, the County, excuse me, the County not only changed their regulations to even allow this battery array to be permitted, they have gone through at each case where there has been some push back, they've basically found a way around. I don't think we should be working through a myriad of workarounds. The County should develop a specific regulation for BESS systems and a specific regulation for utility scale solar projects. That's what we're dealing with. That's what we should have. And the community of Santa Fe, of Eldorado, of San Marcos, all deserve

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that.

We have a number of different areas that we're going to provide testimony. the first area that we're going to provide testimony is through Joseph Rowley who's a chemical engineer. He's a PE with decades of solar power sighting experience. He worked for Sempra, US Gas and Power. He will give us a historical perspective on BESS, the technology, where it's been, where it's going, and what's the most responsible way to regulate it. Ed Henderson is a PE at/from Assurance Engineering. He's licensed and practices in fire protection engineering throughout the southwest. He's done work with DoD, DOE specifically addressing life safety issues as part of the fire hazard analysis. He will talk about wildfire protection, expected fire within and around BESS facilities. We have Don Smith who is a professor emeritus of microbiology and environmental toxicology at the University of California Santa Cruz. Mr. Smith will present testimony on human and environmental exposure to toxic metals released in thermal runaway from lithium ion batteries. Brian Roeder is a resident of Monterey and was specifically affected by the Moss Landing BESS fire. And he's going to give us a perspective on what it's like to live through one of those fires; what went well, what went poorly, how much information they were given, how much information they still haven't been given. And I think that's an important aspect. Finally, we will have Lee Zlotoff who is a resident of Eldorado in Santa Fe County. He's an executive and president of Clean Energy Coalition for Santa Fe County. And Mr. Zlotoff will provide the perspective of adjoining communities faced with consequences of siting a utility scale electric energy production facility in proximity to over 20,000 residents. So that's sort of where we're going to go down the line and once we've presented we will stand as a group I guess a panel for questions. I appreciate it. Thank you so much.

CHAIR BUSTAMANTE: Thank you.

[Those appearing for CEC were duly sworn and advised to provided their name, address and confirm they are under oath.]

JOE ROWLEY: My name is Joe Rowley. My address is Richland Ridge Road, Escondido, San Diego County, California. And, I do understand I'm a under oath.

So again, my name is Joe Rowley. I am an energy industry consultant. I was formerly for many years the director and then vice president of project development at Sempra US Gas and Power. I was personally responsible for the development of most of their assets all large scale natural gas wind solar including BESS projects. After I retired it became I went into consulting and I also primarily consult on BESS projects. I also teach a lecture twice a year on BESS siting at the Cal State University San Marcos.

So, it's pretty familiar territory for me. One thing I need one thing I need to Correct, Bob Stranahan mentioned my engineering background. I'm a registered mechanical registered. I have a degree in chemical engineering. I also advise elected officials and staff in San Diego County.

Okay, so let's get into this. First off, the BESS industry did not exist prior to 2011. I helped develop one of the very first BESS facilities in 2012. It was a five megawatt hour facility. At that time it was one of the largest in the world. Five megawatt

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hours. Tiny by today's standards. So when you look at the history of the BESS industry prior to 2018 still there is very little in terms of megawatt hours of facilities out there worldwide. Starting in 2018 things started to change exploded rapidly. So why is that important? It's important because we've talked a lot about codes and standards. Utility or industry codes and standards are developed in response to actual operating experience and mishaps. There's been very little in the way of actual operating experience which means that the codes and standards that govern BESS are still in a very early stage. NFPA 855 for example, its first issue was just in the year 2000 as compared to other NFPA
that's an infant state. It's only gone through one revision. That's because we just don't have experience. Now, there's a big committee. Mr. Bartlett is on that committee. In fact, AES has a representative on NFPA 855. So, there's a diverse group on NFPA 855 and as all NFPAs over time, as the industry gains experience, that code will get revised every couple of years. They'll make it better. If for example direct injection of Novec pans out, maybe that will become something that's mentioned directly in NFPA 855. We don't know at this point. What we do know is that given the nascent state of these codes and standards, it's an environment where we really need to tread cautiously when we're siting and I'm speaking from the perspective of a developer. We have to acknowledge where the technology is, what its risks are, and then site the facilities appropriately.

I don't think I need to spend time on this slide. I think it's an established fact that lithium ion batteries present an inherent risk for thermal runaway and the conversion of the battery material to a toxic plume is an undisputed fact. That's just the way it is. Thermal runaway cannot be stopped by fire suppression. It's possible that propagation could be inhibited but it can't be stopped by fire suppression. The only proven way of stopping the propagation of thermal runaway is physical separation. If you look at the insurance industry, AIG, the insurance giant, they put out a bulletin on this and they said 10-feet minimum. Ten feet minimum is what the space you need between containers in order to prevent propagation. Now, UL 9540A testing might allow something much closer than that, but AIG says no way. We understand that we understand that that UL 9540A says you could put them closer. We disagree. There's too much risk. You need to Separate, separate, separate. Those last three words are a quote from their bulletin.

Okay, let's go back one. We'll cover this last part on the slide a little bit later. Okay, let's talk about Rancho Viejo in particular. First of all, BESS projects they're industrial facilities. They present industrial risk. The best surroundings for an industrial facility is other industrial facilities. That's one of the reasons why we have zoning. One of the issues with industrial facilities is sometimes they produce toxic plumes. And at the point where I had filed my testimony, the plume analysis had not yet been filed. I've since read it and reviewed it. So item B there, you can amend that. They have submitted that. And I like the analysis in some respects, but it has some significant problems. For example, Scenario 2 talks about that is based on one half of a container burning. Well, if half of a container burns, there is nothing to stop the other half of the container from burning. That's really a baseless assumption. There's no separation there in the middle of the container to cause it to stop burning halfway through. The analysis needs to be based on consumption of the entire container including that Scenario #2. The analysis talks about elevated terrain in terms of friction factor which is something we talk about with

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dispersion modeling but it doesn't actually model the elevated terrain. At least it doesn't say that it does. The problem is that if you have a plume, which tends to rise, and by the way, I've personally been -- I've watched a BESS fire in progress, and I've watched how the plume on that particular plume project travel and surprisingly despite the heat that's generated, the plume doesn't have a whole lot of loft to it. Doesn't rise a lot. Tend to travel pretty horizontally, pretty much like the diagrams, the side view diagrams that we see in that that report. And I like those diagrams, but the problem is that if you have a plume, it's traveling sideways and a little bit up and that plume encounters elevated terrain, suddenly the elevation doesn't matter so much anymore because the terrain has risen to catch the plume. The plume will tend to rise away from the terrain but that effect is not complete. It has to be modeled.

Another problem is that the toxic chemicals that we're talking about which are invisible by the way. The smoke that you see is particulate from these fires. So the toxic chemicals are invisible. Those toxic chemicals are not the full story. The smoke that you do see is a significant part of the toxicity. And so for two reasons that needs to be modeled. One is the particulate falls out. In other words, we call them rocks in the industry. They're very, very small particles and they will actually have a trajectory and fall. And so they don't follow the same trajectory as the gaseous toxic chemicals. They fall they tend to fall out in closer proximity that needs to be modeled.

The biggest problem though with the report is that it's based on what's called ERPG2. That is the sort of sensitivity threshold. What concentration is bad enough to be bad? And they've selected ERPG2. ERPG2 is a concentration that causes permanent injury and inhibits the ability to evacuate. That's pretty much a quote from either EPA or NOAA. You can go on their website. That's the definition of ERPG2. In San Diego County, their BESS guidelines mandate AEGL1, which is similar to ERPG1, which is an order of magnitude lower concentration. I mean, for example, hydrogen fluoride, which is a very nasty chemical, is one of the main toxic gases that come off. Hydrogen fluoride its ERPG2 is 20 parts per million. Its ERPG1 is one part per million. You will detect one part per million far, far further downwind than you will 20 parts per million. That needs to be modeled.

So, while there are some aspects of the report that are good, it needs to be redone and needs to be done in a manner where we're not assuming people are going to be permanently injured and don't have the ability to evacuate. San Diego -- you don't have to do the same thing as San Diego County, but they've had three major fires and I've watched one of them. And they're based on their experience, they decided to go with the one, not two. They don't want their residents to suffer permanent injury and not be able to evacuate. Okay, let's move on.

Novec 1230 FK5112. That's a fine fire suppressant. It's good stuff. There's nothing wrong with it other than it has some toxicity issues itself, but it's not really a bad actor. The problem with the FK 5112 or Novec 1230 is that per the manufacturer, it cannot, this is a quote, it cannot stop thermal runaway once initiated. Now granted that's in a flooded application and the manufacturer 3M who invented the material they don't say that it might not be -- might be effective in some other application for example the direct injected application that's now being proposed. The problem is is they can't say because they don't know because there's no operating experience with that technology

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with that method of attempting and I would I would emphasize attempt to create a system that successfully interrupts propagation. So Novec 1230 in this direct injection it's, I mean they've done some testing. They're going to use it on another project in California. and at this stage it's an experiment. The question for you is should it be an experiment on this site? I think it's something worth pursuing. I think it's it has potential promise, but I'm not sure that this is the right application, the right time and place to do it.

Move on here, couple other issues. In fact, let me back up one. So, I've worked with the fire agencies in San Diego County. They, as yours here, they will work with what they've got. They will make it happen. That's what they do. But you need to give them the tools. This site does not have firefighting infrastructure. When you have a fire on one of these facilities, you need to be able to put cooling water on two adjacent structures, assuming that they're far enough apart. Here we have three and a half feet apart, so I'm not sure what to do with that, but you want to put water on two adjacent structures until the thermal runaway burns itself out on one container. That can take around 24 hours, maybe 36 hours. That means two water streams. Each one of those water streams is 12,000 gallons per hour. That's 24,000 gallons per hour. So a 30,000 gallon tank, guess what? It's going to last a little over one hour. What are you going to do about the other 23 hours? If that water stream goes away, then those adjoining containers will start to experience that heat radiation and you're going to get propagation. They have to be cooled. You need that water. So, either you need a very large tank or this project needs a water line. I don't see any way around it.

Okay, now we'll move on. There's no retention basin. Early projects didn't have retention basins. We didn't really recognize the full extent of the risk here. We do now. So when you produce, you know, 900,000 gallons of water from cooling these adjacent containers, those water streams are going to intersect with the toxic plume to some extent. When that happens, they will dissolve some of the invisible toxic chemicals and they will entrain some of the particulate. So that that stuff will end up in the water. So you have to have the ability to sequester that water and test it and either treat it or determine that it's okay. It's been diluted enough. Generate dilution is kind of the answer. At least, you hope, that it's been diluted enough that you can simply release it. In this particular case, I it's just the worst luck I can imagine. The identified environmentally sensitive area is immediately downhill of the BESS site. So when the water goes on those adjacent containers and it runs off, it's going to go directly into that environmentally sensitive area. I don't know the nature of that area, so I can't tell you what those impacts might be, but there's no retention basin in order to capture that water, solve that problem.

There's been talk about LFP batteries versus NMC. My understanding is this project proposes NCA batteries. That's nickel cadmium aluminium oxide. Of the three, the most common are NMC, they're kind of in the middle of the road in terms of thermal runaway. Their threshold temperature is around 210 degrees centigrade, something like that. LFP, their threshold is higher, so it's more difficult to get them into thermal runway. It's more like 270. NCA their thermal runaway threshold is 150. It's a much more volatile battery chemistry than the other two and it's relatively new. There's very relatively little use of NCA batteries in grid BESS facilities. So it's a somewhat of an unknown quantity in this application, but just the battery chemistry alone would suggest that it's not a great choice.

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Lastly, there's a really interesting discrepancy in this project description. On one hand, it describes the BESS facility as a 192 megawatt hour facility, but then it also says that there are 38 containers each with 8.1 megawatt hours. That makes it a 307 megawatt hour facility, which is a 60 percent increase. Now because BESS facilities are modular, if you double the size of the facility, for example, you double the number of cells, you double the number of racks, you double the number of containers, you double the number of cooling systems and so forth. And that results in the expected failure rate to also double. So failure rate for any given facility, notice not the severity of the event, but just the likelihood of the event is roughly proportional to the megawatt hour size of the facility. So the size of the facility is important. I mean, if you were permitting a say a gasoline tank farm and they told you it was a 192,000 gallon tank farm and then you looked at all the tanks and there were 38 tanks and each one was 8,100 gallons and you say, Well, wait a second now. That makes it a 307,000 gallon facility. Which is it? I don't know. I don't know as far as this project goes, but it does have an impact on the failure rate based on EPRI data.

The failure rate is expected based on the last four years of data. And I'm excluding the first – normally you take a five-year average. That's kind of the industry thing. You take a rolling five-year average on failure rates. The problem is that 2018 and 2019 were so astronomically high in failure rates that we've kind of thrown that data out. It's like whoa that just we don't even want to think about that. So we just we've been looking at 2020 and afterwards those failure rates average about 0.15 failures per thousand megawatt hours per year. Apply that number to this project that's over its life around a 100 it's anywhere between depending on the size 86 to 138 percent chance of fire at this facility.

So you can pretty much count on the facility is going to have a fire. So, you need the water, but you need to analyze the plume because that's kind of the non-starter. If it turns out that the plume when you use the right criteria for sensitivity is something you can't live with, then that's really, that's really a fatal flaw in this project.

So, just got a couple of pictures real quick and I will conclude. So, as I said, I had a chance to view the Escondido BESS fire. Watched it for a couple hours. So the fire again, we tend to focus on fire and as fire firefighters generally want to put out the fire. In this case, you let the fire burn. That's kind of the worldwide consensus. Let the fire burn. let the thermal runaway work its way all the way through the container until all the battery material is gone. So the underlying thermal runaway that's driving the fire is done and then the fire goes out and during that period you cool. So you can see how dense the smoke is on the particulate there. The particulate which was not modeled in the report is a big deal on these fires. Here you can see in the upper left the two water streams going on the two adjacent containers and roughly 200 gallons per minute each. At the right you see a helicopter view from media and thermal image there shows you the full involvement of that one container. And if you look closely back I got a pointer here, right there you can see the water stream has cooled that container and this water stream has cooled that container. So, the water streams are coming in from the bottom and that that caused that fire to be limited to just the one container and roughly a 24-hour event. Still, evacuations and so forth, closed businesses, created a big disruption. That concludes my testimony. Thank you.

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CHAIR BUSTAMANTE: Thank you very much. Next. We were going to ask questions of everyone when you're done. Thank you.

ED HENDERSON: My name is Ed Henderson. I represent Assurance Engineering. My address is 7319 Golden Globe Way Northeast, Albuquerque, New Mexico. I understand I'm under oath.

What we've heard today is a compilation of concerns. But before I get into that, I'd like to just introduce myself a little bit more. My firm was established to address fire hazard assessments. Our client base is the Department of Energy, the Department of Defense. I've worked with utilities throughout the Southwest while they were going through deregulation and considering renewables as a way to maintain their client base and offset global warming and other things.

What I wanted to address today has very little to do with the solar field. I spent 18 years in the solar industry and it's very, very stable. When I was involved with the industry, utilities generally would tell us we need you to have 25 years of experience before we can even consider this as a generating source. That was 40 years ago. So now the solar industry is in pretty good shape. I'm not going to talk about solar, but I am going to talk about the battery systems that are an integral part of transmission of that energy to some other location.

What I'm going to focus on is the consequences of the BESS systems as an ignition source. That ignition source can be within the BESS system or adjacent to the BESS system. Other thing I'm more or less the last thing I'm going to talk about is what does a firefighter do when he has to engage a fire that is really an electrical chemical reaction. It's not a conventional fire. So in this first slide, what this is all taken from are commissioned reports that AES asked and received from an engineering firm, Kaufman Engineering. Kaufman Engineering provided a hazard mitigation analysis about a year ago and I'd encourage that to be refreshed. More recently, just the middle of last month, Kaufman provided a plume analysis and I have to say it was one of the more detailed, informative pieces of engineering that I've had the pleasure to review. Let's get back to where we started with Kaufman. A year ago, they had identified that thermal runaway was the number one issue with this BESS system. That included a review on their part of testing that was done by UL. So that was the UL standard that's been referenced a number of times 9548 and 9548 tested the individual cell. It tested a compilation of cells and then a configuration as the BESS. And what they found was the individual cell will go into thermal runaway. The combination of cells when they're put together will cascade, meaning that one cell affects the adjacent cell and causes that to continue to combust. So thermal runaway was confirmed. There was no question about it.

Underwriter Laboratory is an independent testing organization. They really don't have a dog in the fight. So then the question is if you have a fire, what can you do about it? And what's been proposed is we're going to use a clean agent system called Novec. And that's what my colleague Mr. Rowley just spoke about. Unfortunately, Novec works best to eliminate oxygen, but this is an electrical chemical reaction. Doesn't need oxygen. So what you can do that -- what that clean agent will do is reduce the temperature somewhat but it doesn't interfere with that reaction. That exact process has been studied by the University of Maryland by Worcester Polytechnic, both renowned fire protection schools So, what should we do with this gas? We know the gas

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is going to occur. It's contained inside of this C-cargo container. How much gas is there? Well, the UL standard when they did the test, each cell, one cell evolved about 15 cubic feet of gas. So when you put all of those cells and configure them inside of this container, how much gas is in the container? The gas developed is 74 times the volume of the container. So what that means is the container is going to leak. The gas can't be contained. So if the gas ignites and you make use of the explosion lids that are on there, the deflogration containment. If that occurs now the flame is exiting the container. And that's one of those photographs up there. Let's see.

So, what else happens? The plume study that Kaufman did. I was really excited to read, the plume study if an entire container is engaged. That was their scenario number three. That is the worst case. They said that that would occur in a period of one hour. I think that's a little rapid, but that's what they said. The plume that results is expelled from the area to 4/10 of a mile by distance. The study they did used a standard that said, Well, how serious is that? Well, are we going to affect anyone? And the standard they used was a standard that would reflect incapacitation, the level two, BAC level two. AES showed a slide up here and they said, Well, geez, there's three different levels. Pack one, two, and three. Three is really bad. Let's not consider that at all. We're going to use pack two. Had they used pack one, how far would that plume have gone? They didn't use it. My question to them would be, please give that a shot. It's just a study. It's just a model. Tell us how far it could go. Pack one is just an irritation level. It's sort of like a dust storm. Think of it that way.

I should go on to another slide. Here we go. So AES has had multiple consultants help them. One of them early on was a company called Hiller and they devised let's see right there they devised in this upper right corner this is a curve of heat flux. Heat flux is an amount of energy imposed on a surface. And as you get further and further away from a source, the energy the heat flux drops really quickly. I extended that to these last three data points. And why did I do that? Because people are going to be trying to address this fire. There is a physiological issue when you're exposed to a lot of radiation, solar radiation or radiation from a fire at 12 kilowatts. So, I'm going to point this out down here at the very bottom, that's 12 kilowatts per square meter. Doesn't sound like a lot. If you're at the beach, 800 watts will give you a real serious sunburn. So, 12,000 watts. What will that do? You'll experience pain in 4 seconds. You'll have a second degree burn in 12 seconds. Well, how far do you have to be? Let's see. Got to hit the right button here. To get to the very end of that curve, what is that? That's somewhere between 130 and 150 feet from the fire. So, the fire is one of these containers. How far away? How do I address that fire? Well, Mr. Rowley said, We're going to use hoses, high pressure monitor lines. That's what those are called, high pressure. We're going to use a 30,000 gallon water tank. Well, there's no mention in any of this that that water tank has a pump on it. How do you get the high pressure? Oh, let's use one of the fire trucks. The fire truck comes up. They got to get to the tank. Well, the tank is within 130 feet of the fire. These guys are exposed to very high heat flux. That's what we're asking the fire department to do. Oh, by the way, they're also exposed to this plume. So there are a few issues here.

This graphic what we've done is we said okay that sort of tan color in the middle. The BESS systems are inside of that and the perimeter of that is 130 feet out. So it

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exceeds the property. It exceeds the fence line. That's no problem. But in the lower left corner of that is where the water tank is. Well, that's a problem. You're not going to get to the water tank. If you could get to the water tank, it's going to last about an hour. After that, if we haven't completely used up the energy in the cell that's burning, the adjacent cells are going to start to heat up. What we haven't talked about is at some of the energy management systems that AES is planning. So, we don't know whether there's a parasitic load built into that where we'll continue to control the air handlers on the adjacent units during an event. We just don't know. It's not written down. At least I haven't had a chance to read it.

So, going to collect my thoughts here. So what we're talking about is there is a high likelihood of a fire and when there's a fire there is a chance that there's going to be some significant heat flux imposed in the adjacent area. So what's the issue with that? Does the heat flux, other than the physiological things that are going to be imposed on the firefighters, what does that heat flux do? Anything in the near vicinity will experience the same kind of heat flux. What we have is a high desert conditions. We have grasses and pinions and all kinds of things that have a known ignition temperature of about 300 degrees. If they're close enough to that, the heat flux will contribute to them getting dried out and ready to ignite. All they need at that point is a spark and they will light up. So there is an opportunity here for a wildfire initiated by the BESS. There's a corollary to that. The BESS could be operating and everything's just fine and there's a lightning strike and so we have a wildfire that consumes this same space.

When the BESS heats up enough or if its systems fail to keep it cold, it will go into thermal runaway outside. I'm being called off. They used to have a big hook to do this. Okay, let's just get to some conclusions. Got to do this quickly.

What we try to identify here is there's really not so much an issue with the solar but there might be an issue with the BESS. The codes and standards that we've been talking about are consensus codes meaning this is the best that we understand. This is an evolving technology. So as an evolving technology you should expect changes. This does not have 25 years of operating experience. That was the utilities position for decades. That has changed. The studies that we've had a chance to review, I would gauge them as technically superficial. They are not sufficiently detailed at this stage. These are more or less 30 percent design documents. These are not yet for construction. Because of that, we can't ask detailed questions. So, just be aware of that. That's the conclusion of my comments. I'd be happy to take any questions.

CHAIR BUSTAMANTE: Thank you. We'll hear questions after everyone from the Clean Energy Coalition has spoken. Next.

BRIAN ROEDER: My name is Brian Roeder. I understand that I'm under oath. My address is Forest Way in Pebble Beach, California.

Thank you for allowing me to speak today. I deeply appreciate it. I'll be speaking to share my understanding of what happened.

CHAIR BUSTAMANTE: Excuse me, we need to -- can you pause for just a moment?

MR. ROEDER: Please, thank you. All right.

So I want to share my understanding of what happened based upon personal experience and what we've learned from others. And it'll be your challenge to figure

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out the meaning and the import of what I'm going to share with you.

So a little bit about me. I'm a businessman. I've served on several boards. I've chaired some boards. I've started a couple of nonprofits. I'm a graduate with a master's degree from Georgetown. I would like to see us successfully move to a carbon neutral future. However, I'm here to tell you today that these batteries are incredibly dangerous.

On January 16th, a fire broke out at the Moss Landing District Power Facility and it burned for five days and reignited a month later as you've heard. We stepped out on our balcony and looked 8 miles to the west and saw it burning. The smoke stacks that remained from the prior facility there, the power facility are 500 feet high. The flames were higher than halfway. We started Never Again Moss Landing as a community effort to understand what had happened, what it meant for us as residents. It's almost seven months and we've learned a great deal. There were upwards of 5 million battery cells in that building. Think of AA batteries or their equivalent. Somewhere between 50 and 70 percent burned. Here's what we can tell, they released about 5,000 tons of nickel, cobalt, manganese, lithium. Those materials were vaporized because the temperatures at which thermal runaway occurs. That means that they became nano-particles that can pierce the blood vessel walls and go into one's soft tissues and organs and remain there. That cloud went out approximately 30 miles. We know that the elevated numbers occurred everywhere, but especially from about 3 to 8 miles out. We know that because working with an environmental hygienist, I did testing, 124 tests throughout the community, the largest testing that's ever been done as a result of a fire like this. And what we found was that there were elevations up to a thousand times what we would have expected in the environment. And that was validated by a San Jose State professor who took a totally separate set of tests from what's called the Elkhorn Slough shown there, a birthplace many species that populate the Monterey Bay and elsewhere, otters included.

So we know that we did the testing properly. No one else did that testing. The community didn't. The county, the state, they did testing, but they were in very limited locations using methodologies that weren't designed for this fire. Our tests were surface wipes. We've asked the authorities to explain how their initial report made by the EPA that all this material was destroyed can be reconciled with what we learned. The EPA came out five days after the fire. They said that the, I think it's called hydrogen fluoride had been destroyed. It's an incredibly toxic substance. It's used to move the charge between the anode and the cathode in those batteries. You can't destroy that stuff. It can be neutralized, but the conditions to neutralize the hydrofloride were not present. So, I'm not sure why the APA said that was destroyed, that's still the story. That hasn't been retracted. The particulate matter that the EPA measured for from ground stations was 2 and a half microns and larger. The temperature of a thermal runaway, it's known, vaporizes those metals into smaller particles than that. And if you're not testing for them, you're not going to find them. The EPA continued to say that there were no elevations in particulate matter because they weren't measuring for what came out. And state authorities continue to point to that as does the company that managed and operated that facility. In short, I was expecting the company to do what they could to cover their liabilities. I didn't expect that state and federal authorities would fail to help our community.

I know everything I heard tonight and today I've learned a great deal.

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But I hope you know that once thermal runaway occurs, everything you heard is bull shit because none of it will be operative anymore. Once thermal runaway begins things that are really, really damaging to human health are released. We abandoned our house on January 28th, 12 days after the fire. My wife became very sick. The people that became sick were kind of the same folks who got clobbered by COVID immunocompromised, bronchial issues, people like veterans, retirees, folks with livestock, people who don't have the wherewithal to get out. We had the wherewithal and so we moved. I moved my family out. It took everything I could muster to make that happen, but I had to. We have a seven-year-old son. My wife is finally feeling better.

Look, this industry is making a lot of money. I've spoken to hundreds of people since this fire. Really big brain folks from around the world have been reaching out to us. Something like this has never happened. Your facility is different. It's smaller. You've heard how these containers will be very close together. There is no way to put this out once it starts. And it's not done till it's done. That was 10 weeks almost after the fire broke out that it was done with us. We saw it. We felt it. We smelled it. Hundreds of people got sick. They got sick every time it rained because it was precipitating the stuff out of the air where it stayed. Thousands more who were healthy breathed in the same stuff. They don't know that they did. I tell people that our community now has that each of us has a loaded gun against our temple and we're playing Russian roulette because the stuff in us is there. We know that now. Is that a risk that your community wants to take? Is that a risk that you want to take on behalf of your community? You're hearing them here. They've done the research. Is that a risk you want your parents to be exposed to or your children or your grandchildren or your great grandchildren? This is a multi-generational threat. It burns. The ratio we heard is going down of burns. There's a reason for that. California had one gigabyte, well, sorry, gigawatt of power five years ago when this thing was approved. It now has 16. When you're seeing this in exponential increase in capacity, the number ratio of burns is going down, of course, but it's a trailing cipher, folks. In three or four years -- the tech is dangerous. There is alternatives coming online. If you approve this now, you're bringing in a tech that is not ready. Thank you.

CHAIR BUSTAMANTE: Thank you. Next.

[Duly Sworn:]

LEE ZLOTOFF: My name is Lee Zlotoff. I live at 53 Camerada Road, Santa Fe 87508. And I understand I'm under oath.

Chairperson Bustamante, Commissioners Greene, Hughes, Johnson, and Stone. I have studied this issue of solar projects with BESS installations for over two years now and I hope to share with you what I've learned in this journey as a president of CEC just as all our volunteers have tried throughout that time to educate the residents of the greater Santa Fe area.

On September 11, of 2023, after numerous requests, we finally had a meeting with county staff to share our concerns about this project. Based on the information AES had sent to residents who inquired about the specifics of their proposal, we showed them that AES's business motivation was not the solar panels but the batteries and that they were misinforming the County in the name of profit. It was shortly after that meeting, coincidentally or not, that AES told us they would no longer communicate with residents. It was also just around then that AES sued you, the County, claiming that the hazards

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regarding their batteries were now trade secrets and so should be kept from the public, a suit they undertook in their revised application. So I ask you, do these appear to be the actions of a company that is trying to be open, honest, and forthcoming with you or the community?

And their pattern of half-truths has continues right up to this day. Is their facility 192 megawatt hours? Is it 307 megawatt hours? They stated today that they have used this configuration that they're planning for here elsewhere. In the hearing commission hearing, under oath, they specifically said they have never used this configuration in another facility that they built. Which is it?

AES also says the rates for the power from this facility will be fixed. What they don't say is that there's a complex schedule of pre-negotiated so-called fixed rates depending upon the exact conditions of the overall grid when they either store or release the power from their BESS. That means there could be dozens, if not hundreds of different rates for those transactions. Does that sound like a fixed rate to you?

They say this power might be used to supply electricity to all the homes in Santa Fe. What they don't say is it might just as well go anywhere. That power is needed on the grid. No doubt where it would be most profitable for AES, PNM, or whoever controls the power at that moment. Nor is there any evidence at all that projects like this stabilize or reduce the rates and costs for electrical power, but instead cause it to rise. Why else would massive private equity firms now be so eager to acquire both PNM and AES?

But the list of half-truths is too long for me to recite them all. Simply put, this project was never and is not now about renewable energy. That is a smoke screen to make it look safe, clean, and positive for the environment when we have learned it is anything but that. And even now, as they and their supporters insist that we must have this project to meet the county and state's renewable energy goals to address the effects of climate change, we now know not even that is true. Right now, you the County has another application from Linea Energy for an even larger solar BESS project in the south end of the county that we at CEC, based on what we know, would support as it is more safely sited away from densely populated communities.

So, if this project was ever really about renewable energy, it certainly isn't necessary to fulfill those goals now, is it? And since you are new to all this and looking at it with impartial eyes, here's exactly who and what CEC is now. As of this morning, we have over 2,100 subscriber members and over 1,750 signers of our petition, even though the one you have stopped at 1,675 because of the July 21st submission date. And those numbers continue to grow by about 100 new subscriber members a month, all of which we can verify. At both the Hearing Officer hearing and the Planning Commission hearing, the public comments were 5 to one against this project and the letters to the County regarding this project were about 328 to 154 against. So about 2 to1 against, but those letters were not forwarded to you as part of this hearing. My point is simply that the opposition of this project has been and continues to be significant. So rather than CEC and others who oppose this project who are falsely characterized as a noisy minority, we believe we are in fact represent the vast majority of residents who have taken even a few minutes to educate themselves about the truth behind the smoke screen that AES and its supporters have worked so hard to create. And if you doubt that, then perhaps you should

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consider a public referendum to let the voters decide if they think such a project is really in their best interest, rather than such a significant decision being left to as few as three of you who are tasked with weighing a mountain of technical information and evidence that I imagine must be daunting to say the least.

But if not a public referendum then this difficult decision all comes down to you. And while we expect it to be dismissed, disparaged, and demeaned by AES and their supporters, all of us at CEC and beyond are struggling to understand why the County management and staff who are tasked to evaluate this project in a fair and impartial review seem instead to be an advocate for AES and repeatedly ignore, dismiss, disparage, and frustrates the public involvement in this process and our concerns about its risk to our communities. And we are not alone in that confusion. As both Hearing Officer Hebert who you hired to evaluate this project, as well as District Court Judge Francis Matthews in the trade secret suit, each separately asked with some surprise, and I quote, Isn't the County supposed to be the advocate for the public? In this instance, apparently not. And it is even unclear to us at this moment if the County will be a profit participant in this project, earning a percentage of every megawatt hour sold, as is not uncommon in New Mexico.

Again, in theory, the County staff and management work for you. They are there to enact the incentives and implement the policies that you set for the County. You are the elected officials that should be the ultimate advocate for the public. A fire from the AES facility, which is statistically inevitable, has the potential to devastate both the reputation and economy of Santa Fe, regardless of how many promises AES makes to you today. And given that AES now seems to be up for sale, you don't even really know who you'll be in business with if you approve this permit.

So the real decision you face goes well beyond the specifics of this project because the real choice you need to make here is exactly what kind of county do you want? A county that puts the profits of an out of state corporation and a wealthy and influential landowner above the health and safety of the citizens you are sworn to protect. A county that treats those citizens as a nuisance, obstruction, enemy, or threat to whatever corporate interest has the power and resources to dictate terms to your management and your staff or a county that actually listens to its citizens when they turn to you for wisdom, guidance, and prudence in the face of a real danger that threatens not only the reasons they choose to live here, but possibly even their lives.

So I urge you not to succumb to the politics and pressure of moneyed interests. But even if you err in this complex decision to err on the side of safety to vote for those of us who has volunteered years of our lives to bring the truth to your attention and to be a county of the people by voting to deny this permit. Thank you.

CHAIR BUSTAMANTE: Thank you. Please hold your applause. Thank you. Anyone else wishing to speak on this matter? There are 46 seconds left. Do we have -- and I understand at this time we can cross-examine all of the speakers. If you want to bring them up to the podium. Do we have any questions for the Clean Energy Coalition of Santa Fe County from the parties with standing? Are there any questions from any existing parties with standing who would like to raise any questions with the Clean Energy Coalition?

Not hearing any, do any of the commissioners have questions? Commissioner

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Hughes.

COMMISSIONER HUGHES: Yes. I have a question for the applicant. Why did you choose three feet between the containers instead of 10 feet? And could you possibly switch to 10 feet to prevent a Moss Landing type fire?

MR. SIMPSON: The three feet was determined based on an acceptable loss by insurance and the rate at which we mitigate the fire hazard from propagating at all. Of course, conditions like that would be welcomed. We'd be happy to review those with the County if and when they became necessary.

COMMISSIONER HUGHES: Do you think it's economically viable to do 10 feet between containers?

MR. MAYER: Certainly it is. And then again I think it was also the NFPA55 that dictates three feet and we had the three and a half but yeah we certainly can do 10 feet if that became a condition. Again our testing determines that there is no risk of fire propagation. But, yes, if we are asked we can do 10 feet.

COMMISSIONER HUGHES: Okay, that was my question.

CHAIR BUSTAMANTE: Thank you, Commissioner Greene.

COMMISSIONER GREENE: Thank you very much. How was the 30,000 gallon tank decided on for the capacity?

FIRE MARSHAL BLAY: Madame Chair, Commissioner Greene, the 30,000 gallons was determined as a minimum requirement for any commercial facility in Santa Fe County that is not tied to a municipal water supply. Those 30,000 gallons are not for putting out fires at a BESS incident. It's to protect exposures, to protect a car fire in that facility, a potential grass fire in the surrounding areas, but it's not for putting out a BESS thermal runaway fire.

COMMISSIONER GREENE: So, it's to buy time. It's not necessarily to suppress the fire completely.

FIRE MARSHAL BLAY: Correct. It's not only to buy time. It's mostly to protect exposures and other types of fire that may happen in the vicinity besides a thermal runaway fire.

COMMISSIONER GREENE: So if we had to sort of go with a 30 minute response time, I know that's less than that in theory, but let's say 30 minute, would that 30,000 gallons be enough to, you know, cool down the adjacent containers.

FIRE MARSHAL BLAY: Madam Chair, Commissioner Greene, we'll be there definitely before 30 minutes. I'd say anywhere between 10 to 15 at the most. By the time we get there and we hook our engine, by the way, that water tank was strategically placed on the upwind of because we know that the winds always come from the west. so we would be not only dispatching an engine and having access to the two the 500 or 700 gallons that an engine has, additionally the 30,000 gallons that the water tank would have. We have a fleet of tenders that will respond also from not only La Cienega but various districts. So we have upwards of 10 to 15,000 gallons constantly coming in within the hour.

COMMISSIONER GREENE: Was there any consideration of connecting the water line that's being proposed down Highway 14 to this facility?

FIRE MARSHAL BLAY: Not to my knowledge. That would be ideal, but not to my knowledge.

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COMMISSIONER GREENE: So, if this -- this looks like it's a two to three year process to get this thing ready to turn the lights on, as they say, do we have Public Works available to tell us, maybe tomorrow, as to when they think that water line because there is a proposed county water line to run down Highway 14 and pass this site and maybe this adds the capacity to make things a little safer. Does it run this far down?

MR. SISNEROS: Madam Chair, Commissioner Greene, yes. So, back when the applicant first submitted a ready, willing and able letter, utilities did say that they did have availability in that area. Although they weren't required to connect because of the distance, but there is water availability near on Highway 14 near the parcel.

COMMISSIONER GREENE: And so, this could tie into that with a more, to quote Chief Blay, ideal solution.

MR. SISNEROS: Yes, that is correct.

COMMISSIONER GREENE: Okay. And then Okay. So that so the same sort of situation on the other side of this over by Eldorado on that far west side of Eldorado. Are there hydrants over there that are connected to or is everybody on a well or how does the folks in that western edge of Eldorado have water?

FIRE MARSHAL BLAY: Madame Chair, Commissioner Greene, Eldorado is very fortunate that it has a water department of its own and they have an extensive system of fire hydrants. There may be some areas that don't have a lot of fire hydrants, but overall, Eldorado is well served by fire hydrants.

COMMISSIONER GREENE: Is there a hydrant within the last I don't know thousand feet of Camerada or the western edge over there? This may be -- you probably know better
but –

MR. ZLOTOFF: Okay, the Eldorado water system stops at Camino de los Compadres. Okay. So anything west of that are either shared or independent wells. And obviously we haven't talked about the gas line that runs north south along the western edge of Eldorado. There is – there are no hydrants out there.

COMMISSIONER GREENE: Okay. That would be great for us to know like where the closest firefighting hydrants are on that western edge of Eldorado for you know, if it only covers half of Eldorado then the other half is left exposed.

Is there any automation built into the water system like in case of a grass fire or something like that and it takes 15 minutes; is there any automation built into this system that triggers a sprinkler system to sort of suppress a little bit of the distance? Is that, I guess this is for the applicant.

MR. SIMPSON: The system we built in would be more reliable than a active sprinkler system. It's the setbacks that have been determined based on the wildfire. And I just like to point out that the fire – of the water in the 30,000 gallon tank is not intended for energy storage fires. Those are mitigated by the protection of those enclosures and the separation of those enclosures. So no water would ever be needed to apply onto those enclosures at this plant.

COMMISSIONER GREENE: Even with that description of what they did with that other BESS system where they were running hoses onto the adjacent containers. Was that just a distance factor that they were trying to get over that the 10 feet might get us there?

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COMMISSIONER GREENE: There are a number of differences in that plant. That plant had inverters inside the enclosures. That plant was operated by other people. We're not sure how that plant enclosures were closer together. I have visited that plant. Those enclosures were not designed to the current codes and standards. That was [inaudible] Not sure what the decision was by the fire department, but it is an entirely different set of circumstances.

MR. ROWLEY: I can speak to that.

COMMISSIONER GREENE: Go ahead.

MR. ROWLEY: The containers are a little more than 8 feet apart. So, better, but not ideal. In this case it was enough with that combined with the water streams to prevent propagation from one container to the next. The decision to put water on those two containers was a consensus decision by SDG&E and Escondido Fire and county HAZMAT. And it's really -- it's standard practice now. These fires happen enough to where any agency that's anticipating a fire or has had a fire, they will quickly tell you this is what they do.

COMMISSIONER GREENE: Okay. Thank you. I think I'm good for now.

CHAIR BUSTAMANTE: Thank you. Anyone else? Commissioner Johnson.

COMMISSIONER JOHNSON: Yeah, thank you, Madam Chair. This is a question for -- in response to Mr. Rowley's testimony, in that he said that the FK5112 suppression cannot stop thermal runaway once started. Can you respond to that and how are we to understand the sort of timeline of the event as if a fire were to unfold?

MR. SIMPSON: I believe the way it was phrased was correct that the 5112 would not suppress the thermal runaway and that's not really how it's being deployed here. I believe Mr. Bartlett said this as well, but I'll reinforce what I had mentioned, which is that the intent of the clean agent is to prevent the propagation of thermal runaway. And that's why it's being labeled not as a fire suppression system, but as a thermal runaway propagation protection system, TRPP, which is defined in the in the upcoming draft of NFPA 55. So the intent would be to -- and I believe Mr. Rowley also inaccurately represented it that the clean agent as suppressing the oxygen. But then he also mentioned that it removes heat. So I wasn't sure which but in our experience in our testing its best purpose is in removing the heat and so by cooling the neighboring cells that's how it tends to reduce the propagation.

COMMISSIONER JOHNSON: Okay. Thank you. And Mr. Henderson mentioned an issue. I'm going to simplify this, but there was a gas leak issue. Can you respond to that if you recall the testimony?

MR. SIMPSON: Yes. This would be 74 times the volume of the enclosure.

COMMISSIONER JOHNSON: Yeah, that one.

MR. SIMPSON: What we find is that when these cells vent gas, they it's it does so under extreme temperature. It's the result of that that thermal runway. So that temperature could lead to other gases venting as well. For the entire enclosure to vent would be – would take a very long time. And in that case if you have just enough heat to continue venting without ignition then that would take a very, very long time. So those gases would leak out and the scenarios of gas release are documented in the plume study.

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What I can say is that in our experience with these cells they do tend to self ignite. If there is any issue and that's where we in mitigate that with the thermal runway propagation protection.

I would also note that we've got two protections in place for that scenario where we have venting without self- ignition and the first would be detection and then activation of the concentration -- combustible concentration reduction system or NFPA69 system. And if that fails, we expect that could result in some buildup of gases. If all of those cells actually release gases, you would be well above what is the upper explosive limit. So the lower explosive limit would be the amount of gas where it's concentrated enough that if sparked, it would create some sort of cascading reaction, you know, igniting all the gas around it, and then you would get a pressure wave or a deflogration from that. With just a sparse amount of gas below the lower explosive limit, it wouldn't really ignite, right? If you know, if you have gas leaking in your house, let's say you left the stove on without the sparker and you had a bit of gas, well, you could turn that off, kind of wave it around, disperse it, and then ignite again, and you wouldn't have an explosion. The same is true below the lower explosive limit. Above the upper explosive limit, you have actually too much gas, not enough oxygen to ignite those. And so in that scenario, 74 times, it actually wouldn't even ignite. And then we'd mitigate that through the NFPA69 system or the deflogration venting NFPA68 system once it returned to a limit within those explosive limits, excuse me.

COMMISSIONER JOHNSON: Okay. Thank you. I wonder if the applicant has considered something like heat cameras around the outside perimeter in the sort of inverse scenario where there is fire coming to the facility. How is that planned for?

MR. SIMPSON: That's a good question. We have deployed thermal cameras at other facilities. In this case, we have redundant sensing that does not use thermal cameras. In this case, we have different temperature sensors as well as smoke and but we've got temperature sensors, ambient temperature sensors inside the modules, and then smoke detectors, the flammable gas detectors. And so we haven't seen a need at this site with this technology to deploy the thermal imaging. But with other systems with other energy storage systems that we've deployed that have different level of sensing we have successfully deployed the thermal imaging cameras as well.

COMMISSIONER JOHNSON: Thank you. No more questions.

CHAIR BUSTAMANTE: Thank you. Sure.

MR. ROWLEY: Just very briefly. What I actually said was I was quoting 3M, the manufacturer of Novec 1230, which is the same thing as FK 5112. And the quote is that, Novec 1230 quote cannot stop thermal runaway once initiated. Close quote. That's all he was saying. Now I acknowledge that's that statement is and I said at the time that's in a flooded application. This is different because they're injecting into the cells and this is where I said it's more of an experiment because this has really not been done with Novec to any great extent in the industry and time will tell.

MR. SIMPSON: May we respond to that?

CHAIR BUSTAMANTE: Yes, please.

MR. SIMPSON: We have deployed the system. It's not an experiment. It's been deployed in our plants for the last three years. The TRPP that is. We've tested it

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multiple times. And yeah, we've got videos of it.

CHAIR BUSTAMANTE: Thank you. Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Thank you, Chair Bustamante. First of all, I appreciate all of your presentations and since we did hear testimony about the impact of Moss Landing, I do have a question for AES since it's been brought to the chambers here.

What was AES's contribution financially and investment of energy of resources to help clean up the impact to Moss Landing?

MR. MAYER: Moss Landing is not an AES project.

COMMISSIONER CACARI STONE: Okay. Okay. Well, thank you.

MR. MAYER: That's very important to make clear. AES is no owner, no operator, no ongoing liability or connection to Moss Landing, period.

COMMISSIONER CACARI STONE: Thank you. Thank you for making that clear. Okay, that's important. This question is for the Clean Energy Coalition. It's been brought up in the evidence that's provided to us as well as some of the testimonies today that we need safer technologies but we need guard rails or safeguards and it's also been brought – it's obvious that we are trying to catch up with an industry that's been around a while but there's new technologies. So you mentioned we need the BESS regulations. What type of safeguards and regulations should the County should be considering in our code modifications to make sure that we align and we modernize and assure the safety of our public both in considering applications but in the long-term relationship that we have with these solar companies? Thank you.

MR. ROWLEY: So, this is what I've been working with San Diego County and City of Escondido on, BESS regulations. The initial quote that I heard many times in San Diego County is, we have a chinchilla regulation, why don't we have a BESS regulation? So, it's like, we have this massive gap in our regulations in land use. So, San Diego's been working on that for some time now. I think the NFPA are the BESS guidelines that San Diego put out on an interim basis are just that they're an interim stop gap and they say things like, let's adopt NFPA 855, let's adopt UL 954A and 9840 so those things are easily agreed to I mean those are things that should be done. The problem is that those again those codes and standards are still in a nascent state. There's very -- there's only been one iteration. If you compare it to fire sprinklers, fire sprinklers, that NFPA has been around for a hundred years. It's gone through 50 iterations. We know everything about fire sprinklers that there is to know. And yet it still gets revised every year as we get more knowledge; or not every year, but every couple of years. So this NFPA 855 has only been out since the Year 2000. That's like yesterday in the power industry and it's only been revised once. So it's just a baby and as experience is gained that NFPA will be revised as I mentioned. For example, if this continuing experiment with Novec injection pans out then maybe that will be reflected in the NFPAs. AES is on the committee as are other people pulling in the other direction more in a pure safety direction and they'll reach a consensus maybe it will be in there.

So what you can do is you can adopt NFPA855, you can adopt UL 9540 and 9540A. You can do things like that, but just recognize when you do that, those are not that's not a panacea. This industry remains very young, still gaining experience. The technologies in flux and by definition the codes and standards are in flux.

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MR. ROEDER: If I may, we've looked at this issue quite a bit because we were the recipients of a failure. We have three concrete recommendations that can help your community. Number one, the company should have drones on site ready at all times to go up if there's any threat of emissions. We did not have real-time drone capabilities from any of the agencies which prevented us from knowing what was going out and what the public was being exposed to. Number two, this country in every major airport keeps on site full-time highly-trained personnel in the event of an unlikely crash during landing or takeoff. Why are not we not requiring that these large industrial facilities pay for and maintain such capabilities? I trust the fire captain that they will respond as quickly and professionally as possible. But we now know the risks and these corporations which are making very, very large profits should be able to pay for that type of protection given the threats of these batteries. Number three, these companies maintain records regarding the state of charge, the state of health and the C-rate of the battery usage.

That information should be made public. it should be required to be public and that would be through a system that could be called transparent real time independent monitoring of that facility. Thank you.

MR. STRANAHAN: And I would just note that the fact that we're having this discussion about trying to create regulations that are specific to BESS is really the crux of all of this. We should have had this before we even entertained this project. And Mr. Rowley had –

CHAIR BUSTAMANTE: Thank you for your testimony. I don't think we need to if you are answering a question specifically –

MR. ROWLEY: Just a brief. I misspoke on something. I said that NFPA55 was someone said I said was issued in 2000. I meant 2020.

CHAIR BUSTAMANTE: Thank you. 2020. Thank you. Okay. Are there any other questions
of the group? No further questions of the group.

COMMISSIONER JOHNSON: Madam Chair, if we're to take a break, I would recommend we do so in an executive session. Is that good?

CHAIR BUSTAMANTE: Yes, that's what we'll do doing. Thank you. We appreciate it. So I would like to hear a motion -- we will be breaking for dinner -- a motion that we will be able to discuss this during executive session. So, we'll have a working eating dinner. Is that a motion from Commissioner Johnson?

COMMISSIONER JOHNSON: Yeah, I would propose 45 minutes for executive session so that people can leave and get food.

CHAIR BUSTAMANTE: Okay, 45 minutes for an executive session, eating executive session. A second?

COMMISSIONER CACARI STONE: I second.

COMMISSIONER GREENE: So, it needs to be a roll call, but can we make sure that we're declaring the right statute so that we can –

ATTORNEY BOYD: Yes. The specificity of the motion would be to discuss/deliberate on an administrative adjudicatory matter pursuant to the Open Meetings Act. You have that authority.

CHAIR BUSTAMANTE: That's what we said, didn't we? Can we have a

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roll call vote, please.

The motion passed by unanimous [5-0] roll call vote as follows:

Commissioner Justin Greene	Yes
Commissioner Hank Hughes	Yes
Commissioner Adam Johnson	Yes
Commissioner Lisa Cacari Stone	Yes
Commissioner Camilla Bustamante	Yes

[The Commission met in Executive Session from 7:40 to 8:28]

CHAIR BUSTAMANTE: We'll call this meeting back to order. We'll continue with our hearing.

COMMISSIONER GREENE: Madam Chair, I would like to make a motion coming out of executive session stating that we did not discuss anything other than the items in this case.

CHAIR BUSTAMANTE: And that no deliberation was actually conducted. We were just discussing elemental aspects of it.

COMMISSIONER GREENE: I agree with that.

CHAIR BUSTAMANTE: Thank you. Do we have a second.

COMMISSIONER HUGHES: Second.

The motion to return to open session passed by unanimous [5-0] voice vote.

G. Camilla Brom

CAMILLA BROM: My name is Camilla Brom and I'm a resident of Rancho San Marcos and I'm here to talk to you about why I'm in opposition of the AES Rancho Viejo Solar Facility.

[Duly sworn, Camilla Brom, testified as follows:]

MS. BROM: My name is Camilla Brom. I live at 181 San Marcos Loop and I know that I am under oath for testifying.

I wanted to talk to you all about a few things that haven't been addressed by the other parties yet and that are very important for me and I think a lot of people. The first one – I'm going to be talking about the hydrology of the area, the cultural resources, zoning and the application consistency, ordinances and third-party reviews, local site conditions and the applicable review framework.

First I'm going to talk about the groundwater. The facility that is being proposed is going to be sitting directly on top of a aquifer that 100s and probably thousands southwest of the facility rely on. And the flow of the groundwater in that area is south southwest. Per the SWCA environmental impact report they state that just in the township alone of the facility area there are 327 groundwater wells and the average depth of the wells is 169 feet and the depths range from anywhere as shallow as 18 feet to 535 feet and this indicates that there's a shallow water table in that area.

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For the aquatic resources report from SWCA, I just want to touch on some highlights that they noted. They noted four potential offsite watersheds start at the north and flow in the south direction of the analysis area. And they also point out a FEMA floodplain zone and state, the local floodplain administrator should be involved per local ordinances and to confirm that requirements are met for this floodplain area. They also note that the Gallina Arroyo which is where the gen-tie is going to intersect is potentially a Water of the US based on the features they found. And SWCA recommended avoidance and a minimization of impacts to the potential jurisdiction water feature. And they also noted, and I'll show you in this slide here from the environmental impact report, right there is an erosion feature they noted. And an erosion feature indicates visible soil loss or disturbances of surface disturbances caused by water, wind, etc. and can indicate increased instability or risk. And that's right in the vicinity of the solar array. And also right below you'll see that that's the Gallina Arroyo and it's a Zone A flood zone. So that's the 100 year flood zone risk.

This was a map I got from the FEMA website and it just also points out, there's a Gallina Arroyo, the AES facility would be right in that area. And the Gallina Arroyo is also not only designated a flood zone area, but it doesn't have a base flood elevation documented and that means there's no official measure of how high or fast water could move during a flood event.

This is a diagram I found from the Bohannan Huston site development drainage management plan and I thought it gave a good visual. If you see, starting at the top and you call it the northeast corner, the arrows all kind of point – this is the surface water drainage and it's flows northeast toward the southwest area. It also, on this map, showed four arroyos that intersect in the array design. And this is another map showing this part here where it's the blue part of the diagram, that's another potential floodplain area and it goes halfway into the array. That's just another map kind of stating the same thing.

But this map shows the township where the solar facility would be. There's some things to consider about the groundwater and is why I wanted to talk about it. In this area where the solar array is, there's the gen-tie line and it goes northeast and ended up crossing into the Community College District. And no one has mentioned that here that that is a different zone and it has different regulations or it has additional regulations on top of a rural fringe zone. Also where the gen-tie intersects the Gallina Arroyo, that is an area that needs to be assessed by the Floodplain Administrator and also because this area is in the Community College District when you look at the requirements in that district, they focus on such things as protection of environmental sensitive areas, protect natural drainage systems, respect natural systems of the watershed, etc., etc., and done of that has really been discussed by the County or the applicant.

When you look at the staff report section where they talk about the terrain management and the flood control under the SLDC, if you look at the staff report and read it and compare to the AES CUP written application, it is just kind of taken verbatim from them and pasted onto the staff report. And what was bothering to me was that they discussed what was found in the hydrology and hydraulic report that AES did but the staff never required or requested that report from AES. So if you're just kind of reading it at first you assume that this is what the County saw and they says the applicant has addressed the drainage issues and stuff but they never saw this report. So that's definitely

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a red flag to me.

Also, in the conditions of approval, the County says, the applicant should get the Floodplain Administrator to become involved in the floodplain issues but unless I'm reading and understanding things wrong, that shouldn't be a condition of approval because that's in the design standards in chapter 7 of the SLDC. If you're in a floodplain area, that's a requirement is get the floodplain administrator involved and see what might need to be addressed in the design and all of that. So that's an issue.

And I guess I want to say about the water is that given the vulnerability of this area in the little short bits I've shared with you combined with multiple sensitive features that were found – and the only thing we have at this point is the aquatic resources report – the County really has an obligation to conduct a far more thorough analysis, in my opinion, because this water is a resource that we cannot afford to jeopardize. With the flow going from the northeast corner where the battery facility is and all just draining downstream.

The only thing I'm going to say about the cultural resources because some of it was discussed earlier, there was as you all have probably seen the correspondence between SWCA, the findings of the 17 sites, two were significant and one of the sites is in the northeast corner that was mentioned earlier and it's right under the battery energy storage facility. But when you look at the staff report, the letters as you read they it sounds like, okay, SWCA reached out to SHPO and SHPO said this and then SWCA said we're going to put a buffer around it but in the staff report under, I don't remember exactly where it was, but it said the site plan had already been designed to avoid this site. So if the only protective measure for this site was initially avoid and buffer – sorry, I'm tired. But they decided to put this buffer around it before SHPO actually even gave an actual assessment and a recommendation, unless this was a typo in the staff report. But I thought this is something that should be considered if you all have access to look at these archaeological findings and make sure that they truly were assessed and dealt with in the right way. Forgive me, I've got a lot of papers here.

I want to talk about the zoning in this application. All I've heard is about that it is in a rural fringe zone, but again the gen-tie line crosses over into the Community College District and the access entry point is actually in the Turquoise Trail overlay, the environmental and resources protection overlay. That's not even mentioned in the staff report, the Turquoise Trail overlay and the only mention in the AES CUP written report and the staff report is just that this part goes into the Community College District. They mention the names but don't address anything of how they considered it – the zoning regulations or any of that.

The basic requirements in the technical advisory committee letter that was given in March of 2022, and this is on page 2, it said, submittals shall comply with the SLDC and the criteria in Chapter 7, but then it says, the gen-tie and connection to the main power line are also a conditional use permit and then it says that access via Highway 14 will require an NMDOT commercial access permit and a site threshold analysis. Back in – and I had forgotten about this until I started looking through old emails – but back in February to May of 2023 when Jose Larrañaga was the case manager, I sent him emails three separate times asking him, is the Community College District part of this facility and being considered and he never replied. Well, he replied to one of them and he didn't

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answer that part. He answered something else. But the other two he never even replied to my email. So I never got an answer and I gave up at that point. But then when I read this again the other day about the gen-tie line and connection to – or the point of interconnection needing a conditional use permit, I sent an email to Alexandra Ladd asking her about that. And her reply a couple of days later was that the TAC letter is information only and reflects facts at the pre-application stage. Often the feedback in the TAC letter changes as the project goes through the entitlement process and is modified accordingly and as of today, the CUP covers the gen-tie and the connection.

I also noted earlier today on the staff power point slide, they added in the very beginning under application, they have added the CUP includes the gen-tie line as well. That wasn't in the Planning Commission power point. So, you know, I just think that things have kind of not been recognized of where all this facility stretches to.

I want to quickly talk about the NMDOT details. The site threshold analysis which is done before you apply for a permit was done in October of 2022. The NMDOT permit was submitted in March of 2023 and approved in May of 2023. And this permit is for access, widening the entry point and all of that. And the permit, when you read the fine print, it says it's only good for six months if you don't start construction on it. So I ended up calling NMDOT to see is this still valid and they couldn't find it. Well, they said that the applicant had not filed an extension. So after six months, that NMDOT permit was expired and the site threshold analysis which went with that permit expires after a year. So given it was done around October 2022, that site threshold analysis was only good to about October of 2023. So when you look at all of that, you can't say that this doesn't cause road congestion and you know, we're going to get AES to renew the DOT permit as a condition. All of that was stated as something needed to be done in the TAC letter way back when. And from my assessment, it was just kind of applied and then somebody forgot to file an extension so we're sitting here with no access permit and all of that.

I'm not going to talk about utilities because I'm running a little short on time.

But again with the zoning, Community College District, I'm sure you're all aware of how it wants to focus on small rural village type areas and try to preserve the environment and the land and they talk in the Community College District about arroyo corridors, and protecting natural drainage systems and etc., etc., it goes on and on. And it also talks about the electrical saying place new high voltage electrical transmission lines underground whenever feasibly possible financially. If you're trying to not -- about the Community College District, yeah, you can look at the rural fringe and it also says, transmission lines need a conditional use permit. But the Community College District requirements are a little more stringent. So this was apparently part of the requirement but it was not addressed. That's important, I think. [See Page 137]

The Turquoise Trail Environmental and Resource Protection Overlay, the stretch of road where this overlay is, is where they're proposing this access road. So the Turquoise Trail overlay extends 1,000 feet on either side of the center line of Highway 14 and is identified on the zoning map and I have it in my Exhibit 36 so you can see a visual. But one of the things it says in the design standards for that overlay is for buffers, that non-residential development is prohibited within 1,000 feet of the center line of State Road 14.

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So we're looking at that now and an access road and an expired permit, but on the expired permit they talk about the access opening it's got to be wider, they've got to put a different cattle guard and all of this and based on everything I've looked at – that's within that buffer zone. So they're trying to develop or thinking they're wanting to develop in this buffer zone. It's not feasible because this is a protected area. But again, no one has even, to my knowledge, mentioned to – I think maybe AES did mention the name Turquoise Trail Overlay in their CUP written report. But none of these things were mentioned or according to what I've seen looking at the documents from the staff and AES.

These are just some other things I wanted to add to this. I'm going to go to – I may have to back up. It might be hard to see on there.

The biggest thing is I don't think this permit is valid, the development permit. And the reason I say that is when you look, the form was filled out August 30 of last year, and when you look at the parcels involved, two of the three parcels don't exist anymore. They were old parcels. They were on the first development permit but the two of them that aren't active anymore, one was 8.358 acres and the other is 7,328 acres. There's three parcels mentioned. One of them is correct. It's still active. It would still be where the access road starts. But these others are inactive. And I confirmed with the tax assessor last week. He couldn't give me the exact date but he just gave me a printout which I brought with me but it said as of December it's inactive. So I don't know what time last year it happened. But I do know there was some lot line adjustments last July and I'm assuming that's when the parcels were made smaller and new parcel numbers were added. But not only does hit development permit have incorrect parcel numbers but the AES CUP written report has these inaccurate parcel numbers or inactive and again you look at their old application they just kind of copied – they have the same parcel information on the January 2023 written report. And my understanding is that parcels are very important to have correct because they have to tie in accurately with the proposed facility and the parcel number.

The other thing is when you look at the letter of consent written in June 27, 2024, this letter of consent authorizes Joshua Mayer and Matt Gordon with AES Clean Energy to act as the agent for Rancho Viejo Limited Partnership for necessary land use approvals, including not limited to a lot line adjustment plat and a conditional use permit for the property lease known as Rancho Viejo Solar. It states, they can be agents for Sections 2, 3, 4, 7, 8, 9, 17, 18 and it goes. They don't state that these men can be agents for Section 5, but in the development permit, Section 5 is one of the sections that is part of this facility and I don't know if you can – you probably can't see it in this but up where the gen-tie goes off and heads up toward the Gallina Arroyo, you might not be able to see it, but there's part of Section 5 up there where the battery storage is going to be and some of the solar array, basically the northern part of the facility. So, unless I'm reading this wrong, the person who signed this development permit did not have the authority, no legal standing to apply for a development permit because it was never authorized to sign for anything for Section 5. So I wanted to bring that to your attention.

I'm probably going to skip this part – well, I want to say one thing really quick about the third party reviews. There was a lot of work done to make sure that we had expert consultants for utility-scale solar/commercial solar or what have you. But again I

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think a part of standing mentioned how Glorieta Geoscience in one of their emails, she was being honest with Jordan Yutzy saying, you know, look, this is out of realm. Some of this – I'm not an expert. I'm not a botanist, a biologist, etc., etc., etc., how do you want me to review handling this? And his response was, do what you feel comfortable with. See if any red flags appear – and I'm kind of skipping over part of it – we can get AES to answer questions. And if it is determined to be wrong later, the fault will fall on the person who wrote the report. So that's just not acceptable. What this is, is basically you're looking at an environmental report that wasn't thoroughly reviewed by someone had all the – I don't want to say skills – but she didn't have all the background to review every part of it. So we didn't have an expert review everything. And I'm glad she was honest in what she said that I'm not an expert in these areas. But that email is in my exhibits. You all can read it later if you haven't already.

I wanted to speak on the site conditions in this area. This is just from a Google earth map and if you look over here that's my property line, that little yellow pin drop and over here is the northwest part of Eldorado. This is all Eldorado. So my property is due west of Eldorado by three miles. This spring we had a lot of winds. We always have winds out there. It's a windy area because there's three mountain ranges in this open land area. But I wanted to share with you all videos I took because to me being out there and filming it, it makes no sense to put anything that would cause more danger to people regarding fire. [video demonstrating the wind] This was March 6th, sustained winds 33 miles per hour with gust up to 65. And that's blowing directly east to Eldorado. I know the little thing I made isn't professional looking but I just wanted to give people a visual of how crazy it has been out there. This is a few days later. It's not as dusty because we had a light rain the night before I think it was. But again gust 61 miles an hour. This was March 18th with gust up to 74 miles an hour. And this went on for hours every day. I mean it wasn't like for an hour and then the winds were gone and I know you all know that. But April 1st gust up to almost 60 miles per hour. Oh, that one is not working for some reason. And then April 17th, again. It would be hard enough for our Fire Department to fight any kind of fire in those conditions so to put these batteries that have the known potential to catch fire is – I was out there and thinking if there's a fire people are going to die and I'm not a dramatic person but that just scary and it doesn't make sense to me at all where this facility is being proposed.

In conclusion, I wanted to say that in my opinion this application is not complete. It does not meet the requirements for the SLDC or the Community College District of the Turquoise Trail Environmental and Resource Protection Overlay and I don't even – I'm thinking it's not even legally valid. It doesn't appear to have an authorized agenda because of Section 5 and the permit application has old parcel numbers that are incorrect. The application is not complete. It did not meet basic requirements from a TAC letter from 2022 and I don't know negligence – I just feel like AES should have stayed on top of it. If the permit was approved then make sure there's an extension on it but nothing like that happened and again not even mentioning the Community College District or addressing the zones and some of the other considerations that are part of those districts is mindboggling to me. And, I didn't touch on everything but it failed to meet design standards of Chapter 7 regarding the access road, the terrain management, the flood control. It failed the criteria in the CUP for #1 which is the health, safety and general

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welfare of the area. It didn't meet that. It didn't prove that it won't tend to create congestion in roads – because all of that needs to be redone again. A site threshold analysis from three years ago is too long. Even the NMDOT only allows one up to one year. And even my neighborhood, we have more cars out there now than we did a couple of years ago. So all of that needs to be redone. And criteria #7, again, it is not consistent with the purpose of the property zoning classifications. And I tried to bring this up with County and I feel like I was kind of shoved under the table – I could be wrong but that's how I see it.

So in conclusion, the decision is not about granting approval because it's framed as contributing to the climate change solution. We all know we are in a climate crisis but we have to do everything reasonable, responsible and this is not, in my opinion, a way to go about it. The purpose of the hearing today is to determine whether the application has met every standard and requirement of the our Code codes and our process exists to ensure the projects are reviewed with thoroughness and accountability and that they are safe, lawful and compatible with our community and if these standards are not met – which I don't believe they were – the project cannot be approved. And that's all I have to say. Thank you.

CHAIR BUSTAMANTE: Thank you very much. Do we have any cross-examination from the remaining parties of concern? Commissioners, questions? Commissioner Johnson.

COMMISSIONER JOHNSON: Thank you, Madam Chair. Thank you, Ms. Brom. Could staff clarify the gen-tie line as part of the CUP.

MR. DOMINGUEZ: Madam Chair, Commissioner Johnson, in the initial application the gen-tie line had always been a part of the proposed project. We added the language that it be approved as part of the CUP. Looking at the interactive zoning map, the portion that the gen-tie is running into within the existing easements is in a planned development, it is not the Community College District. But it is actually permitted by right in that planned development.

CHAIR BUSTAMANTE: You do have an opportunity to rebut.

MS. BROM: Thank you. So the Community College District falls under the planned development area. So you have the planned development and then the Community College District and then you have subdistricts as well. The easement was just created, I believe with that lot line adjustment in July of last year and just because you have an easement doesn't mean you can you whatever you want there. That's just an easement from the property owner with the utility company and all of that. It doesn't mean that you don't have to consider what zone the easement is in or the gen-tie or anything. And third, yeah, a conditional use permit it says it right there, why would it say in the TAC letter that the gen-tie and the point of interconnection are also condition use permit. If they all fell under the rural fringe zone, they wouldn't have had to point those two out. But they did. And the thing is, the requirements are more stringent for a gen-tie that goes into the Community College District than it does for the rural fringe zone. So it's really important to make sure you note that.

MR. DOMINGUEZ: Madam Chair, Commissioner Johnson, typically when there's an application for multiple conditional use permits, they are ran concurrently. They are not run separately. So that's one of the reasons that they're being

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run here concurrently. And, again, the gen-tie line that is running within that easement, that's a dedicated easement. That's dedicated for utilities. That easement that is existing that is running into the planned development, again, it is a planned development and there is more than just one planned development. But this one is not the Community College planned development.

MS. BROM: So I would just like to say rather than back and forth, if you all, I know you all know the Community College District and if you look you'll see – and even on that plat I showed a minute ago – it crosses over into the Community College District. If you look at the Community College District plan there's all of these other things that it wants people to address before they put development there. And me as reading it, this does not align with the vision of what the people in the Community College District wanted and at the very minimum it should have been mentioned or something. Hey, this goes into the Community College District, wants the requirements there? The Turquoise Trail Overlay is a whole other thing that hasn't been mentioned other than the names.

CHAIR BUSTAMANTE: Thank you. Mr. Sisneros, can you answer that question; what is the implication to the Community College District? What is the implication to this project and the Community College District?

MR. DOMINGUEZ: So, Madam Chair, there's no implication, no association with the Community College District at all. The Community College District is north of this property. Where the gen-tie line is ending is north of the Zia station north of Eldorado and that's indicating a planned development and it's indicating that it is permitted by right. And that's using the map link interactive zoning map that we, Santa Fe County, has.

CHAIR BUSTAMANTE: Thank you.

MS. BROM: May I say one last thing? Is that okay?

CHAIR BUSTAMANTE: You may say something.

MS. BROM: And I actually have it here right in front of me, the lot line adjustment from July of last year and the purpose of that line lot adjustment was there were three parcels, I call it bi-zone, part of it was in the Community College District and part of it was in rural fringe district – I'm just going to see if I can find it super fast, because I want to read to you what it says the purpose of this lot line adjustment was. It says the purpose of the lot line adjustment is to adjust three patent tracts, to adjust property lines, to line up with the Community College District boundary administrative line. And I have the plat right here and it shows the gen-tie line crossing over. It says the new lot line, Community College District, so I have it right in front of me. So the Community College District is kind of at an angle and where the gen-tie heads toward that's where the Community College District starts. It is to the north too but the line crosses kind of at an angle but it's right here on the plat and I think Ms. Ladd you signed this – no, you signed one for February of this year.

CHAIR BUSTAMANTE: Thank you, Ms. Brom. And that will be taken into consideration and I actually appreciate that clarification.

MS. BROM: Thank you.

CHAIR BUSTAMANTE: Thank you. Any further questions for Camilla Brom? If there are no further questions, thank you very much. And thank you very much

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for your presentation today.

MS. BROM: Sure, thank you.

H. 350 Santa Fe, Inc.

[Those representing 350 Santa Fe, Inc. were sworn as a group.]

LUCY FOMA: Lucy Foma, 714 Rosita Street, and I understand that I am under oath.

ROBERT CORDINGLEY: Robert Cordingley, 1817 Centaurus Ranch Road, 87507 and I understand I am under oath.

GLENN WIKLE: Glenn Wilke, 2006 Conejo Drive, Santa Fe, New Mexico.

DAN BAKER: Dan Baker, 32 Camino Mariquito, Santa Fe. And I'm already under oath so I understand, that finally.

CHAIR BUSTAMANTE: Thank you. You may proceed and we'll go ahead and start the timer.

MR. CORDINGLEY: Madam Chair, members of the Commission, thank you for the opportunity to present our case and our perspective on why we support this project.

I'm president of 350 Santa Fe, a chapter of the international 350 organization and within 350 our multidisciplinary team is charged with representing all of the people of Santa Fe, the county and the city. And provides many years of professional scientific and engineering expertise. For those of you who don't know, 350 in our name refers to the parts per million carbon dioxide in the atmosphere that was set as a target by NASA scientist, James Hansen, in 1980, below which we should be fine. Today, we're over 420 parts per million and everything isn't fine.

These are the topics we're going to cover today. I will speak more on the criticality of action, Glenn Wikle will speak on PNM's plans for a transition to renewables, Lucy Foma will speak on County plans and codes followed by her daughter, Elise providing a youth perspective. And then Dan will speak on solar and storage. Lastly, I will share some closing remarks.

This the dismantle of the current administration of climate protections and even opposition to renewable energy projects, we see the locus of climate action has to move to the states, the counties, the cities, and the private sector. We are fortunate in New Mexico that there are plenty of opportunities to make a difference as we, along with the mountain states, have some of the best sunshine and wind resources. Encouragingly, the Vatican, in an encyclical, declared action on the climate a moral duty. And then this past July, the World Court of Justice ruled countries can be held liable for climate change damage. Closer to home it's well documented that the fossil fuel industry has first denied, then delayed action on the climate crisis for decades. We tend to see their effort as being directed to making it appear falsely that many of the solutions to the climate crisis either don't work; are too expensive or too dangerous. Because of the scale of the climate problem we all need to pursue any progress we can to mitigate the worst effects of global and local warming, the lives lot already and the many more to come. It really

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has become a moral imperative.

This is a challenging road ahead since our mission is to promote rapid and just reductions in greenhouse gas emissions through the education and advocacy in Santa Fe and New Mexico as we work to secure a healthy planet while the transition from fossil fuels to renewables is paramount. Coal has been one of the largest fossil fuel contributors to climate change. Fortunately, our state and our county have committed to transitioning away from burning fossil fuels to building solar and wind energy projects as required by the ET law. I will now as Glenn to come up and review what he knows about PNM's plans.

MR. WIKLE: I have a master's degree in electrical engineering and I did my research on clean power systems at NMSU. I also have a graduate certificate in public utility regulations and I'm a citizen stakeholder on PNM's Power Resource Planning Committee.

This hearing is about making an important choice switching to clean energy is not optional. Santa Fe County can lead the transition and reap the benefits. Denying this permit would send the economic benefits, construction jobs, tax revenue, and local grid reliability to another county. A capacity plan for Rancho Viejo will be built somewhere in the state it is just a matter of where. My slides illustrate the timeline for PNM's state approved plan to meet the requirements of New Mexico's Energy Transmission Law. Six years ago our legislature passed a plan to reach 100 percent carbon free electrify by 2045. This meant that PNM must retire coal and natural gas power plants and replace them with renewable energy. PNM needs many facilities like Rancho Viejo to comply with this law. PNM is already half-way through it's critical transition. It is following a state approved plan to achieve a zero carbon system by 2040. This requires developing roughly a dozen new facilities like Rancho Viejo. As homes and vehicles electrify, demand for electricity increases in Santa Fe. Instead of inflexible coal power, this new facility will improve local reliability as a smaller, highly flexible power source in our own backyard.

PNM has already developed over 20 grid scale renewable projects in other counties. Rancho Viejo is a key part of the final build out. The capacity planned for Rancho Viejo will be built somewhere. If it's built in Santa Fe County, we get the jobs and the revenue. Furthermore, if it's built near Santa Fe we will also benefit from a more reliable local power grid.

This is an important opportunity. Let's not pass on the benefits of solar power and a more reliable power grid. And now I'll pass you on back to Robert.

MR. CORDINGLEY: Thank you, Glenn. Let's look now into more details and why it's so important that we all support this project. First, some climate science to refresh our memories. From the Scripps Institution of Oceanography, I think you've seen a version of this chart earlier today, here's what happened since 1960 until now. Note the vertical scale is carbon dioxide and parts per million. The horizontal is from 1960 to date and shows current levels are continuing to rise at 2 ppm per year. One a larger scale, note here the horizontal scale starts 800,000 years ago. Roughly 300,000 years ago homo sapiens actually showed up first in Africa. On this scale we can see current levels of terrifyingly going straight up right at the end of that chart, the vertical line. The millennial levels never rose above 300 parts per million until the 1950s, the

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dash line. These are unprecedented times needing unprecedented action.

It's been known since the 1850s that higher levels of carbon dioxide in the atmosphere trap the sun's heat making temperatures rise. Carbon dioxide is [inaudible] infrared. Global temperatures have marched in step with CO_2 levels and in 2024 the annual world temperatures exceeded the Paris Climate Accord limits of 1.5 degrees centigrade rise. Higher global temperatures over the past 143 years on this chart all show are out of control with droughts, wildfires, hurricanes, rains and floods to be more and more devastating.

Closer to home in Santa Fe and Albuquerque, we can see in this chart the average number of days when maximum temperatures are at or above 93.9 degrees Fahrenheit were made twice as likely by climate change. This isn't good. Some of the worst effects are lethal heat waves. Woodlands and pastures dry out and locally we get the wild forest fires of Calf Canyon and Hermits Peak and the South Fork and Salt Fires near Ruidoso. So most [inaudible] is warmer air means heavier rains and along with burn scars leads to recent flash flooding in Ruidoso and the Texas Hill Country.

So what can we do? What's really to be done? Here are some of the biggest opportunities of these renewables energies are relatively low hanging fruit: battery storage like lithium ion used in this project smoothes out the variability of sunshine and winds to meet peak demands during our summer times. Lithium ion batteries represent some of the best safety and price performance going and Dan will speak more on this later. And as more renewables – simply put more renewables stops or replaces burning of fossil of fuels, stops putting carbon dioxide in the atmosphere which in turn slows and stops temperature rise which interestingly leads to lower risk of wild fires and lower risks of a litany of extreme weather events.

Given this dire perspective on the climate crisis you can see why local action is urgent and large scale projects are needed to make a difference. So Lucy Foma will please come up and speak on how the project fits in with these documents.

MS. FOMA: Thank you, Robert. My name is Lucy Foma and I'll be presenting the legally justifiable approval of this project based on the County's own documents. I am a land use planner by profession. I have over 10 years of experience and I have my master's degree from Cornell University and I've been taking vacation leave from my day job to be here with you today.

The County developed the Sustainable Growth Management Plan and the Sustainable Land Development Code with vast amounts of public input in order to guide the County in how to develop. These are the policy and regulatory documents that you have as a basis of judgment for this project and both of them support solar in many ways. In Chapter 7 of the Sustainable Growth Management Plan it talks about the need and the desire for the county to reduce greenhouse gas emissions in part by developing renewable energy resources. It even has a map that you've seen already today, showing ideal location and siting for renewable energy. The red is ideal for solar based on multiple criteria evaluated by GIS. And if you'll notice the AES proposed project that was approved by the Planning Commission is right in the middle of where the County identified as ideal siting for solar.

As Glenn pointed out, PNM has said that they need more renewable energy to meet the Energy Transition Act required by the state. They told this to the PRC last

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summer that they need to 2,000 megawatts of renewal energy just by 2030 to meet their deadlines. 2,000 megawatts is more than 13 projects the size of AES or larger and that's just for our service area. That's PNM alone. We're talking about all of the investor owned utilities needing more renewable energy but this is for our electric use. And I'll remind you that while we're talking about the potential for a risk of fire from batteries, that the electricity for our own lights in our own houses that we built has been coming from coal and natural gas plants for over 50 years that have guaranteed to poison people daily -- most of them Native, most of them underprivileged. So it's time for us to take responsibility for the energy that we consume every single day. Delaying this approval process will only cost us more in the environmental realm and financially as ratepayers.

In Chapter 1 of the Sustainable Land Development Code it talks about how we need to use solar and renewable energy as a way to protect our county. It recognizes that renewable energy is a less intensive development on our county land than building housing throughout. The last thing we want is sprawling housing, sprawling buildings. It says we shall which in legal terms means must.

Santa Fe County has the most notoriously difficult approval criteria for any development. My brother is trying to develop a house right now. It's hard to develop in Santa Fe County. So this is a list of the documents that AES has submitted and it actually isn't even all of them. There's two that have been submitted since we developed this presentation. County staff has gone to great lengths to approve – to review this process and has recommended approval not only based on their vast expertise but also based on third party expertise that they have taken the time to find. The Planning Commission overwhelming approved this project. I don't think that there's a question as to whether this meets muster.

So this is a map of the area/vicinity of where the project would be located. I think what we've heard a lot here today is that people don't want anything built here. They're talking about how quiet it is, the rural character, but as you can see there are communities on all sides of this project that have been growing for years and years now. The reality is that this will be developed. It's a private landowner and they have the legal right to develop it. So it's a question of how and that is your decision.

I tried to approximate what the AES project impact would be, just this little black square in the midst of a lot of – thousands of acres actually of other undeveloped land. This represents 96 megawatts of solar and up to 48 megawatts of storage that could power 34,000 homes. That's a pretty small trade-off in land for what the benefit is for our community.

I wanted to address the issue brought up about whether commercial solar should have been put into gas and electric generation. There is absolutely no question that it was intentional to put commercial solar separate. If they had meant in developing the code to put gas and electric as solar included it would have said, gas and solar electric. Otherwise, there would have been no reason why they had parsed out every other renewal energy use in the use matrix. Also it says commercial because all other scales of solar are accommodated for in other parts of the code. So there should not be any question that commercial solar means big enough solar to sell.

The zoning on this parcel is rural fringe and in the description of rural fringe it says that renewal resource based activities are a compatible use. You could also look at

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if it weren't renewable resource activities, if this were a housing development instead, the zoning on rural fringe is one dwelling unit/one house and one guest house for every 20 acres. Each of those could be 36 feet tall and each of those could have a well. Pardon my chicken scratch but I tried to use my finger on a mouse pad to show what it might look like if this were 20 acre parcels and roads and driveways and wells instead of open space and one small solar relative to the open space around it. So this would be around 400 homes and 400 guest houses that could occupy this site instead.

AES developed a visual impact analysis at the request of the County. This is the existing condition looking northeast from San Marcos Loop to the hills. And this is the mock-up taking into consideration perspective and sight lines and everything of what the solar in the distance would look like from that same vantage point. And this is what I was able to do with my limited skills to mock-up what it would look like instead as housing. Granted this isn't one for 20 acres or two for 20 acres, this is cluster zoning which actually the County encourages for efficiency. But take it as you will, it is not to scale.

So this is really a story about choices that you have as the Board of County Commissioners today and tomorrow. Do you want to have the future of Santa Fe County be developed as continuing the sprawl connecting all of these communities into many more houses or do you want one solar generation facility that can power all of our houses. This is a story about water and the choice about water. If this were housing it would take 58 million gallons of water every year for these houses versus a project that could take up to 48 million gallons of water once during construction. This is a story about climate choices that you have in your hands. Are we continuing down the path of stubborn climate change, relying on fossil fuels for our own houses with more drought, more forest fires or are we going to do what we can today so that maybe our children can still see snow on our mountains.

For me, I've devoted hundreds of volunteer hours to this because my choice is my family. I am born and raised in Santa Fe and my children who are born and raised in Santa Fe, my nieces and nephews who live here, I want them to have the option to live here in the future. And now you're going to hear a video, a short clip from my older daughter who couldn't join us this evening. But I wanted to point out that if we get this thing right about climate, if we act now, she could be sitting in your chair as a Board of County Commission, in the year 2070, if we get this right, when she's 55 she could be sitting where you are making decisions but she can't right now. So please make decisions for this generation.

ELISE FOMA [Pre recording video]: Hello, my name is Elise. I'm 11-years old and I'm a 6th grader in Santa Fe. I'm here to talk about why we need clean solar energy. We need solar energy because the climate is being affected by carbon dioxide. Though carbon dioxide is coming from all kinds of things, for example, power plants and cars. The extra carbon dioxide is getting trapped in the atmosphere and heating the earth. This is a problem because first of all, all of the animals like polar bears, insects and many creatures might become extinct because of the drastic temperature and rain changes. And the climate is changing. For example, the big snow we had in November and then the warmth of December. There will be more storms in the weather and seasons because of climate change. Because of these changes, the plants

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and animals will not be prepared for the different weather conditions.

In Santa Fe our water comes from snow and if we do not have snow we will not water. We should support solar because we can keep making solar power everyday without harming the environment. I am 11-years old. I want my future to be filled with plants and animals and to have a safe environment for me and my family and that won't be possible without making some changes to how we make our energy.

Please support this solar project so that me and many other young people can have choices in the future.

COMMISSIONER HUGHES: Some good parenting there, right.

DAN BAKER: So I'm Dan Baker and I'm here to talk a little bit more – get back to what I think are the highest priority conditions for approval that we talked about already focusing on public safety, health and welfare. And just as a reminder, I wanted to say that none of the testimony so far really brought to the forefront that there's actually no evidence of any BESS fire in the US ever escaping containment: none. In fact, only seven containerized BESS facilities have had fires in the last 5 years – this is directly from the ERPI database. None of those fires were an AES design. And I'm providing, the information that I'm trying to provide right now is really just to illustrate the example between risk which we've talked a lot about. How much risk and is there risk but we sort of forget the results. And the results have been that after all of these years of BESS being implemented all over the place, no fires have escaped containment, not one.

The second thing is that there was a lot of talk earlier about toxic this and toxic that. Toxic to me means it kills people. And these words were used without any actual supporting documentation showing that concentrations were found in modern UL 9540 facilities that ever got anywhere near concentrations that are actually harmful to humans. There's no evidence in your packets – I looked through it. But really, what I wanted to kind of jump to is an argument that I'm surprised hasn't been used. And we've talked a lot about all of the zones, and the SDLC and the overlays and all of this stuff and the rules but I haven't heard anyone mention the overlay of the state Solar Rights Act. And as a local solar designer and installer and maintainer when we sold in Eldorado and in San Marcos or difficult HOAs that didn't want the project. They didn't want to see it. We relied on state law which, I'm paraphrasing the slide, but a county or municipality shall not restrict installation of a solar collector as defined. And there's no mention of scale, size, whether it's self-consumption or commercial for sale or wholesale to PNM. There's no mention of scale. It just says, a county shall not restrict. And the state, as a matter of fact, won't even get involved unless there's a singular overriding concern which significantly affects the health and welfare. And I think what we've seen today, so far, is that, yes, there's risk. Risk is never zero. But how significant is it? And when you look at the latest and greatest standards, UL9540, and then kind of put on top of that the NFPA855 , and what do we do if there is a fire? And then something that really no one has really mentioned is the NEC, the National Electric Code, the state has adopted and the County has adopted NEC version 2020 which has chapters on stationary battery storage. And it's all very, very specific highly technical stuff to say if you're going to build it safely this is how you do it. Things have to be wired this way.

And so we have all the latest and greatest stuff combined with seven layers of

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protections inside fireproof metal container that is certified to be safe by the highest standards we know. And so for me as a solar professional, it's like what's the problems, it's certified. We said it's certified. That's the highest certification that we know about.

So the other thing that hasn't really been touched on is the advantages of proximity. It's a benefit. It's less expensive in the end for us consumers and grid reliability.

So I just want to close it out, my part of it anyway, by saying that delay is the expensive part because if we miss out on the 30 percent solar tax credit we are going to pay the difference. And so that's something that has kind of got lost over this.

MR. CORDINGLEY: Thank you very much Lucy and Dan. Our own experience in New Mexico with drought, wild forest fires, burn scars, mud slides, flash floods really bring it home. –

CHAIR BUSTAMANTE: Just to remind you, you have less than a minute.

MR. CORDINGLEY: We have shown that this project is consistent with County's established plans and codes. PNM is going to need every solar farm project it can get its hands on. We've seen that BESS fire risks have fallen dramatically in recent years; the tech is vastly improved and they are comparable or less than many daily risks. The cost of not doing the project is significant – like the lost tax revenues. And then it is worth repeating, you can no longer expect help from the current White House Administration to fight the climate crisis, quite the opposite. We can set an example for the state, the counties and many other projects that we're going to need to meet the state's renewable energy goals. A warming climate affects everyone. It has no boundaries. It spares no communities. You will hear more on these matters from our colleagues coming up. And finally we all need this project to be built, there's no time to lose, no time for more delays as temperatures continue to rise. At least for our youth and generations to come, let's get this done. Respectfully, we ask you to please deny this appeal. Thank you.

CHAIR BUSTAMANTE: Thank you very much. Do we have any cross-examination of the other parties of standing? Questions from the Commission? Thank you very much for your presentation.

MR. CORDINGLEY: Thank you very much. It was an honor.

MR. DOMINGUEZ: Madam Chair, Commissioners, before we move forward, I would like to revisit Camilla Brom's testimony. After further reviewing the map, the gen-tie line does go through the Community College District. There is one subdistrict in the Community College District that prohibits the gen-tie line and that is the Village Zone. And part of the gen-tie line is going through the Village Zone so staff would have to get with the applicant and figure out a reconfiguration of their gen-tie line because it would partially go into the Village Zone and once again it is prohibited in that zone. But in all the other Community College subdistricts it is either a conditional use or permitted by right.

CHAIR BUSTAMANTE: Thank you very much, Mr. Sisneros.

I. Santa Fe Green Chamber of Commerce

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[Those representing Santa Fe Green Chamber of Commerce were sworn as a group.]

GLENN SCHIFFBAUER: Glenn Schiffbauer, 3900 Paseo del Sol, Santa Fe, New Mexico and I realize I'm under oath. I should have rewritten this, it says good afternoon.

Good evening, Chair Bustamante and Commissioners, I'm Glenn Schiffbauer. I am the executive director for the Santa Fe Green Chamber of Commerce and New Mexico Sustainable Business. I also serve on New Mexico's Economic Development Department's Sustainable Economy Task Force Advisory Council.

The Santa Fe Green Chamber of Commerce is a business network of over 180 businesses and organizations committed to advancing sustainable economic development, environmental responsibility and social equity. We represent a coalition of businesses, organizations and individuals dedicated to integrating environmental stewardship within their business practices. We have been involved with advocated and lobbied for clean renewable energy since our inception in 2013. We have worked on community solar, Solar For All, sustainable building tax credits, solar tax credits, and this session's local solar access fund, community benefit fund and the energy storage system income tax credit.

I kind of had a feeling of familiarity today with so many oil and gas people talking about clean energy tonight I should say. So we have worked on, stood and spoken in support of nearly all of the clean energy electrification and tax credit incentive bills and projects for the last 12 years. It is part of our mission. It's what we do all the time.

It's been stated that this project will provide solar power to the equivalent of 37,000 customers or in context it was put in terms of residences. That number would be available to Santa Fe's PNM customers and I guarantee that businesses in downtown Santa Fe like a hotel or a sustainably-minded restaurant leasing in a shopping center like Joe's Dining where they have no ownership would be welcoming of the opportunity to be powered by clean energy.

Serving on the Sustainable Economy Task Force Advisory Council we have become very familiar with these nine target industries. You can see that the sustainable and green energy is part of the nine that have been targeted and I believe the state is doing a pretty good job of going after these but I also want to say that the County's Economic Development Plan also contains these nine targeted industries and green energy is one of those too.

I don't want to belabor some of the economic benefits that we've already gone over and other people have gone over today. But I did want to point out that the jobs and job creation is part of our mission too. Clean energy jobs especially. And as you can see from this, we have been growing our solar jobs at a very quick rate and utility scale is what we look to towards the future. It's going to be a training and a career path for a lot of kids that we are trying to recruit in to the programs at Santa Fe Community College, CNM – there's a very aggressive recruiting process trying to get kids interested in that at a very young age.

Again, I won't belabor the points that have been made by several other people before. We do have a good amount of money that will be coming into our county while

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there is construction. It also will provide our businesses with some resilience if there's a power outage someplace, like maybe in Las Vegas, we have power source here close by. And again, the solar training program that we have with Santa Fe Community College could be revived. AES has already provided scholarships for solar training in collaboration with SEIA and CNM. Santa Fe Youth Works has also been a beneficiary of some of AES's generosity; I guess is the best word.

Lowering electricity cost, lower electricity cost from solar directly benefit both residents and businesses in Santa Fe. For businesses cost certainty is something that is very important. Energy reliability are essential for long term planning and economic stability. Solar also strengthens that resiliency helping to avoid the high financial safety risk associated with power outages. These are strategic advantages to support economic development and reduce vulnerability across our infrastructure.

Again, I wanted to point out and bring back to the point that we, with this project, are aligning with the County's goals both from an economic development standpoint and from your sustainability plan. It also helps with the ETA, this is part of that mission and it also is part of New Mexico's economic developments' targeted nine industries. This project represents exactly the kind of leadership Santa Fe County must demonstrate if we want to meet those demands. It directly supports the County's goals, New Mexico's goals, and provides us with growth through clean energy and our infrastructure. It's about foresight, jobs, resilience and responsibility.

Almost 25 years ago *An Inconvenient Truth* came out and they warned us about accelerating climate crisis. Some of us were already sounding that alarm. At that CO_2 levels were at 365 parts per million already past the safe threshold of 350. Today, we're pushing past 427. Twenty years ago we knew we needed to act and we had capability but we didn't Consumption has grown at a steady pace due to all of our devices and a warmer planet whether we like it or not we're going to be seeing more AI and data centers, they're coming. Not to mention quantum computing which is really a target of this state. It's been said that we have enough. PNM has 200 RFPs out. Meta is building a geo-thermal plant. If we didn't and PNM didn't need these I would push back against Mr. Schannauer's point that we have plenty. Often it is easier to do nothing than to do something. That's especially true when it comes to political will.

As alleged before, the ratios that the opposition has against those of us in support is not quite accurate. Doing a letter count of the letters uploaded onto the County's website, those in support of this project are ahead by about 2 to 1.

We have an opportunity now not only to do something but to lead. This project is a concrete local action with statewide implications. It reflects the mission of my organization and its members and it aligns with the County and the State's goals. As Bill McKibben said, We win fast or we don't win. This is Santa Fe's moment to lead New Mexico and to protect the future of our children. Let's choose to do something.

Now, I'll turn it over to Phil.

PHIL UNDERCUFFLER: My name is Phil Undercuffler, 52 Old Windmill Road, Cerrillos, New Mexico and I recognize I am under oath.

I have been asked to speak on how this project is important to me. I'm a resident of Santa Fe County for over 30 years in the Madrid/Cerrillos area. I've worked 27 years in solar, 15 years focused on energy storage. My company has installed over 1.9

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gigawatts operational energy storage with about another 1.4 under construction. We're not associated in any way with this project. Some might even consider my company a competitor to AES but personally I don't see anyone who is advancing renewable energy as a competitor.

I've also been a firefighter for over 20 eyras and serve as the district chief for the area where this project is planned. I will be in the first response for any incidence at this facility. I mentioned these things to simply to give framework for my comments. Today, I speak as a private citizen. I am speaking up because much of the misperceptions and misinformation that I've heard shared over these sessions saddens me. You have fears, I understand that. It's understandable. I have fears as well. As a firefighter what scares me, your memory foam mattress, your composite counter tops, when they burn and burn they do, they admit the same toxic soup as these batteries but in a constrained environment immediately dangerous to life and health. Unlike your home, however, if it's open floor plans that enhance fire spread, these BESS units are designed, tested and certified to contain and limit spread and they are installed to minimize exposures. I hear fears repeated of fire spread to the surrounding grasslands but that either knowingly or unknowingly ignores reality. BESS yards look like common utility substations. They are surrounded by 20 feet or more of rock for electrical safety. There's nothing to burn to support fire spread. We've earlier seen the UL9548 test videos of these specific batteries. Every firefighter knows if the cooling rate is less than the heat release rate the fire gets bigger. I guess that's not that hard to understand. But these guys have achieved a major milestone. The UL test intentionally forces cells into thermal runaway and then they exceeded the requirement. They actually successfully achieved no propagation. They got ahead of the heat release. That's huge. And as someone that has successfully taken product myself through UL9540, I am angered by those who would use pictures and images of successful tests of unrelated product to try and incite fear, uncertainty and doubt. On the other hand, it seems folks in these neighborhood think nothing of dunking a frozen turkey into boiling oil on the back porch. We get reminders of that hazard nearly every year. We live so long with our couches, our mattresses, and turkey fires we have forgotten to be afraid but BESS is new and scary.

Let's talk about fears. My children have fears. Some like the monsters in the closet just need a little light to be shown as what they are. Others are very real. This area that we live in is officially classified as pinon, juniper, scrub. Find me the pinon. In the short stance since my daughter's birth we've seen a drastic die off caused by climate change. We have to change our ways and how we power our lives and homes is the largest portion of carbon emissions we can directly impact while creating a stronger more resilient grid. This project can make a huge positive difference in our community.

What is the message that we in Santa Fe give if a company offers to build a project in accordance with our laws and our rulings aligned with our stated commitment to an energy transition, follows all the requirements, chooses listed equipment, proposes to build it in the best location to make use of that energy but we reject it based on our fear of monsters. Friday, my company celebrating the ribbon cutting on a similar solar plus storage installation in Rio Rancho. That project provides almost 400,000 hours of high-wage pay for 150 workers plus an additional 25 apprentices achieving over 50,000 apprentice hours. Those are our next generation. Building a career while literally

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building our future. We purchased over 400 miles of cable from local suppliers enough to stretch from Rio Rancho to the Rocky Mountain National Park, 200 miles of solar tracker infrastructure from New Mexico companies. That was a day worth celebrating.

There are many among us that resist change. And we want to keep things just the way we where when we moved here. Well, change is happening. We can direct that change instead of rejecting energy storage out of fear. I challenge you, shine that light. I fully support this project. I wholeheartedly welcome this project. And I urge the Commission to allow this project to proceed.

JILL CLIBURN: Good evening. So I'm Jill Kay Cliburn, 45 Crazy Rabbit Drive, Santa Fe, New Mexico 87508. And I know I'm under oath.

I'm a 30 year resident of the San Marcos community including volunteering for the San Marcos Association, Turquoise Trail Volunteer Fire Department, Turquoise Trail Charter School and natural history and archaeological sites throughout the area. I love it. I've worked nationally in clean energy for 40 years or more including more than 20 years as a county-registered business. I'm Solar Load Flexibility and Battery Storage. In the early 2010s I was the solar consultant on Santa Fe County's first megawatt scale solar project at the Buckman Direct Diversion which I'm proud to say is performing very well today. In the past five years I have focused on planning and procurement for solar and battery storage in six states.

I live about five miles south of this project and I drive up 14 regularly. At first like any long-time resident my reaction is the proposal was, oh shoot. I had concerns. But I watched it evolve and I've become confident that 1) it meets the criteria for a CUP under the SLDC, 2) it takes advantage of best practices for safety and environmental protection and, 3) tangentially this project supports a plan to protect thousands of acres of ranchland along our treasured Turquoise Trail.

I just came back from a national conference of solar researches and policy leaders where we learned how much harder it will be to meet clean energy goals and keep cost affordable here due to actions of the current administration. This includes termination of funding for New Mexico's $156 million Solar For All Program that was planned to help low-income households including in Santa Fe County. The outlook is troubling. But here we have a timely offer of a private investment from AES which can bring a different kind of solar for all, affordable solar through the grid. The proposed project would bring equitable, affordable solar and greater energy resilience to everyone in our community.

It's my informed opinion that the proposed project is threatened most by distrust and weaponized technicalities at the very time when we truly need to do hard things. When I hear the claim that this project won't comply with the SLDC because it should be classified as an electric generating station and not as commercial solar. I can't agree. This on the left is an electric generating station, the defunct San Juan Coal Fire Plant. The photo on the right is a third party projection of the Rancho Viejo solar project set back two miles from State Road 14. It will run with the lay of the land. People forget that. It will even provide modest benefits to flora and fauna in its partial shade. Its design requires no scraped earth, no concrete pilings, a maximum height of 8 feet tall. And it will be taken away in 30 years if you don't like it. PRC reviews solar projects as an electric generating station if they are 300 megawatts or larger and that's in statute. Even a small natural gas peaker would, if proposed, not be remotely comparable to the

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proposed AES facility. It would burn, of course, by design relying on study deliveries of fuels and pollution control chemicals and require the management of associated waste. Communities nearby would be subject to emissions of volatile organic compounds which the current EPA despite its favoring natural gas concedes can lead to, quote, a wide range of health effects including aggravated asthma, increased emergency room visits and hospital admissions and premature death. These impacts are not associated with solar and battery storage.

If you ask whether the AES project fits the SLDC definition for commercial solar my answer is yes it does. I've provided links and exhibits to a guide from a solar law firm, Stoel Rives, which refers to commercial solar contracts as a term of art. You can also find easily accessible sources on line such as Investopedia. This is available – commercial contracts on any scale. Contrary to what Mr. Kurtz said, non-profits have commercial agreements too. The solar power purchase agreement that I worked on for the Buckman Direct Diversion was a commercial contract. And this proposed project would have a broadly similar contract with PNM. The whole discussion is a red herring.

The Green Chamber registered Robert Griego as a witness. Robert is a retired County planner who was the primary author of the Sustainable Development Plan. He couldn't be here today but I urge you to review his letter and exhibits that are on file. He confirms that the staff used broad language purposely to apply to technologies and needs as they change. I verified that the American Planning Association does not consider its definitions to be required but merely suggestions. The policy intentions are clear.

I'm going to speed through a lot of this but this slide from California shows all the generation dispatched on one day in April. You can see the dramatic difference that solar can make. If it weren't for the storage capacity shown in purple on the right side, there would be an over production of solar mid day. If there's no place for the power to go, the grid goes out of balance affecting voltage in seconds and potentially impacting service region wide. But here that solar is safely stored – you can see it in the picture – for use at night. California has 13 gigawatts of battery storage last year. Arizona has about 4 gigawatts mostly built to new standards after the 2019 fire that our opposition considers a show stopper. You can see it on the map there, New Mexico has 640 megawatts safely in our operation by yearend 2024. I'm going to repeat that, New Mexico already has 640 megawatts of battery storage in operation. This is not an experiment. That includes a small project up at Hyde State Park, go see it. They did that project in part to provide safe energy in case of a forest fire.

I also wanted to make a point very quickly but I want to provide time for my next speaker. This buffer that battery storage provides, it also provides more choice on the distribution grid. Okay. I've worked with a lot of electric co-ops with this include Kit Carson Electric Co-op in Taos where they're excited to have battery storage on both sides of the meter. They know that DERs are popular and bring jobs for solar companies – EV, HVAC companies, electricians and more. But they need to know that their grid is going to be safe and they won't have an oversupply locally and that they'll have fast ramping when they need it when the lights are needed in the evening and other appliances and so on. They can control all of this and orchestra it if they have a good setup that they're working very hard to achieve.

I've been asked to address two other questions: the risk of insurance cancellation

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and this project's likely impact on real estate value. I'm going to skip ahead to the fire question around insurance because it is easy to answer. Insurance companies are in crisis. We know that and there are residences that are seeing higher rates and even cancellations up in the red area. This project however, and you've already seen this, is in one of the lowest fire risk areas. And even though insurance companies have been doing a lot of things nationwide to respond to climate change they still have to have data and as you've heard time and time again, there has not been a battery fire that has escaped its containment and injured any private property or persons since the modern standards have been in place.

Regarding real estate values, I know I'm going to run out of time – so I'm going to hope that you might take a look at these sources. The number one source I wanted to mention was the Kirkland study which the County had. It came under question and so I checked five other sources and they all say the same thing. This is basically a wash. Real estate prices go up a little bit, they go down a little bit. The Berkeley National Lab study suggested that after they looked at this whole national data it was plus or minus 1.5 percent. And in some cases, such as the La Jolla study, there was an indication that property values can go up significantly. You might ask, why is that? Well, people hate uncertainty and solar energy and battery storage can be quiet long term neighbor. This is particularly true in this case because we have the opportunity to preserve some of this land and I think that that's going to be a real game changer for the future of Santa Fe.

In closing, I want to recognize the thorough work that County Fire, County staff, and the third party experts and the Planning Commission have put in. Their findings matter. I've worked my whole adult life on getting energy innovation right. If we wait for perfect we'll never get there.

CHAIR BUSTAMANTE: Thank you. Mr. Thompson, you have just over 3 minutes.

WARREN THOMPSON: Warren Thompson, 55 Cañada del Rancho, Santa Fe, 87504 and I have been sworn.

This map shows the solar area in the center of all the yellow that's the solar site. And then all of the yellow is land that we are working with staff to remove the TDRs from. We've actually added more land since this was drawn. We're up to 6,780 acres which would eliminate 323 homes and 323 ADUs saving 161.5 acre-feet of water a year.

We've been looking at this property for 20 years wondering what we were going to do with it and looking at the guidance we get from the Growth Management Plan identifying this area as a preferred solar location and the adoption of the Transfer of Development Rights by Santa Fe County and the values of agricultural land gives us the solution. So you'll have about 7,500 acres that will be either open space or this solar farm.

In maintaining, in doing the TDRs, it will maintain this property as a cattle ranch. This will continue the historical use of the property, mange the range to reduce the fire risk, provide a local food source and the solar is a large investment and gives us a good step building the necessary infrastructure of the future. Thank you for your time and consideration.

CHAIR BUSTAMANTE: Thank you, Warren. Do we have any questions, cross-examination from the existing party of standing? Any questions?

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Hearing none.

J. Sierra Club Rio Grande Chapter

[Those representing the Sierra Club Rio Grande Chapter were sworn as a group.]

JOHN BUCHSER: Hello, my name is John Buchser. I live at 606 Alto Street, here in downtown. Thank you for the opportunity to speak this evening, Chair Bustamante and Commissioners. It's been an interesting day. Thank you for your attention. I am truly impressed that you have been listening to all in that I've had a challenge in doing so.

I'm the chair of the local Sierra Club group. My background is originally as an engineering student at New Mexico Tech. Couldn't decide what I wanted to do when I grew up so I thought, well, if I go into computers I'll have a job, which I did, and I really like statistics and mathematics and it's been a bit challenging to us and to some of the discussions on risk today. The sequence of our presenters will be Camilla Feibelman, the director for the Rio Grande Chapter and then she will read a statement from Magnificent Farrell who was ill today but we wrote something up for her to present. And the next will be Craig Hammond who will speak to risk and safety of battery storage systems and then I will speak briefly on basically business continuity in our community whether we have power or not and very briefly on soil diversity and soil health and then we will close with Chris Calvert, former City Councilor. Thank you.

CHAIR BUSTAMANTE: Thank you and thank you all for your tenacity.

CAMILLA FEIBELMAN: Thank you, Madam Chair and members of the Commission. I'm Camilla Feibelman. I live at 3016 San Rafael, Albuquerque, New Mexico 87106. And I am the director of the Sierra Club's Rio Grande Chapter representing our 30,000 members and supporters in New Mexico and west Texas. But first and foremost, I am a parent. I have a 12-year old and a 9-year old and on my way up here passing the school along the way, my son Rafael asked me, Mommy, what do you mean by testify? And I said, Well, remember when the Environmental Improvement Board rules about bringing cleaner cars to New Mexico. And he had some with me after school and he heard people giving public comment about the climate crisis and what could we do about it and bringing cleaner cars to New Mexico and he said, Mommy, can I do that. And I said, Sure, if you know what you want to say. And he got up there and he said, I think EVs are cleaner cars and I'm worried about climate change. And this morning he said to me, I think they really listened to me. And I said, They did and they did listen to you and they passed those rules. And so it left me wondering today how many people in the room are under 50? Okay, it's not a judgment but it is a big question about what we're going to do and who we are doing it for. And I think that's what brought Magnificent here. Magnificent joined the Sierra Club's Global Warming Express program when he was just a kid and – he couldn't be here tonight, he wasn't feeling well – but he said: I'm from Santa Fe where it's hot. So hot that it shouldn't be unusual during the summers so why can't everyone stop talking about the heat. Because it is so unusual and we need a difference and you're never too old or too young to make a difference. I got my start when I was nine years old when a friend of my mom's got me

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involved in the Global Warming Express. My other siblings had extra curriculums and jobs and other things at that time, but me being 9 I had almost nothing to do for the whole summer. So my mom signed me up. And despite me never showing any interest in that kind of thing before, I'll always be amazed at how fast it became such a big and important part of my life. And he goes on to say that, one of the things that stuck with him most was that I researched extensively on my own about renewable energy, the concept of taking a resource that's almost infinite and using it to create a cleaner environment and that's so inspiring and so hopeful. And so he reminds us of that 9-year old kid and is young myself now, that that generation is relying on us to do something different.

So I want to put the question of this project into context. And the first part of that is where has our energy come from this whole time? All of us, if like me, we were born and raised in New Mexico you have relied on the Four Corners to receive your energy and you have happily exported all of the externalities to a community that you can't see or hear or listen to unless you really try. And actually happily thanks to the efforts of this current statewide administration and many others we are on our last coal-fired power plant. In 2017, PNM shut down the first two stacks of the San Juan Generating Station and later that year agreed that it would be better both economically and environmentally to shut down the next two stacks. But that was going to be a huge impact on the community in terms of employment and in terms of property tax. So in 2019, a whole group of stakeholders got together passed the Energy Transition Act, it updated the renewable portfolio standard, it allowed PNM to refinance its debt in the plant that we as PNM customers pay. It saved us for a year as the average residential customer about $10 on our bill because the coal was so much cheaper than the solar energy that was going to replace it. We saved enough money to give additional severance to workers. We were able to include the coalmine workers who wouldn't have otherwise been included. We were able to do community grants to help soften the blow. And the PRC was given additional authority to prefer projects in the school district that was going to be impacted by this change but it turned out that the replacement scenario that many of our groups participated in was all solar, battery storage as well, was cheaper than any of the other alternatives. And actually we are on the way to replacing all of that coal with renewable energy.

But interestingly, I never heard the hearing examiner in that case, who I believe also testified today, give anywhere close to the scrutiny of any those solar projects that was given here today. In fact, it was just the most obvious solution. So where are we with not just moving away from coal but also complying with our renewable portfolio standards? Yes, PNM is on a good track. They are meeting the required amount of renewal energy that they are meant to comply with but they are going to need a lot more. And that's partly because of climate change. People's swamp coolers aren't working anymore. People's very large houses need a lot of electricity to work. And we're also thinking about receiving data centers here.

CHAIR BUSTAMANTE: Camilla, we've lost connection with our Team and we just need them to log back on for the people on line and we'll start the clock again when we're ready to go. I apologize to everyone in the room who is waiting. Let's all stand up stretch.

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Okay, we're back in business. We lost our virtual connection for people who were attending on line lost their connection. Camilla, please start again. Are we ready?

MS. FEIBELMAN: Are you ready for me to continue?

CHAIR BUSTAMANTE: Yes we are.

MS. FEIBELMAN: Great. So I think I was talking about the fact that although PNM is on good track to meet its current renewable portfolio standards requirements, it's going to need more renewable energy than ever because of climate change. We're seeing people wanting to electrify their homes, like we did in our family. The fact that swamp coolers aren't working as well. The increasing square footage of homes, even the need for or desire for power for things like data centers and other things like that. PNM's ability to comply with the RPS and drive us toward a renewable transition requires communities stepping up, doing their part. I live right next to the International Sunport airport. Sometimes they are remodeling that runway and sometimes those planes are going over my house. But that's a sacrifice I am willing to make for the greater good of how we operate in our society.

And New Mexico has really stepped up to lead in this energy transition but we're now confronted with the moment where just last week President Trump's EPA rolled back what is called the Endangerment Finding, which is the underpinning that allows the agency to regulate greenhouse gas emission. What is at risk are those very clean car rules that my son spoke about in his first testimony but also the rules that regulate power plants. The witness Schannauer claimed that the Four Corners power plant would be closing in 2031, well, just last week the parent company of Arizona Public Service announced it would no longer be meeting its climate goals or intending to and that they would be keeping the Four Corners power plant located in New Mexico on Navajo Nation land operating until 2038. You need only to Google it.

So when Schannauer claims that we don't need renewable energy on line in order to transition from fossil fuels it is just not fact. That is how you do it. As communities we step up, we make ourselves as part of the solution and the alternative is a continuous of the following headlines, you just need to Google search what is the climate impact on New Mexico: extreme heat is intensifying now. Heat illness is surging in 2025. 500 plus heat related ER visits since April 1, 2025. Rio Grande dried through Albuquerque in July through August. Deadly post fire flooding, three fatalities. Three fatalities. Snow drought set up 2025 water stress. Drought persists especially in the southwest. Ozone, smoke, air quality alert in Albuquerque. And it goes on and one.

But at the end of the day it may not be me or any of us that you need to hear from. We need you to follow the guidance of qualified, trusted, science-based experts. If there is a question the answer lies in the science and the expertise. We cannot allow ourselves to get sucked into two-sided ideological debates that are not based in fact. So what we ask you to do today is to look at the zoning. Look at the policy. Look at the science. I sat next to a woman today who claimed that AES everyday would be washing the panels to keep them operating. That's just not fact. But it is an example of the extreme of misinformation that has come the way of the neighbors to this proposed plan. And understandably fear of what that might imply to them. You job today is to listen to fact, make decision on what's best for those us, honestly, who are under 50 – I'm sorry to say it. And with that, I'll turn it back to the Sierra Club Rio Grande Chapter team.

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CHAIR BUSTAMANTE: Thank you Camilla.

GREG HAMMONMR. DOMINGUEZ: Greg Hammonds, [inaudible] Road, Santa Fe, 87508 and I realize I am under oath. I need slides here.

CHAIR BUSTAMANTE: Please pause the time.

MR. HAMMONMR. DOMINGUEZ: So I think the case for transitioning rapidly away from fossil fuels has been made very clear. As a resident of Eldorado I've been very interested in BESS installation and what the risk benefit with these installations is. Do they provide benefit? And I think it is very clear that they do and some of them are listed here. You can see enhanced grid stability and reliability may be the first – may be first and foremost in these benefits. We also have grid flexibility that has been mentioned. There's also cost savings in power at peak demand. And there's two analyses that showed the Texas saved hundreds of millions of dollars due to BESS supplied power in the winter and in the summer of 2024. Obvious one is power at night. They provide power when the sun is not shining. But it's not a benefit but a consideration that PNM in their request for proposals was stipulating no stand alone solar. They were not considering any solar projects that did not tie into grid storage, this is how important it is. And you can see that these advantages of grid storage are driving a near exponential increase in the deployed capacity in the United States. You can see along this blue line over time from about 2018 to 2024 and if you look at installations that are occurring across the country – the yellow dots here are large-scale storage system that have deployed across the country. And in 2024 there are about 1,700 of these installations, either industrial scale or utility scale operating in the US. So this has really become a common place technology across the country.

It definitely has advantages. Are they safe? This on the left hand side here is data from the Electric Power Research Failure Incident Database, it's the global BESS incident database. It has been cited many times. But I think it is remarkable because of this yellow line which is the failure incident and note that an incident is anything that causes an increased safety risk in the BESS system. Incidents are dropping dramatically from 2018 to 2024 per deployed gigawatt hour. So these systems are definitely getting safer.

The Camelot Energy Group, this is a professional engineering advisory group or consulting group, they did a subset analysis of this database and they looked only at fires, and again these fires don't escape the BESS facility, but fires in US facilities from 2022 to 2023, and what – there's a very small number of fires so that's a caveat to the dataset – but what they came up with and there's a little slice here annualized incidents of lithium ion fire of 0.3 percent. Now to put that in context, it is similar to house fires in the US. This is a low level of fire risk that many of us deal with all the time. Also worth noting as people talked about, updated safety codes, testing standards, they mostly updated in 2023, 2025 will make these systems even safer.

What about risk to the environment? In April of this year, the Fire and Risk Alliance, another engineering consulting firm that has members actually on the oversight board for the 855 standard, they did an assessment of 35 BESS fires in the US going way back in this context, 2012 to 2024. So this includes a lot of older facilities. Any I'll read a couple of statements from their executive summary looking at all of these fires. The historical data and scientific studies indicate that BESS remains a relatively safe

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technology of minimal environmental contamination risks. In none of the reviewed cases of environmental sampling related to BESS fire event were contaminant concentrations found that would pose a public health concern. This gets back to the level of contamination that actually proves to be toxic. It is worth noting that Moss Landing data were not available for this assessment. Looking at the Monterey County website, they plan to release preliminary findings once they have data that is up to their standards, quality control data up to their standards, and that should be released in preliminary form in December of this year. And in any case, Moss Landing was a very old design. It is considered an anomalous design by the industry and it would never be built today.

So just to summarize BESS installation definitely do offer benefits to the grid and the customers. Studies show that BESS installations are relatively safe technology with low fire risk and minimal risk to public safety and the environment. I think that updated safety standards and especially updated design of fire suppressant systems are going to make these systems even safer. So as a resident of Eldorado, I fully support going forward with Rancho Viejo. Thank you.

MR. BUCHSER: Another change – Once, again, this is John Buchser. One of the things that has come up a lot is, we don't want this solar so darn close to Santa Fe. And why is that important to us? And basically to me, it's a business continuity issue and the reason that is the case is one of the things that happens as power lines get hot, is they start sagging . And another issue is that as we get wind as other presenters today have shown, it gets pretty darn windy here and the power lines that come in to Santa Fe go through of course grasslands, they go across pinon-juniper, it's all over the place where it is not grassland and power companies, particularly in California, have seen cases where the fact that they haven't turned off the power has resulted in deaths, lots of damage to homes. So ideally what will happen is PNM or whichever power suppliers are controlling the power coming into town, they turn off the power lines. Well, if we've only got one of our 115 kV lines coming into town, that's probably not enough. So rolling blackouts start. And pretty much nobody that runs a business can keep conducting business without power. Can't serve food, it's hard to see your way around a hotel. Even the galleries start having trouble. You can't see the objects of art that are so popular here. And having a storage project close to Santa Fe means you can keep serving the community when those lines get turned off. And just to briefly show what that looks like, the Norton Substations on the upper left, that's the big red line on the left side of this particular diagram, that's a 345 kV. One of the 115 kV comes to the Richard Substation which is where the Rancho Viejo tie would connect and the other 115 kV comes from the south. So both of those are somewhat risky situations.

And then in comparing risk, Craig quoted a .3 percent, I think that was per year of a failure of a BESS installation. Well, that's about the same probability of a house fire. So your probabilities are similar. The emissions are similar – there are of course differences but plastics give off a lot of the same very dangerous stuff.

The next slides are reminders to me of what – I tried talking to various friends in the environmental community about what happens to the land and what happens to the critters. My wife is very much a critter person and she's concerned about, well, are there antelope out there anymore, there used to be. I suspect the count is down a lot as more homes go in. When I was out there for a tour in the middle of the winter, AES took us

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out there so we could see what was going on, there's a lot of gopher holes, there's evidence of prairie dogs, there's evidence of overgrazing. It's pretty typical New Mexico ranchlands. And I was like there's no endangered species so done of the wildlife people that I know and work with – we've got important things to work on, nope, we're not going to touch this one. So what I started wondering was, okay, well I've got to do a little citizen research here. What's going on? Apparently, there's some research going up at Colorado State University and they had some fine examples of places that are a lot greener than here but one from Pahrump, Nevada they had the panels 42 inches off the ground, every 260 feet they put a 10x7 inch opening and they observed jackrabbits, foxes, rattle snakes using the opening. Their main observation was that after installation, it was needed to put, you know, revegetate things and control invasive weeds. Solar panels can actually improve things. They give more shade, release heat stress, give the opportunity for some things to do a lot better, potentially the grasslands do better. It mainly means that after installation you've got to keep the vegetation going. You don't want to spread Roundup all over to control things so it's more labor intensive and probably more jobs pulling out weeds. Minimize grading and minimize heavy equipment. And then on another resource from Colorado State and Cornell, your challenges during installation primarily are removing top soil, making dust and exotics coming into play. And then one opportunity I saw for research potentially at the community college is that normally the panels are tracking the sun so in the morning they are pointing over toward the sun and they keep going, I forget the exact quote but it's like 30 of 40 percent more power if you track and we'd support a New Mexico based company that is doing great lately But if you align the panels so that in the morning when it's not too much sun you can actually provide more sun to the plants on the ground and that would result in 11 percent PUV loss, probably don't want to do that on all of it. AES, you know, doesn't want to give up that much power to growing grass that's not going to grown much but it might be a research opportunity and I'd say that's about it for me. And one more for Mr. Calvert, thank you.

CHRIS CULVERT: My name Chris Culvert, 2360 Cibola Drive, Santa Fe, New Mexico 87501 and I understand I am under oath.

Good evening, Commission. I served on the Santa Fe City Council for two terms and the main focus of my eight years on the Council was issues of sustainability for our community. So in the interest of time, I'm going to read what I have to say.

Come on, Santa Fe, we can do this. We can locally site a solar panel array with a battery energy storage system and keep neighborhoods safe. This does not have to be one or the other. We can do both. Proponents of this project must take safety seriously and demand the latest and best monitoring and suppression systems for the BESS. Opponents of the project need to focus on the specific technology and project being proposed for Santa Fe. Comparing apples to oranges is not helpful. Comparing this project to old technology and wildly different design configurations is not valid nor useful.

We in Santa Fe like to think of ourselves as progressive. Now is a good time to test that label. We profess that climate change is an existential crisis that requires immediate changes to the way that we produce energy. We are now presented with an opportunity to take responsibility for our energy demand and life style. We can no longer afford the luxury of that responsibility being someone or somewhere else's burden.

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There will always be something better or a silver bullet right around the corner. We can't wait for that perfect solution that will never come. We have a perfectly good solution right in front of us now and now is when action is needed.

By most accounts, we are already falling behind in addressing climate change and energy demand is only increasing at an increasing rate. You see and hear about it every day with new data centers popping up everywhere. AI's hunger for energy, encrypto mining's voracious energy appetite as well. Some companies are proposing to re-commission shuttered nuclear plants. And the current administration in DC is talking about going back to coal. We can't control any of that but we can control what we do here. If we turn this opportunity to do our part we are basically the southeast and northwest portions of our state that we don't care about the environmental and health damage that they have and will continue to endure to provide us with energy.

Santa Fe are we the lead by example model for our state or are we the do as we say not as we do capital of New Mexico. Are we the progressive community that we claim to be or are we the privileged community that many others think we are? Come on Santa Fe, we can do better than this. We can implement this project and we can do it safely with the best technology currently available.

CHAIR BUSTAMANTE: Thank you.

MR. CALVERT: Really, I just have – oh, okay.

CHAIR BUSTAMANTE: Thank you. All right, thank you, sincerely. Thank you everyone who has been here since the beginning, everyone who has testified, everyone who has been patient. Thank you to staff for all of your good work and hanging in there.

Do we have any questions for the last speakers? Commissioner Greene.

COMMISSIONER GREENE: I am just curious to what Commissioner [sic] Calvert was going to say. Not really, I'm sorry.

Other Business

CHAIR BUSTAMANTE: All right, if there isn't anything else, I'm going to say this slowly and I want you to pay attention. We have some options, we can stay until 1 in the morning and we finish continuing conversation asking questions. I don't see a whole lot of interest in that. But what we are allowed to do under the Open Meeting Act, is we are allowed to recess and reconvene. And we can do that and let me give all options before the Commission starts to discuss this: we can reconvene tomorrow meeting and meet from 8 to 10 or 9 to 10 and ask additional questions with whatever applicants and staff – applicants that are still here and staff. I understand that staff is very tired and has been working very hard. That may be the least interesting option. I understand the applicants will be leaving town at some point tomorrow. So if we did that option we would start earlier in the morning and then we would start with public comment at 10 o'clock. The next option is that we would meet on Wednesday prior to the County Commission meeting at 2 o'clock. And that could be in the morning at 10-12 or just before from 1 to 2; whatever the case may be. It can be from 11 to 2, whatever the Commission wanted to do on Wednesday the 13th.

Our next option would be anytime that the Board proposed or it could be the

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Wednesday the 26th from 8 to 12 before the 8/26 Housing meeting. So those are the three options before us. If we did the Wednesday the 26th we would ask for the applicants to either be present or available on line and we would have ample time to notice. The other two options require that we state that time and that meeting date tonight and we post it on the door or we post for the new meeting that would happen on the 26th of August. Also, with regard to tomorrow morning's meeting, we have one Commission who absolutely can't make it and this is probably the most difficult on staff. So the questioning that we have would be/potentially to the parties of standing but clearly for sure we would have questions with staff and the applicant and both would be in public forum of course.

So at this time, I'll open it up to the Commission to factor the options before us and see where you'd like to go. No one is interested in 1 o'clock a.m. and how do we feel about tomorrow morning's meeting; any interest in that at all?

COMMISSIONER HUGHES: No.

CHAIR BUSTAMANTE: Okay, no interest at all in tomorrow morning. We go to the Wednesday on the 13th meeting.

COMMISSIONER CACARI STONE: Madam Chair, just to be clear for the applicants, they could join remotely, right?

CHAIR BUSTAMANTE: The applicants can join remotely.

COMMISSIONER HUGHES: I think the best option is to meet the 26th because we need to discuss as a Commission and get all of our thoughts together either tomorrow or Wednesday and they be prepared for the 26th. That's my suggestion.

CHAIR BUSTAMANTE: Any further discussion? Is that a motion?

CHAIR BUSTAMANTE: That's a motion.

COMMISSIONER JOHNSON: Second.

CHAIR BUSTAMANTE: We have a motion for the 26th and a second from Commissioner Johnson. Is this amenable for the applicants to be available on the 26th and that would be 10 to 12.

MR. MAYER: No. we will not be available on the 26th.

CHAIR BUSTAMANTE: You are available this Wednesday but not on the 26th.

COMMISSIONER HUGHES: Can we do 10 to 12 on this Wednesday?

CHAIR BUSTAMANTE: Ten to 12 on this Wednesday is doable. I would ask that we have – but we could do it this Wednesday from 10 to 12 and the applicant would join us virtually. Is that a motion?

COMMISSIONER HUGHES: Yeah, I'll make that motion, this Wednesday 10 to 12.

MR. MAYER: Can we do 9?

CHAIR BUSTAMANTE: Nine to 11 on Wednesday the 13th.

COMMISSIONER HUGHES: That's fine, 9 to 11.

CHAIR BUSTAMANTE: Okay, the first motion failed. The new motion is to have it on Wednesday the 13th from 9 to 11 a.m. Do we have a second?

COMMISSIONER JOHNSON: Second.

CHAIR BUSTAMANTE: We have a second from Commissioner Johnson.

COMMISSIONER HUGHES: Is that okay with staff?

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CHAIR BUSTAMANTE: Does that work for staff?

ATTORNEY BOYD: Chair, I'll answer for staff, staff is happier with Wednesday so that works out well. They want to sleep in tomorrow.

CHAIR BUSTAMANTE: Happy is good. We have a motion from Commissioner Hughes and second from Commissioner Johnson. All in favor to meet for questioning on Wednesday from 9 a.m. to 11 a.m. on Wednesday morning the 13th. Let's have a roll call on that.

The motion passed by unanimous [5-0] roll call vote as follows:

Commissioner Justin Greene	Yes
Commissioner Hank Hughes	Yes
Commissioner Adam Johnson	Yes
Commissioner Lisa Cacari Stone	Yes
Commissioner Camilla Bustamante	Yes

CHAIR BUSTAMANTE: Okay, with no further questions for anyone in the chambers. We will reconvene and I will ask for a motion to adjourn and we will reconvene tomorrow morning at 10 a.m. in the chambers.

COMMISSIONER CACARI STONE: Motion to adjourn.

COMMISSIONER JOHNSON: Second.

The motion to adjourn/recess passed by unanimous [5-0] voice vote at approximately 10:58 p.m.

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SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS
CONTINUATION OF SPECIAL MEETING

August 13, 2025

CHAIR BUSTAMANTE: We're here to reconvene our Special Meeting from Monday, the 11th 2025, a public hearing appeal of the Planning Commission final order case number 24-5200. And today's session is specifically set aside to continue questioning from the Board of County Commissioners. There will be no cross-examination. It will just be questions to the applicants, the staff, and potentially the parties with standing.

May we have a roll call.

Roll Call: Roll was called by Celeste Garcia of the County Clerk's Office and indicated the presence of a quorum as follows:

Members Present:
Commissioner Camilla Bustamante, Chair
Commissioner Lisa Cacari Stone, Vice Chair
Commissioner Justin Greene
Commissioner Hank Hughes
Commissioner Adam Johnson

Members Excused:
None

Continuation of Public Hearing on Application by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC, Applicants, for a Conditional Use Permit (CUP), Case No. 24-5200 (Arising by Appeals in Case Nos. 24-5201, 24-5202, 24-5203 and 24-5204)

CHAIR BUSTAMANTE: No. No. I'm sorry. Is this an issue of process of what is the question regarding? I've stated the process. We will be asking questions of the applicant and the staff and potentially the parties in standing and that's all we'll be doing today.

MR. SCHANNAUER: County witnesses have been sworn in to do their testimony except the growth management witnesses and I'm expecting that Mr. Sisneros is going to be testifying quite a bit today and so if he is going to be testifying just suggesting that he should be sworn in.

CHAIR BUSTAMANTE: Thank you.

MR. SCHANNAUER: Unless there's some reason that he shouldn't be.

CHAIR BUSTAMANTE: Attorney Boyd, is that necessary?

ATTORNEY BOYD: Chair Bustamante and Commissioners no it's not required. If the Commission wants to require that it's possible but that's not that's not consistent with you know practice and it's also not required by –

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CHAIR BUSTAMANTE: Let's do it for the comfort of the public but it's usually not required. Thank you. Okay can we have all staff stand to be sworn in as a group.

[Ms. Garcia administered the oath to staff members Ladd, Call, Sisneros, Black, Blay and Cordova]

CHAIR BUSTAMANTE: Thank you. For the purposes of the public, when you're asked upon or have a question asked of you, just state the department that you're working for if it hasn't already been made apparent. Okay.

ATTORNEY BOYD: Chair, one thing in terms of the address, I would just say that they I would provide their business address. You don't need to provide your home address.

CHAIR BUSTAMANTE: Yeah, of course. Okay. All right. We're prepared to start questioning if there is -- I would like to call a brief executive session to discuss the order of the questions that we will be asking. Okay. Can I hear a motion to call for a brief executive session to discuss the order in which we'll be asking our questions and how we want to handle the questioning?

COMMISSIONER GREENE: Move to move into executive session to discuss the items brought up by the Chair.

CHAIR BUSTAMANTE: And we have a second.

COMMISSIONER JOHNSON: Second.

ATTORNEY BOYD: And Chair, just to make clear your authority to do this, I do consider this deliberations in connection with a quasi judicial hearing.

CHAIR BUSTAMANTE: Yes. And it is specifically to discuss the order of the questioning. We haven't started questioning. We do intend to question. There won't be any type of decision making discussion. It's specifically to ask each other how we want to present our questions.

COMMISSIONER GREENE: And specifically this is for the AES case that we've been discussing just to make sure – and we don't start talking about something else.

The motion to go into executive session passed by unanimous roll call vote as follows:

Commissioner Cacari Stone	Yes
Commissioner Greene	Yes
Commissioner Hughes	Yes
Commissioner Johnson	Yes
Chair Bustamante	Yes

[The Commission met in executive session from 9:06 to 9:11.]

COMMISSIONER GREENE: Motion to come out of executive session.

COMMISSIONER HUGHES: Second.

CHAIR BUSTAMANTE: We have a motion to come out of executive session by Commissioner Greene and second by Commissioner Hughes.

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The motion carried by unanimous [5-0] voice vote.

ATTORNEY BOYD: Can I get the a Commissioner to note that the matters discussed in Executive Session were only those matters raised in the motion?

COMMISSIONER GREENE: Yes, ma'am -- Yes, sir. We only spoke about what we discussed going in there discussing this case and the questions we were going to ask.

CHAIR BUSTAMANTE: Okay. And we have a request. Commissioner Cacari Stone would like to say something before we start the proceedings.

COMMISSIONER CACARI STONE: Thank you, Chair Bustamante. Thank you other Commissioners, members from the public, our staff, all the parties with standing. I just want to make a comment that it's been a tremendous process and for transparency's sake wanted to acknowledge and honor everybody's due diligence up to this point. I know prior to my position here in January, there was a lot of other efforts and processes that have occurred to date. And I just want to commend my other commissioners as well in terms of really taking this very seriously. I want all parties with standing to hear the due diligence that has happened in the last two days and I'm particularly grateful for the -- we had about 100 over 150 public testimonies yesterday. So I just want to mention that because I think it's important that the public understand it's been a very rigorous and thoughtful process. Thanks.

CHAIR BUSTAMANTE: Thank you, Commissioner. Anyone else want to make a statement before we start? Hearing none, we will start with fire safety and emergency response questions and we have first Commissioner.

COMMISSIONER HUGHES: Yes. Thank you, Madam Chair. So, these are questions for AES staff and so first of all, who will complete the fire suppression design for code 855 compliance? Are you going to do that internally, externally? Who's going to -- because it was very incomplete as presented. Who's going to finish it?

MR. MAYER: Do we have Mike Simpson on the line?

MR. SIMPSON: Yes. Yes. Can you hear me?

CHAIR BUSTAMANTE: Yes, we hear you.

MR. SIMPSON: Okay, thank you. I was sworn in the other day. Should I do I need to swear in again?

CHAIR BUSTAMANTE: No. You've been sworn in. everyone else has been sworn in for this matter.

MR. SIMPSON: Okay. Thank you. And I'll start out by again saying thank you, to all the Commissioners and the public who's able to hear me right now. We're very pleased to have received all this feedback. We continue to incorporate this into our plant design, into our operations, into our plans and appreciate just the repeating what was said the immense amount of time that was dedicated to this.

But to answer the question who's going to complete the design. With the systems that we presented to you in the plant design that's entirely in AES's scope. We are the developer, the engineering, as well as the intended owner and operator of this plant. We do bring in outside experts of course I think you've seen reports from many of them and so we'll continue to do that. We have an overall engineer of record and then as it relates to the compliance of NFPA 855 all of the systems all of the plans the

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documentation that's required for 855 compliance is in our scope. And we do bring together and integrate those efforts from those industry experts. And then lastly, I'll summarize by saying that that all of our plans deployed since 855 has been adopted in the jurisdictions we've deployed in have been 855 compliant and continue to be 855 compliant. And as I mentioned, the system we proposed here has been deployed in many sites. The origins starting seven years ago and the exact systems deployed over the past few years. Currently today we are UL9540 certified as well.

CHAIR BUSTAMANTE: Thank you.

COMMISSIONER HUGHES: Thank you. So can you bring a water line to the site and separate the containers by 10 feet? So that's two questions. I know you answered 10 feet, but I want you to confirm that 10 feet between containers you'll do if we make that a condition and also bringing a water line directly to the site so it's right there.

MR. MAYER: I'll respond first. Yes, we are willing to accept a design modification to space the containers 10 feet apart. I'll allow Mike Simpson to speak more to the AS view on the need for a water line.

MR. SIMPSON: Yeah, thank you. As we mentioned, the enclosures are designed to provide all of the hazard mitigations that that we specified that go above and beyond the 855 requirements without water. If the fire department required water, of course, we'd be happy to review all possible all possibilities to get that into the site. We deploy these currently we've got around a gigawatt hour operating, or sorry -- 1.3 gigawatt hours, I believe, operating currently that do not have water -- like additional water beyond the approach of the 30,000 gallons for non battery fires. So that is our standard and that's what has been approved by several other AHJs around the country. Of course, what the only thing that matters is what the what the County and the AHJ needs at this site.

COMMISSIONER HUGHES: So, in other words, you'd accept our requirement that the water line be brought to the site if I mean I don't require –

MR. SIMPSON: Of course.

COMMISSIONER HUGHES: Okay. How much water is needed for fire suppression? So describe a little bit about the 30,000 gallon tank duration with two hoses cooling adjacent containers for 24 hours.

MR. SIMPSON: I have not run that math. It would not it would not go very long. But again the 30,000 gallons was not designed for that application.

COMMISSIONER HUGHES: Okay.

MR. MAYER: I think just to reiterate the position that it is not AES's view that water is required to be applied on adjacent containers.

COMMISSIONER HUGHES: Okay. So that's if they're 10 feet apart they won't catch fire anyway.

MR. MAYER: It is our view that with the technology and the safety mechanisms deployed there's not a need for the quantities of water that were being discussed at one point yesterday. That is not our expertise or recommendation or guidance of what should be applied.

COMMISSIONER HUGHES: So would the water line to the site help you during construction?

MR. MAYER: We have provided our initial water budget and plan for

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utilizing trucked water or additionally potentially, the use of the hydrant, existing hydrant, on County Road 14. We do not think building a water line you know two to three miles into the facility would be beneficial or cost-effective for neither construction or operation of the plant.

COMMISSIONER HUGHES: How far is the site from Route 14?

MR. MAYER: The entrance to the site is approximately 2.1 miles. It's about three miles if you were to then drive the interior roads all the way to the battery site.

COMMISSIONER HUGHES: Okay.

CHAIR BUSTAMANTE: I have a follow-up question.

COMMISSIONER HUGHES: Yes. Follow-up question.

CHAIR BUSTAMANTE: We have a few follow-up questions to that. It was our understanding that water would be used to cool the containers approximate to a container that would indicate that it was had a potential to burn because I understand that we would be seeing the smolder before we would actually see a fire. If that is not the case that water would not be used to cool the proximate containers; can you explain that because that was our understanding.

MR. MAYER: I'll initiate a response and Mike -- yeah. So I think that water has been applied at other sites and other instances. Through conversations with the Fire Department and discussion of what may be appropriate additional measures, we agreed to the 30,000 gallon tank, again, mostly for defensive protection. But it is our view and I think Mike can elaborate again that water is not needed to cool adjacent containers.

CHAIR BUSTAMANTE: Commission Greene.

MR. SIMPSON: Thanks Joshua. Yeah I'll if it's okay, I'll spend just a few minutes on this but please do interrupt me if I'm going too deep. I think it's worth discussing because I understand where the question's coming from. It's a very good question.

So we've asked that question quite a bit as well and there are sites where we have deployed a strategy such as that and in those particular sites they had a different -- it was a different energy storage enclosure and I'll get into why that matters. It was also in the middle of a municipal area where the water lines were already there, right.

So what we found is that these fires can be very dynamic, right? We've studied them quite a bit. We've done multiple large scale fire tests. So, these are tests that you've seen the tests where we basically use all of our mitigation technologies. We ignite a fire, but then we suppress it. But we've also done testing where we say, If everything fails, right? This is the large scale fire test where the precondition is that the entire enclosure is on fire. It doesn't matter how it gets there, right? But that's what the test condition is. And in those the reason why we do that test is because we're asked to do it. Again, we don't think it's necessary, but we're not here to debate probability. In those tests, what we find is that there is a heat release rate. So, we have heat flux sensors that basically measure how much heat is radiating off of that enclosure and being convected, right? Moving air, hot air around, and we also look at other dynamics of those fires. With that data, we can then figure out how that heat will transfer and really how propagation could occur or could be inhibited in those circumstances. Those tests also include like a target enclosure, if you will, where it's basically another of the same enclosure emulating

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the spacing of the aisles that you've been asking about. And then we can with all of that detailed data, we calibrate a model on that, right? So you know, normally models are only as good as you as you as your data, right? Garbage in garbage out. But we can build a model, calibrate it with real world data and then extrapolate small amounts, right? Move the enclosure a few feet further or closer. So we've done all that modeling on multiple sites. We look at the wind, multiple wind conditions that could carry the fire, carry the heat closer to an enclosure. We look at the insulating materials that we have. We have fire rated mineral-wool insulation that is designed not to combust. We have spacing, we've got certain coatings on the systems inside that enclosure. And so we look at all of that and we say how far away can we be, really how close can we be before propagation could occur in those extreme conditions, right. Entire enclosure on fire, wind moving right towards the enclosure and that's how we get to those spacings. As I mentioned the 3 feet spacing there are enclosures that are designed not to propagate even that close. In terms of this plant that we have designed it based on those studies and so it's designed not to propagate enclosure to enclosure in these conditions.

CHAIR BUSTAMANTE: Thank you. could you provide or direct us to these studies that were done to show this?

MR. SIMPSON: Yes. I'm not sure if they were submitted as part of this. Again, that's sort of above and beyond, and is built into the HMA, but of course we can we can discuss those.

CHAIR BUSTAMANTE: Thank you. If they are not in our packet, I would like those submitted for our review for a decision is made. Commissioner Greene.

COMMISSIONER GREENE: So this may be more for staff. Is there a fire hydrant with a water line at the intersection of the access road and the Highway 14?

FIRE MARSHAL BLAY: Madame Chair, Commissioner Greene, yes, there is one. It's a blue top which provides over 500 gpm/gallons per minute. By the way, Jaome Blay, and I acknowledge that I'm under oath. So, it's a blue top, over 1500 gallons per minute. It's at the intersection of Highway 14 and the entrance to the road that leads to their facility. I think they mentioned the distance is about 2.1 to three miles all the way to the upper northeast corner.

Can I speak about the feasibility of installing a pipe all the way and a fire hydrant all the way into their facility?

COMMISSIONER GREENE: I would love to hear your thoughts.

FIRE MARSHAL BLAY: So after consulting with Public Works, that long of a pipe, first of all it would not have enough the pressure needed or the ideal pressure needed, It would be in the in the neighborhood of maybe 5 to 6, 700 gpm. What the fire department does in rural areas is tender shuttle evolutions. What that is, is we have trucks for people that may not know what that is. We have fire trucks that all they do, their purpose is to carry water and the average is 2,000 gallons. We have maybe over 20 of them in Santa Fe County. So what we do is we provide that water supply in a mobile way.

One of the reasons why a water line for fire flow or fire protection is not recommended is first of all because that would become stagnant water. We would have three miles of stagnant water that would have to be constantly being flushed out and replenished which would be cost prohibitive for Santa Fe County or for -- anyway aside of the cost. The main risk would be that this line feeds the Turquoise Trail Elementary

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School. God forbid that the backflow preventor failed and all of that stagnant water made its way into the municipal water supply. All those kids could potentially be poisoned. So that is one of the reasons why I don't think it would be a good idea to have a water line all the way to the end of fire hydrant all the way to their facility.

Instead, what we do have is a fire hydrant that doesn't get better than that. It's a blue top. And through a system of tender shuttle operations or evolution, we would have a series of drop tanks by their water storage tank, the 30,000 gallon, which by the way is going to be increased to 60,000 gallons. And we can talk about that a little later, too. A series of drop tanks where all these standards would do is drive these 2.5 miles from the fire hydrant to the drop tanks and all they would do is fill in, drop the water, go back, fill in, drop the water and we could have upwards of six, 10, whatever is needed, depending on when we put that emergency operations plan together in collaboration with AES. So that would provide us over 1,000 gallons per minute indefinitely for the duration of the system.

They mentioned that water is not going to be put onto the fire. The latest consensus in fire marshals discussions is that no, you want to let it burn. You want to isolate it, contain it, let it burn, protect the exposures. Yes, even if they are 10 feet apart, we would still put most likely water on the exterior just to protect maybe on other than that there's no other structures next to those containers. So obviously we would consult with them and see what would be the best way of keeping other containers cool because as we all understand thermal runaway needs cooling. Not what is one way the other way is potentially thermal runaway propagation protection system that also cools that. So it's something that we would discuss as we move forward through an emergency operations plan.

But our suggestion would be to have a tender shuttle evolution procedure to provide water from that fire hydrant at Highway 14 all the way to their facility to avoid that stagnation that stagnant water.

COMMISSIONER HUGHES: Yeah, thank you for very complete answer. Is it all right if we move on to the next question?

COMMISSIONER CARCARI STONE: I just have – I have a clarifying question. My question is what was discussed from AES was modeling and estimating. Have you actually, do you have any real life examples of how you've mitigated the fires with some of your sites and can give us more details about how that was handled?

MR. SIMPSON: Yes, and I apologize for the confusing statement. What I was intending to say earlier is that we do the modeling and evaluation that's in parallel and supplemental to the empirical testing, right? So that is actually going to a large gravel parking lot. I mean it's much more than that. It's a test laboratory, but in essence, it's a large gravel parking lot outfitting with literally hundreds of sensors. But otherwise a an enclosure that represents exactly what we have deployed and then igniting the batteries inside that enclosure with another enclosure nearby. And these are full scale. These are not subscale or bench-top. These are full scale 40-foot enclosures. Observing those fires both with visually with cameras as well as with these hundreds of sensors. And then using that data to calibrate the models after those enclosures have fully burned. It costs millions of dollars to do this. We're happy to do that because of two reasons. Firstly, it is all about safety of nearby personnel and communities. And then second to that is because it enhances our availability, our ability to do what we do and earn revenue by

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doing it, right? It enhances our ability to provide uptime on these systems.

I believe maybe your question was also asking about how real systems work out in the field and what I can say is that we are very fortunate to not have had this circumstance happen. I can't, you know, the absence of evidence is not evidence of absence, of course. But I'm pleased to report that at least the measures that we're taking for quality control of these materials in the factory, coming out of the factory, as well as the monitoring and preventative maintenance, but also preventative measures if we do start to see some sort of abnormality in operations, we've been able to avoid any certain any kind of thermal runaway event in any of the enclosures. Again over, 1 point I think it's around 1.3 -- it's over 1 gigawatt hour deployed operating today in the field based on the AES specified technology.

COMMISSIONER CACARI STONE: Thank you for your answer and again my question is going to be focusing on the requirements for a conditional use permit that's required by the County. And the number one requirement is health, safety, and welfare of all in the communities. And so your answer is it's never been tested under real life circumstances. It's been tested in the parking lot. Is that correct?

MR. SIMPSON: That's incorrect. These are real life circumstances.

COMMISSIONER CACARI STONE: I'm going to ask again. The modeling and the testing that you've done has been a controlled laboratory in a parking lot. Is that a yes or no?

MR. SIMPSON: In a test laboratory. I described it as similar to a parking lot. So that would be incorrect, but we have tested this under real conditions. I'm sorry.

COMMISSIONER CACARI STONE: So you haven't and why I'm asking this is we've had testimony and evidence from both sides. We've had at least a probably close to 20 scientists, engineers, folks even from public comment. And there's the biggest discretion between all the opponents and the supporters, the discretion is around the risk. What are the risks? We still do not know. And we also had, while the requirements have we checked the box in terms of the fire codes and thank you for your additional expertise, Chief Blay, we also have testimony and evidence provided to the Board that demonstrates we are in high fire zone. So, we're talking about containment within one area that's been tested in a quote unquote simulation in a parking lot versus out in the desert. And the biggest concern with the risk has been the ignition of any type of [inaudible] spots or sparks that would go into the desert and produce additional fire.

So I'm trying to discern the risk in which you've tested in the laboratory but not in real life conditions under high fire circumstances in our environment. Do any of your facilities are they in a desert?

MR. SIMPSON: Yes, many of them.

COMMISSIONER CACARI STONE: Okay. So, even though they're in a desert, you said you're fortunate. I would say you're lucky and we can't depend on luck. So, I'm going to ask again, have you tested this in a desert environment when which you will be able to control within real life environmental climate circumstances?

MR. SIMPSON: Yes, ma'am.

COMMISSIONER CACARI STONE: So, you tested in the desert environment, not in a parking lot.

MR. SIMPSON: Correct.

COMMISSIONER CACARI STONE: What desert environment did you

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test this in?

MR. SIMPSON: We have plants operating in or near Yuma, Arizona, near Phoenix, actually quite much, much closer to communities near Phoenix. We have sites operating in Lancaster, California. I visited all of those sites personally.

COMMISSIONER CACARI STONE: So you -- but you haven't actually tried the fire simulation in the desert on these sites?

MR. SIMPSON: No, but we did do it --

COMMISSIONER CACARI STONE: No, okay.

MR. SIMPSON:-- approximately 50 feet away from pine trees.

COMMISSIONER CACARI STONE: Okay. So the answer is no. Thank you so much.

MR. MAYER: Could I please elaborate on a response there? So I just want to try and make clear this concept that we have done testing with hundreds of sensors using all the most advanced technology to capture data and understand that.

What I believe the Commissioner is trying to ask is have we not then gone built a site that we plan to operate and then purposefully ignite one of our containers to test it where the project is being built. And I don't think that would be appropriate just as I don't think this community would want us to build our site and then purposefully prove it by igniting one of the containers to see that it works.

So we are doing these tests collecting this data and doing that in a proper certified laboratory setting and then we've been operating these plants for this specific design architecture and technology for over six years as Mike has indicated. So these are operating every single day in their environments and we have not had a single issue. So I just wanted to try and give that additional context that the appropriate setting for this testing and fire testing and explosion testing, etc., is appropriate and that we would not otherwise do this at a community or at a project site that we go built. We utilize the data from our test laboratories and from the test sites.

COMMISSIONER CACARI STONE: Thank you, Joshua. And I think we have enough sensibilities to hear that's clear that we're not going to expect you to do that at a site you already built. I'm talking about preparatory work and being prepared for emergencies and all the risks that have been presented here. And so what I heard is it's been tested on a cement parking lot and three of us here on the panel are scientists ourselves. Okay, we're not scientists in this area or engineers, but we know the difference between real life condition testing and laboratory testing. Thank you.

COMMISSIONER HUGHES: I'd like to move on. So can you design automated fire suppression at the BESS perimeter and implement failsafe settings for red flag days? In other words, what are your systems to protect you from wildfire that starts outside the site?

MR. SIMPSON: I think I may have mentioned this the other day, so forgive me if I'm missing the question. Please do please do reiterate. The design incorporates two primary protections against outside fires and those are the setback which, again, has been designed specific to these site conditions based on our experience at other sites and as well as the fencing which would block you know if there was say a tumbleweed or something rolling in that had caught a spark. So those are the two methods that -- again we also feel most confident in. We design our systems first around layered passive mitigation measures because we don't have to rely on necessarily, you

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know, some other monitoring system to pick up what's happening and then act. And in this case the setbacks and the fencing were reviewed heavily by independent experts and found to be sufficient.

COMMISSIONER HUGHES: Well, do you have any sensors that, you know, at the site that tell you when it's getting too hot out there?

MR. SIMPSON: The current design does -- well, we have we have sensors inside the enclosures. Of course. But I think you're asking maybe about an ability to detect long before that. And at this site, we don't currently have plans for like a thermal IR camera. Of course, that would be a rather easy addition if that was a requirement from the AHJ.

COMMISSIONER HUGHES: Okay. So, you might you might include a infrared camera to let you know what's going on outside the site.

MR. SIMPSON: In the past, when we've deployed that kind of technology, it's been a network of cameras so that you have full, you know, 360 view of the site. That's what we found to be the most reliable approach. Of course, again, we're happy to entertain any other requirements of the AHJ.

COMMISSIONER HUGHES: Okay, I think the last question is what are recommended best practices for fire safety improvements and defensible – oh, what will be the -- how often will you survey the defensible space to make sure weeds aren't growing up inside your defensible space for example?

MR. SIMPSON: Joshua, do you want to take otherwise I can take?

MR. MAYER: Yeah, I can initially respond. So, the site will include four full-time O&M operating personnel. And it is a part of their ongoing responsibilities to ensure that throughout the entire site, not just around the battery enclosures or the battery yard that there's proper vegetation management and no, you know, accumulation of vegetative fuels. So, this would be a continuous responsibility from our on-site staff to ensure that that there's proper maintenance of the vegetation and the plant.

COMMISSIONER HUGHES: Okay. I think that's the end of fire and safety. Anyone have anything else they want to ask on fire safety?

COMMISSIONER GREENE: So, I'm I have two questions. One, just since we're on this subject, in terms of our own inspection, do we, will our fire folks go once a quarter, once every six months to just make sure that they're on it and, you know, check the math? Is that part of something that we would do to make sure that that perimeter, not the whole facility, but really in that defensible space area?

FIRE MARSHAL BLAY: Madame Chair, Commissioner Greene, yes, the Fire Department will conduct annual inspections at these BESS facilities on campus. Anything from requiring paperwork on their fire protection systems, annual inspections or servicings of these systems to make sure that they are functioning properly as well as the defensible space.

COMMISSIONER GREENE: Wonderful. And then the question about failsafe settings, here in Santa Fe maybe where you are we have our local utility that disables power lines in high wind days because of the risk of wires coming down or wires coming in contact with some brush and stuff. Is there a failsafe setting within your system that says when there's a, you know, a red flag day, whatever we call it here, or high wind day, that you disable anything to make sure that the wind that takes that tumble weed or whatever it is doesn't interfere with the with the power lines that could be exposed in that;

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is there a setting that says got to shut it down? It's we can't, one, because of wind will carry a fire quickly, but also wind might start a fire.

MR. MAYER: Would you like to respond Mike or otherwise I can.

MR. SIMPSON: Why don't you start?

MR. MAYER: Okay. So I think there's a couple things there. So first there's the solar trackers within the array. So they have sensors that if the wind -- if the wind speed approaches a certain velocity determined on what's appropriate for the site they go into what's called stow mode because obviously you can understand that if it's early in the morning or late in the day and you have a larger tilt that that's kind of more wind loading. So there's a safety mechanism that is automatic that when the wind speed exceeds a certain determined amount they go into stow mode which is kind of the flat midday position. And then throughout the site there are disconnects and auto-shutdown features if required, and then of course we work with the utility in this case it would be PNM to respond to any dispatch signals or communications from them regarding grid conditions.

COMMISSIONER GREENE: And that it's that would not only be on the connection to PNM but would be internal to your site to in between your track -- your panels and your batteries and all of your equipment internal, there is a failsafe sort of shut it down for a few hours just until conditions improve.

MR. MAYER: Yes, that is correct. And if you just consider from an operations and maintenance perspective, there's also times we need to do work on certain segments of the array. And of course, we don't want to like turn off the entire facility. We can isolate and disconnect certain subcomponents or sub-arrays and be able to do work. So yes, those features exist.

COMMISSIONER GREENE: Okay. Thank you.

CHAIR BUSTAMANTE: I'm sorry.

MR. SIMPSON: If it's okay, I'll just add a couple of quick points. Our standard for site design is to have –

CHAIR BUSTAMANTE: Mike, Mike, my apologies. I've been notified that we are having some audio difficulties for those who are logged in and we've been asked to allow for the system to be rebooted for those who are watching online. So, we will have a brief pause in our meeting until we restart. I hope you'll hold your answer till then. Thank you.

[Hearing paused from 9:47 to 9:55]

MR. FREQUEZ: For all of our virtual attendees, we are going to restart the Teams meeting. The link is going to remain the same. So, if you go to Santa Fe Countym.gov/join meetings, you'll be able to join the meeting. Thank you.

CHAIR BUSTAMANTE: If we can continue with the answer that was being provided.

MR. SIMPSON: Thank you, I think that was for me.

CHAIR BUSTAMANTE: Thank you, Mike.

CHAIR BUSTAMANTE: Yeah, thank you. Thanks for figuring the technology out. It was a little choppy on my side, but it sounds much better now.

I just wanted to add that in addition to the protection measures that Joshua mentioned that are all automated. Our standard design also includes underground cabling for the de-medium voltage cables. And so that does at least protect against what

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might be like a sagging transmission cable type issue that you would see. Anything above ground is suspended on very short distances. And of course those have a number of other protections that that would all be inside the substation in our plants. And then it was protected with typical fusing breakers relays that are both monitoring and then automatically triggering shutdowns as needed. Thank you for the opportunity to respond.

COMMISSIONER GREENE: Thank you for answering that.

CHAIR BUSTAMANTE: Commissioner Johnson, you had a follow-up question.

COMMISSIONER JOHNSON: I had just one brief question which was that it was mentioned that the tank size had changed. Can we just get a clarification on that please? I thought you mentioned 60,000 gallons.

COMMISSIONER GREENE: I did hear that change as well. Did that formally change?

FIRE MARSHAL BLAY: Madame Chair, Commissioner Fulton Johnson, yes. Given internally in the Fire Department even though 30,000 gallons met the code originally because that water is not dedicated to put out a fire. We discussed it and realized that 60,000 gallons would give us even more time to set that tender shuttle evolution procedure. We have three tenders in Turquoise Trail, two in La Cienega, a couple in Agua Fria, so that would give us plenty of time to make sure that we have all that procedure set in place before that water was exhausted. For cooling purposes. And that would become one of the one of the required approvals of conditions of approval.

MR. SISNEROS: Madam Chair, Commissioner Johnson, just to reiterate that. So that would be the 24th condition would be to upgrade or to require not the 30,000 gallon water tank, storage water tank, but the 60,000 gallon storage water tank.

CHAIR BUSTAMANTE: Thank you, Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Thank you. So I'm trying to turn -- these are questions for staff and I'll hold them later. And we have some questions on fiscal impact on the County. What would that cost the County in general to upgrade that? Because we're upgrading in order to be emergency fire preparedness for this commercial solar system; correct?

MR. SISNEROS: Madam Chair, Commissioner Cacari Stone. So the 60,000 gallon water tank would be provided by the applicant. That's not provided by the County.

COMMISSIONER CACARI STONE: Okay. So it's the water tank. And just so that I'm clear because again I'm following what the CUP standards are here and trying to determine risk and our preparedness. So we're going to be required $60,000 gallon tank we have five according to Chief Blay, five 2,00 gallon tankers that are mobile; is that correct what you said?

FIRE MARSHAL BLAY: Madame Chair, Commissioner Cacari Stone, we have upwards of 20 tenders already in circulation right now.

COMMISSIONER CACARI STONE: Okay. In 20 and then how many gallons per tender again just so I'm clear for the record?

FIRE MARSHAL BLAY: 2,000 on average.

COMMISSIONER CACARI STONE: Okay. And are they all deployed at the same time? And if I guess my question is and it could be more for further study by the staff and I don't want to take any more time with this but for the record I'd like to have

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more of an analysis on what the fire mitigation would require should we would have any types of sparks and fires would break out around the acreage and on the land. And do we have it -- and I would like further information not necessarily today but a deeper analysis because it wasn't in the reports. Should this break out what would actually be required to respond appropriately, contain the fire on the outer perimeters to protect the communities because again we're assessing risk and safety for the communities surrounding. Because we have at least five Communities, two schools, a community college, a detention center and a prison. So these were the things that again assessing the outer containment we would need. So that's just a request.

CHAIR BUSTAMANTE: Thank you. Moving on. Thank you. The next questions are with regard to technology and safety comparisons.

We've heard a lot about what has happened at Moss Landing. How does this proposed project differ from Moss Landing in terms of safety and protective measures? And what is the calculated risk of thermal runaway compared to other utility hazards? And if you don't have the immediate answer for the calculated risk, if you can direct me to your studies that have established such.

MR. SISNEROS: Madam Chair, Commissioners, I also want to let you know and inform you that we do have Nicholas Bartlett online virtually our subject matter expert for any questions as well.

CHAIR BUSTAMANTE: Thank you. The question is directed to the applicant.

MR. SIMPSON: I'll take a stab at that. And again, I'm going to I'm going to try not to be too deep because you've heard a lot on this. Please do ask any follow-ups. I'm happy to address any details, not trying to hide anything.

So the Moss Landing site was and it depends on exactly how you would characterize it, but I would argue it's about four generations of technology prior. It was designed prior to really at full adoption of NFPA 55 or UL9540 the standards that we continue to focus on because they have done so much for energy storage safety. That Moss Landing facility is built with a technology that's no longer available. It includes multiple battery modules. So if you can envision the racks that I was showing in my presentation on Monday, basically you know hundreds of those actually stack double tall, right? So any sort of heat originating in one could actually transpire upward through many more modules. These were packed very densely inside an existing building that was kind of repurposed. As opposed to these which are purpose-built containers at the site we've designed for Rancho Viejo. They include purpose-built enclosures that have the necessary protection specifically for this kind of circumstance. I'm, you know, not having designed the facility I'm working on public information. But pictures are available and you can see all this information there. I am aware that there were -- there were two thermal events that occurred at Moss Landing that have been reported publicly in the I believe this is the 2021, 2022 timeframe that stemmed from a water-based fire suppression system that had inadvertently activated.

So I think in one circumstance it was reported that a smoke -- an HVAC system had failed and that set off a smoke detector which released the water even though it wasn't a thermal runaway but that then created a short circuit that led to a thermal runaway event. At least that's my understanding. So we don't have water-based suppression certainly not internal to these enclosures. The enclosures are designed for

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external water. Obviously, we're going to have rain at these sites potentially even flooding in localized areas, although we designed the site around to direct those waters elsewhere. But the outside of the enclosure is meant to be exposed to water. The inside is not needed so no water would be necessary there.

And then there's a number of other detailed differences but the actually I'm aware of the form factor of the cells at these sites was different. Different shape, different material. We actually have selected the material for this site which is in line with the previous seven years of deployment that we've got over 1 gigawatt hours that's a more rigid structure that that prevents against thermal basically thermal expansion leading to some sort of short circuit. So that's also part of the passive safety protections.

And then I'll just reinforce t at every single one of these layers of mitigation that we have at these sites all the way through from the first step of passive through the active thermal runaway propagation protection and all the sensors linked to that, has been field tested in over1 gigawatt hour of deployments across at least half a dozen sites. I should get that number for you. But so those are those have all been field tested in their formal environment.

And then to your second question which was the probability; what I would say is we can consider probability of thermal runaway for the sake of how this site was designed we have assumed it to be 100 percent. And what that means is that we don't actually expect that, right? We can talk about these things. There are there are numbers from NFPA and a few others from several years ago that discuss 1 in 10 million cells. This is mostly referencing consumer electronics which are produced -- those batteries are produced in very different environments at different scales. And what we've seen in the stationary storage industry as well as the EV industry that it uses similar form factor of cells and similar chemistries, is that that rate is likely much lower. But 1 in 10 million is a number thrown around. We could assume it's exactly 100 percent. And that's why we have all these layer protections because I'm not saying that we haven't had a thermal that -- I'm saying, excuse me, I'm trying to say that we have tested these protections in site and we found that they stop the thermal runaway from proceeding into anything that would be detectable outside the enclosure. The thermal runaway propagation protection system is a last resort. And so if that system actually goes in the thermal runaway, self ignites, there's a fire, right? That's the only time there would really be a fire inside this enclosure. That is stopped before it becomes anything that could translate into a spark outside the enclosure, anything that could translate into any harm to nearby assets or personnel.

CHAIR BUSTAMANTE: Thank you. Any follow-up to that question? Thanks.

MR. MAYER: Could I just add just brief. Mike has done an exceptional job explaining a lot of the technical differences and then also the view of probabilities there. Just to again further reiterate because I know there's been a lot of discussion of Moss Landing throughout these hearings and I am extremely sympathetic to the folks who lived in that area who experienced that, to the fear that citizens hear when they see that visual imagery. It's entirely understandable to see that and to have concern. So I just again want to reiterate first and foremost to make it clear that Moss Landing is not an AES project. We're not an owner. We're not an operator. So it's not AES.

And then additionally as you know Mike referenced it being built in a retrofitted

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turbine hall from a thermal generation plant. You know this is a hyper unique facility that resembles less than 1 percent of all of the deployed energy storage systems in the country. So it is extremely unique and if we talk about the safety mechanism of Containment and how the industry and the proposed solution for this project is a containerized, uninhabitable, unmanned container that is sized to 8 megawatt hours, each one of those, with all the design mechanisms and features. So if we then compare proportionally the size of the container for Moss Landing which was 1,200 megawatt hours that is a 150 times more energy capacity within a single container the turbine hall versus our containers proposed for this. So just to put a bit of the massive distinction in scale of what Moss Landing represented in its incredibly unconventional architecture versus what has become an industry standard in which we are proposing here. It's a vast difference in addition to it being built prior to UL9540 prior to NFPA855 all of the standards and codes that this facility would meet. So there's significant difference and we just asked respectfully that that distinction be recognized.

CHAIR BUSTAMANTE: Thank you. There have been a number of statements. We did ask this question during your testimony regarding other and presumably safer alternatives to lithium ion. The recommendation for sodium ion batteries was suggested. Can you please provide or direct me to any evidence of increased safety or what would make the other batteries undesirable for this project and how the safety measures that are being used for the lithium ion may be more protective than the sodium ion or the other batteries that have been suggested.

MR. SIMPSON: That's a great question, Madam Chair. One of the best resources for battery data and battery safety data comes right next door from Sandia National Labs. They've got a strong team there. So I have not yet searched their database for information on sodium ion batteries primarily because we've been talking with all of the primary suppliers of sodium ion batteries for the past few years studying their Technologies intently for specifically this claim and to try to understand how we can make use of those technologies. And what we're finding is that they are unfortunately they still pose thermal runaway hazard. They still have the potential to release similar gases.

They use a similar electrolyte and so the similar constituents that we've heard about these different hydrogen based compounds, hydrocarbons, can still be emitted and because of that the flammability of those gases is still there which means that can also result in a fire hazard. It does occur in different amounts of gases, different temperatures. What I've heard from the public as well as the County is a concern over really not the amount but the presence of a hazard which is the right, I think that's the right question to ask, and unfortunately sodium ion does still possess both explosion hazards and or does you know present rather both explosion hazards and fire hazards as do other forms of lithium ion based batteries and many basic electrical system. So, anything that's going to be storing electrical energy, whether it's in chemical energy as a lithium ion battery or whether it's in some sort of, could be, you know, mechanical storage of some kind, at the end of the day, it's going to and from electricity, and electricity also poses a fire hazard. But the thermal runaway is both present in sodium ion and lithium ion. Did I completely answer your question?

CHAIR BUSTAMANTE: No, sir. Well, somewhat. If you could also we are very much interested or at least I am interested in a relative risk comparison. If you

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have any data for that or and make it available for our documents I'd really appreciate that.

MR. SIMPSON: It is, yes. I'll look for something it is one to one. They both have 100 percent, you know, capability of fire and explosion and so we would mitigate that with similar methods. I'll look for some data for you.

CHAIR BUSTAMANTE: Thank you very much. We have a follow-up question from Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Thank you for your questions, Chair. I just want to add to our staff if we could get any reports or published data from the Sandia National Labs and the scientists leading these analysis so we could look and do our due diligence ourselves on the comparison and then we can compare that to what um AES submits to us. Thank you.

CHAIR BUSTAMANTE: Thank you. I think this one is reiterative, but I will ask for a simple yes or no answer to this. Does your team include former or current Fluence personnel from the Moss Landing incident? Have you conducted internal debriefs on lessons learned? I guess it's a two- parts. Maybe more yeses, more nos or one or the other.

MR. MAYER: Do you want you want to take that or – So, I want to make sure I respond in the correct manner. Can you rephrase the first part of the question regarding Fluence?

CHAIR BUSTAMANTE: Does your team include former or current Fluence personnel from the Moss Landing incident?

MR. MAYER: No.

CHAIR BUSTAMANTE: Okay. Um, have you conducted internal debriefs on lessons learned from that incident?

MR. MAYER: So, again, I want to make clear Moss Landing –

CHAIR BUSTAMANTE: Have you done any lessons learned conversations as a team?

MR. SIMPSON: That's a yes. I can affirm I can affirm that.

CHAIR BUSTAMANTE: Thank you. Thank you. Will you consider replacing lithium ion batteries with different technologies over the 35 years of the project if there was something safer, more protective, more efficient that would come out?

MR. SIMPSON: Yes.

CHAIR BUSTAMANTE: Yes. Okay. Are there any follow-up questions for this category from the Commission?

COMMISSIONER GREENE: I guess I'll just -- what could trigger an upgrade of this system? Because considering it is nice, but actually doing it. Have you ever upgraded battery systems in another -- can you give an example of that in another facility? And then what triggered that upgrade if so?

MR. SIMPSON: Yes. So the system that's designed today and the heritage I've been talking about this seven-year history testing these exact systems in operations in the actual commercial facilities across the southwestern US, across the northeast, across South America as well and as in Hawaii, those systems have been designed around these multi-decade operations. And so those we've not had a need because they were designed to be cost-effective, as well as, fully hazard mitigated. And so there was no need to change those out at least there hasn't been yet.

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But we have had other facilities that were designed for other applications using other technologies, energy storage systems using lithium ion technologies but past generations that were designed around use cases where their revenue was basically like their target revenue was earned in a much shorter time frame. And really it was based around certain market services. In New Mexico, of course, this would be operated at the dispatch rather at the behest of PNM, but in other areas where there's an open market where maybe an owner operator of a storage plant could bid in different revenue on different days to do different sorts of things. They were basically these batteries being charged and discharged at different amounts, and they because of that in that separate use case and with this older technology they degraded faster and so they basically got to a point where they were being used in one in one application, they degraded just like your cell phone would lose talk time over a couple of years. They also lost storage capacity and then they were repurposed into something else. And by a certain point they lost enough capacity to where it was useful to actually bring in an additional set of batteries or replace them. And so we had we had done that in certain circumstances. In that case, lithium ion was still reviewed and selected to be the best choice. It was just a newer version of those batteries that were brought in.

But in this in the case of this plant, we expected to go through the full 25 year lifetime of that plant, of the of the storage facility, and of the 35 year solar facility we would we would be reviewing the application usefulness throughout. And if there was a more cost-effective way to address the same level of safety, we would of course, look to bring that in.

COMMISSIONER GREENE: Okay.

MR. SIMPSON: Did -- did I, sorry. Go ahead.

COMMISSIONER GREENE: You did answer, but I just want to be clear. It seemed like it was a financial decision and a performance energy performance decision and not specifically a safety thing. So if a new regime of UL standards and these batteries were performing having defects in other hopefully nowhere, but if there were known issues in other areas, would you be willing to upgrade these to sort of warranty the system and make sure that you know, like a recall sort of thing and make sure that a new safer system was implemented?

MR. SIMPSON: Yes, yes. I mean we have conducted more minor recalls on systems things like software upgrades or maybe some minor hardware upgrades. But we have not we've not, again, I think we've designed the systems in a way you could say it's been fortunate but I think we've also designed these systems in a way where they haven't needed that. So, in the hypothetical case that you presented, which may very well not be hypothetical at some point, of course, we'd be we would need to do that.

COMMISSIONER GREENE: Great. Thank you very much,

CHAIR BUSTAMANTE: Commissioner Cacari. Stone.

COMMISSIONER CACARI STONE: Just a quick question. This could be for Legal or staff. Do we have any mechanisms as we move to the next step? Let's just say this went to the CUP, then it went to the next steps in full implementation. Is there any contractual legal or procedural mechanisms in which the County could require upgrades? Because what I heard in expert testimony and evidence and what we've read is that the field is developing very rapidly and in the short time frame of one or two years we're going to see some modernization of even newer technologies that are, that will

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increase the safety, decrease risk, decrease fire but as well would be cost-effective. So, do we have any guard rails or mechanisms in the County? Because this is a 30-year relationship. So, you know, we have to think ahead.

ATTORNEY BOYD: Chair and Commissioner Cacari Stone, we're operating here under the conditional use permit process. And so you know again the vetting as you all are fully aware is, you know, of the design of the project as a whole is going to be at the front end. And there is not a contract. I mean, I know that some of the parties with standing have been inquiring, is there some ongoing relationship, contractual relationship between the County and AES, not that staff are aware of. And so again, I think it would need to be a question for fire personnel about what is the scope of their annual inspections and then a conversation between land use and the applicant about what conditions need to be included in the permit to allow for what you're inquiring into.

COMMISSIONER CACARI STONE: So I'm sorry, Dominic, were you going to add anything? Okay. So, just so I'm clear because we have to think ahead, 30-year relationship, it's three generations. How the County code and our process right now that we have in place doesn't give us any guard rails to in five years ask for an upgrade to the most recent technology that decreased the risk and hazards.

ATTORNEY BOYD: Chair and Commissioner Cacari Stone, the County has ordinance authority, right? So you so the County could, assuming it's not preempted by otherwise preempted by state or federal law if it became clear that it was unsafe to operate batteries of this nature within the county limits for purposes of protecting the health and safety of County residents, the County could adopt an ordinance prohibiting these batteries from being used at a BESS facility within County limits.

COMMISSIONER CACARI STONE: Thank you, Walker. That seems a bit more complicated. It seems like we would want to be more proactive rather than -- that's kind of a Catch 22 for AES as well. We want to think so we say go ahead green light use what you have with the current technology. We have a 30-year lifespan. But we're saying later we might determine they're unsafe or do we have guard rails to determine that? Because what I also heard in the last two days and read and when you look at National Association of Counties and there's 3,140 counties in the nation. So other counties are grappling with this. But the theme and the trend nationally is we're not keeping up with the solar energy. Every testimony everyone's 100 percent on board that solar is the way to go. There's no -- this is not what we're questioning.

CHAIR BUSTAMANTE: I'm sorry, Commissioner. If I may interrupt, we're in question mode.

COMMISSIONER CACARI STONE: Okay, so, the question is, so we could later do an ordinance or is there another guard rail in the conditional use permit that would allow us to have language that guarantees that we modernize with the latest technology like every 3 to 5 years? Thank you, Chair, I understand.

CHAIR BUSTAMANTE: Thank you.

MS. LADD: Madam Chair, commissioners. I think one way to look at this may be the way a lot of other land use requirements work, which is that you build what you build at the time with using the best technology, the best the up-to-date what's current with code, materials, structures, etc. But at the point at which any modifications need to be made, you're subject to whatever the current code or the best practices are at that time. So that's kind of a standard way of doing things. Like for

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instance, if you remodel a building that was built before ADA requirements, so it's not accessible, you remodel it and you have to create ways to make it accessible because that's the rule that's in place now.

So I think there is a little bit of a built-in guard rail. And I'm not sure, you know, we can work with Legal staff to just, we can't really make that a condition, but we can make it clear that at the time at which any of the components need to be upgraded that the company will, of course, deploy the best technology, the safest technology that's available.

COMMISSIONER CACARI STONE: Thank you so much. And so it's just a question, is it a good faith agreement at this point? If we move to the next step, there's no there's no guarantees or mechanisms.

CHAIR BUSTAMANTE: We have both the response from legal and –

ATTORNEY BOYD: Chair and Commissioner Cacari Stone, I won't speak for the applicant, I think they've presented to you all what they understand to be the lifetime of these batteries. And so I think that the question for you all is you understand the proposal. They are proposing I believe a 20 to 35 year lifetime of these batteries and so I think that it's ultimately conversation between Land Use, you all, and the applicant about whether that aspect of the proposal is acceptable.

COMMISSIONER CACARI STONE: Thank you. Thank you, Chair.

CHAIR BUSTAMANTE: Thank you. Commissioner Greene.

COMMISSIONER GREENE: Are we ready to move on to the next section? Yes. Okay. Wonderful. Thank you.

So this is in regards to environmental and community impact. What measures protect the groundwater, night sky, and wildlife passage?

MR. MAYER: Sure. I can initiate the response to that. Thank you for the question,

Commissioner Greene. So we do propose utilizing wildlife friendly fencing. That's to avoid for example you know an antelope or a gazelle jumping over being, you know, caught in barb wire. So typically this also allows you know smaller critters to get through the fence. But we do have as part of a proposal wildlife friendly fencing. I think again it's worth noting the exceptional collaboration with the hosting land owner to set aside 10 times more acreage than the footprint of the facility in perpetual conservation through the transfer development rights. Can you please remind me the rest of the question?

COMMISSIONER GREENE: Yes, no problem. Night sky precautions.

MR. MAYER: Yes, so these facilities would employ motion sensored or motion detected downward cast lighting at limited locations effectively at the inverter pads throughout the subarray of the solar array. Also at the battery energy storage facility and the substation. So this would not be perpetual light throughout the nighttime. It would be there based on, you know, service needs at a late hour or motion detection for security purposes. So there should not be a significant contribution to light pollution. It certainly be certainly less than a residential setting.

I know you mentioned one or two more things.

COMMISSIONER GREENE: So, yeah, the last one was regarding groundwater and more specifically what protections would you have for the groundwater and will you use a lined protective catchment pond for any water or chemicals that are

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deployed?

MR. MAYER: So I'll initiate the response and if Mike wants to add anything he certainly can. So I think it's you know worth reiterating that this is a solid state facility. There is not liquids in any substantial quantity circulating throughout the site. So these are solid componentry. Yes there is within the battery cells the electrolyte that Mike could speak much more to that is fully contained within the battery modules which is then fully contained within IP55 container. So these are leak resistant, obviously, they need to be hyper conditioned for cooling and temperature and humidity. So they're very well sealed to protect from outside elements and therefore they also guard against any leakage from without. And I will say that transformers are often lubricated with oil. There are containment for where transformers are sited. But otherwise there is no means or medium for groundwater contamination from this facility.

COMMISSIONER GREENE: Okay. Related to that for stormwater detention there was some discussion about a fewer arroyos to the north and the south of this project. Is there any like check dams or any flood control improvements that can be put in to sort of make it less flood prone?

MR. MAYER: Yes, so we fully do analyze the hydrology of a site. So we conducted a hydrology study and as you may notice from review of the site plan, we are set back and avoiding the arroyos of significance and otherwise drainage features. And if you also review the site plan in the northeast corner just due west of the battery energy storage facility there is a proposed stormwater management basin of 200 feet by 200 feet.

COMMISSIONER GREENE: Okay. I might recommend some improvements to the arroyos just to slow down the water as it moves from your site into those arroyos. But okay, second question. What noise impacts from the BESS system and solar panel trackers at various distances and how will you mitigate it? So what is the, you know, how does the noise impact at a half mile and a mile away or to the closest residences?

MR. MAYER: Yes. So I'll initiate the response and if any members of my team care to elaborate I certainly welcome that. So we did provide the noise study to the County and again voluntarily upon learning of the concerns of the community. So we're of course thankful for the expression of those concerns and of course look to satisfy them via independent study. So I'm also just bringing up the slide that has a depiction of that. That was slide 39, the report that we updated at the request of the County to include 24-hour insitu or in the field monitoring that was one reason why it was submitted after the initial document deadline was that it was a request from the County I think on July 25th that we performed this monitoring. So we were very reactive to deploy to the field to collect field data. So if you look in that report or also on the slide 39, you can see a visual representation of the sources of noise. Predominantly those are the PV inverters and the BESS inverters and then the HVAC units and chillers at the battery energy storage system. So you can see the visual representation of the red kind of asterisks or stars. And then you can see kind of concentric circles going emanating out from those of what the dBA level would be. So it's a very helpful graph or chart to be able to review. And that represents precisely the answer to your question of what the level would be at a given distance. You can see that the Eldorado community has zero reach of any noise. And the only one which sees any increase is the singular residence in

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the northeast of the San Marcos community but that increase in noise is below what's otherwise deemed detectable, which is the 5 decibels. So does that answer your question?

COMMISSIONER GREENE: I think so. Thank you. Next question is can construction be limited specifically to heavy traffic and transportation trucks during construction times to after 8 or 9 a.m. and then preclude work during dark hours. So in the winter days are shorter and that no artificial lighting be used utilized during construction during night times to protect and not make a 24-hour construction site or even after 5:00 p.m. when it's dark at 5 in the winter?

MR. MAYER: So I think I heard a few things there. So, the standard course of work hours is generally 7:00 a.m. to 300 p.m. Of course, we typically reserve or would request the right to be able to operate from 7:00 a.m. to 7:00 p.m. Certainly in winter hours when it's dark early, safety is a number one priority, construction generally does not continue into nighttime hours unless there was a specific task at hand which would be better performed at that. Specifically, I'm thinking of when you pour concrete and you want, you know, cooler temperatures and need to observe that or sometimes there may be some electrical work that requires continuous. So, it's a limited nature. But typically, yes, we are only working within a standard working hours during the daytime.

COMMISSIONER GREENE: And then specifically to heavy truck traffic at the rush hour, 8 a.m. hour, so that trucks are accessing the site between 7 and 9 or 7 and 8 at least.

MR. MAYER: So you were requesting that we would not have heavy trucks enter the site between 7:00 a.m. and 9:00 a.m?

COMMISSIONER GREENE: Correct. Like pour your concrete at 9:00 am, stage stuff the night before, if you need to have stuff delivered to be on site the morning before. But I can think of, you know, a parade of concrete trucks showing up and just disturbing the neighborhood for hours at 7:00 a.m.

MR. MAYER: Yes, actually as a part of our water supply report or the water budget that we've updated and provided, we are willing to schedule outside of peak traffic hours.

COMMISSIONER GREENE: Okay. And including construction during construction phase.

MR. MAYER: Yes, heavy equipment. Yes.

COMMISSIONER GREENE: Great. Fabulous. Thank you. And then lastly in this section, what sort of screening trees could be deployed and planted and maintained to protect the San Marcos neighborhood which seems to have the most visual impact of this area here? Specifically, I wouldn't recommend doing it right up against the homes there to give them some perspective there, but maybe, you know, a few hundred yards away in that open space area that the common land owner might have to provide some deciduous as well as evergreen buffering.

MR. MAYER: Sure, I think it's a fair idea and proposal and I see the logic in proposing something of that nature. I would like to say that there's already been a condition made on the permit that we use paneled fencing in the southwest corner. As a part of the community feedback, we already modified our design to fully remove the array from the north of the San Marcos community. So, anybody on the northern periphery looking straight north from their backyard would not have any visual

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obstruction, only if someone were to look at a minimum 1/3 of a mile to the to the northeast would it be visual and we've already committed as a condition to do paneled fencing. The nearest residence already has vegetative screening around their home. So from their home they would already not be able to see the facility. They would have to walk to the corner of their property line a thousand feet to be able to see it. But that's where the paneled fencing should already provide visual buffer.

Utilizing vegetation as you suggest especially coniferous trees if ongoing water usage is a concern that is going to increase water consumption and generally we find we reseed with native vegetative mixes appropriate for the environment. And so we would be incorporating that as a part of the soil revegetation plan. But typically including you know significant bushes and trees in desert environments has never, in my experience, proved to actually be successfully established given that it's kind of out of the appropriate kind of environment for them.

COMMISSIONER GREENE: Just to follow up, there are native trees that can be established with a few years of watering, whether it's their slow growing pinons or some other even non-native trees that can be used as a landscape buffer, just to give a little bit of a an added level of that. But, thank you for answering those questions and I'll pass this on for the next section if anybody else has some questions.

MR. MAYER: Madam Chair, certainly invite the recommendation of any specific species. I was just speaking from experience of course the success of the typical establish –

COMMISSIONER GREENE: Yes, of course and I understand the water issue and it's great that you understand it as well but sometimes water is necessary to achieve a goal here.

MR. SISNEROS: Madam Chair, Commissioner Greene, I also just want to add to that point that on that southwest corner of the property, there's a pretty Significant prairie dog colony that is being preserved in that area.

COMMISSIONER GREENE: Thank you for clarifying that.

COMMISSIONER CACARI STONE: Thank you, Dominic. Thank you, Chair. My question is for the staff as we think about the environment and community impact. If noise and other and lighting and traffic are violated, remind us for the public, what's the process and how we do monitoring, oversight, regulation and penalties.

MR. SISNEROS: Madam Chair, Commissioner Cacari Stone. So there are mitigation issues that that could be put in place for them to come into compliance if anything does get reported to the staff or to code enforcement. There are certain things that can be done and that's one of the reasons why we have our third party consultant, Glorieta Geoscience, and their sound division reviewing the sound study to see what those mitigations could possibly be.

MS. LADD: And I will add anything that is in violation of SLDC standards can be reported to our Code Enforcement Division and they will go out and investigate.

COMMISSIONER CACARI STONE: Thank you so much. And all five of us are very aware of all these calls and reports that come in. Thank you.

CHAIR BUSTAMANTE: Thank you. Before Commissioner Johnson starts, I do want to say for the record that I take some issue with the first question regarding budgets and expected revenues, understanding and respecting that

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environmental commerce is a respected trade, if you will, a field, maybe not trade, but field. And that if there are issues that are proprietary that are not of safety, health and community protection, environmental protection, that those questions I fail to see the relevance if all of the safety and health measures have been and environmental protection measures have been taken. But with that, I will move the question to Commissioner Johnson.

COMMISSIONER JOHNSON: Understood, Madam Chair. Thank you. Thanks to everyone for being here today. I'm going to ask some questions about project details and oversight.

The first is a question about the company of your company structure. I am a little bit confused because in the first presentation you sort of differentiated between AES, Fluence which has been brought up and AES Clean Energy which I understand you all to be a part of. Could you briefly describe that structure to all of us so that we can understand because I think some of the mistrust is rooted in AES Clean Energy may not have had certain safety issues but other associated companies have. So I think clarifying that would be helpful for us. Thank you.

MR. MAYER: Yeah, most certainly. And thank you for the question, Commissioner Johnson. I'll try not to get too far into the weeds and keep it high level, but if you would require further explanation, happy to do so. The AES Corporation is the parent corporation. They own several business entities not just in the US but also globally. AES Clean Energy is a wholly owned subsidiary of the AES Corporation. So we are a specific business unit that is focused on development ownership and operation of clean energy sets predominantly solar, wind and storage within the United States. So there are other country units and other business units that are owned by AES but operate elsewhere or with different missions.

COMMISSIONER JOHNSON: So would it be fair to say that AES clean energy focuses on the solar portfolio maybe other renewable sources clean sources?

MR. MAYER: Correct. Yes, that's entirely correct.

COMMISSIONER JOHNSON: You can continue.

MR. MAYER: Yes, and then I think you may have been asking this and I also heard Fluence so I'll address that. So then Rancho Viejo Solar LLC which is the entity that is ultimately seeking the permit here, that is what we then call a project specific company or project company. That may seem strange to folks that are unfamiliar with the industry but it's absolutely universal practice in the renewable energy industry and it's also common in the real estate industry. But the reason that you set up a dedicated project company is that is for purposes of project finance. We provide our equity investment into the project but we also because of the long duration contracts we predominantly finance these projects based on a power contract. If we do not have a power contract we essentially do not have a project.

And so once you are successful in securing a 20 or 25 year power contract, and then based on the industry confidence in the overall energy production there's confidence in how much revenue that contract will generate. So you can then go to the market and you can highly leverage these projects, meaning that you essentially finance much of the project based on debt issued by a bank. And then you also utilize investment tax credits or tax equity investors. And so you have various sources of financing that are backed on a power contract that is tied specifically to the project entity. And so that all that is to say

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that there's a benefit to creating an entity that is specific to the project that is specific to its permits to its power contracts to its interconnection agreements so that the financing structures and those that are directly invested in it have a clean vehicle in which to invest in because they would not otherwise just give all their money to AES when AES owns hundreds of projects and operates utilities etc. So you create this entity that is specific to the project. That all being said, it's a wholly owned entity by AES and AES is ultimately also responsible for this for this project company. So I know there's been some assertion that the idea of a project company is to shield the parent from anything else that that's actually not the case. It's predominantly a financed driven entity or a vehicle for the project.

Lastly in relation to Fluence you can kind of think of Fluence as a cousin in which AES Clean Energy and Fluence have a common grandfather right. But it's worth pointing out that Fluence is actually not an AES subsidiary. It was a joint venture between AES and Siemens. It has its own governance structure. It has its own mission statement. It operates in complete independence and actually I believe AES has both minority equity stake and minority governance rights in Fluence. I have worked at AES for 10 years. I've never once spoken to somebody at Fluence. So it is a completely different business entity of which there is a thread of shared kind of family, as I said, for a better metaphor.

COMMISSIONER JOHNSON: Thank you.

CHAIR BUSTAMANTE: Commissioner Hughes.

COMMISSIONER HUGHES: Yeah, it's real short. You said Rancho Viejo LLC, is wholly owned by AES. Are there any other partners in the LLC?

MR. MAYER: My understanding is no. I would request that perhaps I follow up on the technicalities of it all, but it's otherwise an entity for which AES is wholly responsible. I would maybe asked to be able to follow up to ensure with my legal if there's not some minority stake that is kind of carrying on further. I know that there's some of these structures can be more complicated and there could be some side investment that I would want to confirm for the record. But my understanding is it's you know it is a wholly owned subsidiary by AES.

COMMISSIONER HUGHES: But yeah I appreciate the complete or checking into that because I've been involved in the formation of LLCs that own affordable housing projects and usually there's two or three partners even though one is responsible. So yeah, if we can know whoever else involved in Rancho Viejo LLC, I appreciate that.

MR. MAYER: Yes, I'll see if I can actually request that and have confirmation by the end of this session.

COMMISSIONER JOHNSON: That'd be great. Thank you. And we would like to make that a matter of the public record.

So this relates to the question or the sort of preamble by the Chair. We are interested in sort of brief details on the construction budget, the expected GRT revenue and local energy sale income just so that you know -- a lot of the testimony that we heard there is sort of a suspicion about a large entity such as AES coming in and profiteering. So I think that might help to inform or alleviate some of those concerns.

MR. MAYER: Yes. Just allow me one second.

COMMISSIONER JOHNSON: And I think we'd like to request that information in writing.

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MR. MAYER: Okay, so I heard a few requests financial requests. So for one I would like to state that specifics generally of competitive nature, right. The specific cost of the facility, the specific revenues if I tell you specifically our revenue expectation you could backend the expected generation that we've shared and you could determine what our confidentially submitted pricing to PNM in the last RFP is so I would respect some degree of sensitivity or confidentiality around those numbers. But I would say that it's a very competitive industry that we operate in. Margins are very thin. AES is not targeting specific monetary return by like a number figure. We have a hurdle rate. We have an internal rate of return which our board approves for projects to achieve when we bid pricing into a competitive procurement. And effectively every cost that gets added onto a project, every condition, you know, for example, adding in a perimeter road in cooperation with the fire department adds cost. If we did not have to add that road in, AES is not taking a higher profit, we are lowering the PPA rate or the energy rate that we're going to bid into the RFP. So, what I'm trying to say is there's just a number like a percentage number that we are looking to achieve on our investment which I would say is very typical for the industry. No, there's not a single company that is earning 2x what another one is. We all are operating on very minimal margins to be competitive because there's a lot of project opportunities out there and effectively any savings or any additional costs get directly translated into what the final cost of energy is and our return threshold stays the same. Hopefully that makes some sense.

COMMISSIONER JOHNSON: That is helpful. Do you have a follow-up?

CHAIR BUSTAMANTE: Do we have a follow-up from Commissioner Greene.

COMMISSIONER GREENE: I do. I'll try to maneuver this in a proprietary way for you but to get the answers we want. Construction budget, so there was discussion of an IRB and so if you go down an IRB route that foregoes Santa Fe County's revenue on a lot of the GRT in that space, is my understanding is one of this. And so at some level you're going to have to report what your construction budget is going to be. So, you know, what is the order of magnitude? So, one, what is the order of magnitude? Doesn't have to be full-on detail, but is this a $200 million project? Is it a billion dollar project? So, that's the first question. Then the second one, is if you were going to go down the IRB, we are going to then at a later date be asked to give up that revenue when you're coming to us now saying you will get GRT construction benefit from this, but you're now leaving out the opportunity for to come back and say, Well, we'd like to get an IRB and Santa Fe County will basically pay for that.

MR. MAYER: Yes. So, thank you for the question, Commissioner Greene. It's a very thoughtful one. I'm not an IRB expert, although I've worked significantly with New Mexico based counsel who's experienced with IRBs. We have already initiated industrial revenue bond process in Bernalillo County for a battery energy storage facility that we permitted there. So I am already practically experienced and my understanding, the best of my understanding, is actually the gross receipts tax exemption that is eligible through qualification of an IRB, exempts the state tax gross receipts tax for applicable renewable energy equipment. That is why we are still citing in our presentation that our estimates based on our capital expense budget is that the County would still collect $3 million in upfront gross receipts tax and there would be an

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additional million that would still go to the state based on equipment that's not exempt as a renewable energy component. And I am familiar that we need to provide a budget for an industrial revenue bond application and we would provide that. Generally, the experience has been that you provide a number in excess of what you think you ultimately would spend and this would be a self-funded IRB. So we would be not asking for any public proportion of the financing. So we would fully finance it ourselves utilizing the approved mechanisms within IRB structure. But we would provide a number. It just likely would be conservative based on what we ultimately expect to spend. But to address your question of magnitude, yes, it's a facility that would estimatedly cost us in excess of $200 million likely less than 250 million.

COMMISSIONER GREENE: Perfect. And then – I understand these sort of like process things. So we get this or if you were to receive this approval you would then go forward and apply to PNM for that contract and that becomes another hurdle or milestone that you need to get to, to say go or no go. Am I correct in that?

MR. MAYER: Commissioner Greene, you're entirely correct. Project development is a puzzle. You need all the pieces to have a complete picture achieving or with your consideration today if you decide to grant us a conditional use permit that is a significant piece to the puzzle. It advances the maturity of the project. It also makes it more marketable because the project is now less or it's further derisked as far as its ability to execute. So that does, yeah contribute to its marketability. But ultimately, as I mentioned before, we do need a power contract. So, it very well may be that this project is granted a CUP and is never built if we are unsuccessful in ultimately contracting it.

COMMISSIONER GREENE: Okay. So, that goes to the PNM aspect is like you're targeting as has been mentioned quote unquote targeting PNM, but ultimately if PNM doesn't do it, you could find another purchaser, but this is built kind of purpose-built for a PNM type of customer.

MR. MAYER: Yes. So currently today PNM is largely the only customer that this project could sell power to. In other states there are what we call wholesale markets in which you can openly transact on a daily basis. And you can even transact with, you know, a Meta or an Amazon or a Google and be able to quote and quote sell them energy into the grid. It's a bit more kind of accounting but it does help transfer renewable energy credits. So there's a mechanism to sell to various customers but as currently exists in New Mexico this project is located in the P&M service territory. The only way we could potentially sell power to a tri-state or to El Paso Electric or an SPS – well, SPS is in a completely different they actually are in a wholesale market. They're in the Southwest Power Pool. But we would effectively then have to pay wheeling, it's called a wheeling cost to send the power through the transmission system and that just frankly is never economical There is and it's still new and burgeoning but you see with the growth of data centers in different regions there being specific tariffs set up where because these customers are requesting significant amounts of power in a given location. You know they're not your typical business or industry that wants to interconnect to the grid and receive you know power. They're asking for 100, 150 megawatts, 200 megawatts of power, which the utility then says, okay, that's a lot more power than we perhaps currently have a generation mix for. There can be a tariff in which they with PNM or with a utility can solicit specific generation that would be tied to a specific customer to address their new demand request. So, I believe Meta has contracted through

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this arrangement with PNM for their Los Lunas' facilities. This has not been transacted on significantly but that is currently the only other mechanism in which this project could potentially market itself and contract for power supply outside of the PNM RFP.

The only caveat I'll add is that Colorado, for example, currently doesn't have the wholesale market, but they have a state mandate now to create one by 2030. At which point, you know, you can engage in these wholesale market transactions, transact with other corporations. This is a trend that's growing throughout the West. So, one day, New Mexico may also introduce a wholesale market, but as of today, there's not a means to do so.

COMMISSIONER GREENE: Thank you for explaining that. And just for the record, you are not in conversations with Meta or any data center. This is you don't have any discussions with PNM. You know of the PNM RFP and you don't have any discussions with any big data farms in the state to potentially wholesale to them or to –

MR. MAYER: There's not currently any solicitations outside the PNM RFP that this project has engaged in.

COMMISSIONER GREENE: Great. Thank you.

COMMISSIONER JOHNSON: Okay. To continue, thank you for that detail. There was some discussion yesterday from parties withstanding about a pending sale of AES. What provisions ensure continuity in the project specifically regarding safety standards and disposal commitments if in the instance of a sale of the parent company or some radical change in leadership?

MR. MAYER: So thank you for the question, Commissioner Johnson. I'll answer it in two parts. The first part is I cannot publicly comment on any potential sale of AES. There's no information I have on it. There's nothing that's been communicated internally. So there's only what is perhaps in public media and I can't speak to whether there's veracity or weight to that.

What I will try and assure you with in the second part of your question, if this project company -- this actually also is a is a good explanation for why there are project specific entities or project specific companies is because they can be sold. That's not AES's model. We are owner operators. It is a model that is employed by others and it could theoretically take place although it's not intended to. But any permits granted to that project entity, any power contracts, any lease agreements for example carry with the project company. So if there was some ownership change in AES, all of the conditions that are outlined in the conditional use permit grant for this project would carry with it. So there it would not all of a sudden nullify if there was a new owner of the facility that the prior conditions were not applicable to them. So for the lifetime of which this project would exist or be operating under the permit, regardless of who the owner is, those same conditions and requirements and legal requirements would persist.

COMMISSIONER JOHNSON: Okay. Thank you.

CHAIR BUSTAMANTE: We have a follow-up question from Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Yes, thank you. This is just going along the business aspect of the questions. I want to manage it sounds like our community from testimony as well as other presentations in the last two days discussed this number of 200 jobs and your other sites with comparable sizes; .how many jobs during construction phase on the average did you have versus operational jobs after the

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fact? Because I want to manage community expectations and get a sense of because this has been touted a lot in the last day. Oh, it's going to create jobs.

MR. MAYER: Most certainly and thank you for the question, Commissioner Cacari Stone. First I want to go back to the question about the project equity ownership. So I was able to confirm with my internal legal counsel. So AES Clean Energy is, in fact, the 100 percent equity interest owner of Rancho Viejo Solar. The reason that I wanted to caveat my question or confirm is the higher AES Clean Energy business unit level there is another investor AIMCo owns 25 percent of AES Clean Energy. So that is why I wanted to ensure and confirm my response to you but Rancho Viejo Solar is 100 percent owned by AES Clean Energy.

To your question, Commissioner Cacari Stone, so, yes, it is our current estimate based on projects of similar size and scope that we would employ approximately 200 construction workers throughout the course of construction. It may be a little less, it may be more. But that is a very reasonable estimate on our part. And then during the operation of the facility we fully expect to employ full four full-time O&M staff making six-digit salaries.

COMMISSIONER CACARI STONE: Okay. Thank you. And how many full-time staff again was that with the six-digit salaries?

MR. MAYER: Four O&M personnel would be anticipated during the operation phase of the facility.

COMMISSIONER CACARI STONE: Okay. Besides the six figure salaries and jobs, are there any other jobs?

MR. MAYER: There's always the possibility that we need to contract some additional service if our direct O&M personnel would not perform that themselves. So there may be some consultant or engineer or additional service provider, you know, that that may be called to the site but as far as AES staff, it's the four is our estimate.

COMMISSIONER CACARI STONE: Okay. So the 200 jobs what duration do you anticipate for the construction? And so this would be jobs during construction. So what's that time period people would be hired?

MR. MAYER: Correct. So we anticipate a construction time frame of approximately one year for the significant construction work. You often have commissioning task that that may go on longer but your kind of physical efforts of moving ground and installing things is largely ceased at that point. So I think the year is an appropriate expectation. That being said, AES is not the, we are not the civil contractor or the electrical contractor. We hire an engineering procurement and construction company who then may also hire subcontractors. And so there may be certain jobs for specific tasks for specific subcontractors that may not be the entire year. And so there could be some variability within whether a particular construction worker is there for the whole duration of the facility's construction or just a specific scope whether it's civil or electrical or mechanical in nature.

COMMISSIONER CACARI STONE: Okay. Thank you. And with the construction jobs, does if they're
temporary one year, do you offer insurance or any type of employee benefits to these workers or also any type of insurance should they get injured on the job?

MR. MAYER: So anyone who is on our construction sites is required to have appropriate levels of insurance. AES has insurance and benefits for all of its

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employees. we do not pay for the insurance or the benefits of our contractors or subcontractors.

COMMISSIONER CACARI STONE: Okay. And what are the salaries or wages the wages of construction workers per hour?

MR. MAYER: I would have to, if you actually give me a few minutes, I may be able to bring up what is an estimate.

COMMISSIONER CACARI STONE: Sure.

MR. MAYER: But I otherwise would request to be able to follow up with what an average salary is. Again, that's going to depend on scope. If you're, you know, someone that is driving piles versus someone that's installing the solar panels versus someone that's wiring the electrical work, there's going to be a significant variance.

COMMISSIONER CACARI STONE: Okay. So, based on their expertise and just trying to manage some of the expectations that were thrown out there. Thank you.

MR. MAYER: Sure. If you'd like, I can try and find this estimated hourly wage or I can follow up after the hearing today.

COMMISSIONER CACARI STONE: Follow up is fine. Thank you.

MR. MAYER: Okay. Thank you.

COMMISSIONER JOHNSON: May I continue?

CHAIR BUSTAMANTE: We have Commissioner Greene.

COMMISSIONER GREENE: So just to follow up on that change of control concept. AES may be very well capitalized and, you know, great bond rating and everything like that, but you could sell this in a variety of ways. And so this could go into a bunch of a pile of junk debt, right? You know, the junk bond sort of ways of things. You could have -- you could sell this to a company that has tons of liabilities that knows that it's going to dispose of this stuff like a 3M or a DuPont that suddenly had a bunch of PFAS litigation behind it. And so the concern that I have and I think that we have is that if this does change control is there, you know, a sufficient bonding for the cleanup and for any catastrophe that god forbid happens. And so I think I'm wondering if there are any triggers that could be applied to this in a way that says well if you do sell this and AES isn't the parent company any longer of this asset that there is some additional bonding restriction or obligation for cleanup or for insurance policies in this?

MR. MAYER: Yep. Great question, Commissioner Greene. So actually at the request of the County, we did provide a decommissioning plan for this project and that included a cost estimate for decommissioning. I believe the total estimated cost in current dollar figures was approximately 8.8 million. If you factor in salvage value the net value I believe was about 7.2 million. Um I believe and perhaps Matt Gordon, my permitting manager could confirm or County staff would could confirm, I believe there is expectation or condition that we would post a decommissioning bond. I don't believe the terms of that have necessarily been finalized or the requested amount. But it's otherwise a very common commitment and responsibility that that we employ on many of our projects. So, it's certainly something that we would be amendable to posting, which is a decommissioning bond. And again, if that is a condition or a feature of the permit, regardless of the change of ownership of the facility, it would still have to adhere with the decommissioning bond requirements for the facility.

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COMMISSIONER GREENE: Great. And then to follow up on Commissioner Cacari Stone's question: the four O&M positions would be six figure salaries on those. They're all in the above $100,000 a year.

MR. MAYER: That's correct. When I when I asked my O&M director about these salaries, the average salary was about $165,000.

COMMISSIONER GREENE: Great. And then lastly, do you use union workers for the electrical workers, teamsters or construction workers do you require that of your subcontractors or your contractors?

MR. MAYER: So ultimately that our selected construction firm/general contractor is the one that we provide the discretion in certain areas where there are any contractual requirements. For example, there's some state power contracts or others that you that may have requirements that you utilize a union labor. If there's not otherwise a binding contract insisting upon that. It is a decision that we ultimately defer to our general contractor to source the best labor that they feel is required to safely and successfully build the project. So, it's neither a yes or a no. We've utilized union workers on some projects. We do not utilize them on all and ultimately it's a decision that lives with our general contractor unless we insist upon them to utilize union labor.

COMMISSIONER GREENE: Okay. And then do you use – do you create or require your subcontractors and contractors to utilize or offer internship opportunities? We have a relatively robust program at our community college, but on the job training is the best training there is. And wondering if there's a potential to incorporate that into your contract.

MR. MAYER: So, you know, yeah, it quite often is and in fact under the current investment tax credit regime which is under federal review at the moment and is subject to change there was a prevailing wage requirement in order to secure the full value of investment tax credits which is essential or central to renewable energy financing. I believe that had a 30 percent requirement for apprenticeships or traineeships in the workforce. In addition to that, New Mexico itself believe has a requirement for workforce training and apprenticeships which I believe is also around 30 percent. So this if my precise quotations are not accurate we do intend to utilize what is required by the state and by federal requirements for apprenticeships and in fact we actually have met with the community college and we are aware of their goals to actually develop their solar training and we have been in discussions about supporting the development of that program in very specific regards cards to help ensure that there's a local supply of labor that can be utilized for this project. And we've already contributed to other workforce development in New Mexico to date.

COMMISSIONER GREENE: Great. Thank you very much.

COMMISSIONER JOHNSON: Okay, continuing on. A question that I had about the disposal bond was asked if Commissioners have additional follow up there'll be time for that.

Can you explain to us so that we have more clarity on what price fixing agreements are, how they work, and what the sort of ramifications for energy consumers are when those agreements are reached.

MR. MAYER: Could I ask for you to please restate the beginning part of that question, Commissioner Johnson?

COMMISSIONER JOHNSON: So, what what's a fixed price agreement?

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That's something that is proposed between PNM I think helping us understand what they are.

MR. MAYER: So, I believe you're in reference to language that I featured in my presentation talking about a long-term fixed price supply of energy. So what I was trying to communicate through that is that you can either bid a project where you say the energy is going to cost X and it's going to escalate at 2 percent over the course of the following 20 years. You could almost consider that fixed price as well because it's you have the certainty of what it's going to cost. What is currently typical practice and I believe what PNM also requested in their RFP was that they don't want to see escalation. They want to see what is the price for 20 years for you to deliver the energy and the capacity that you say you will. And so that means that the price of their energy or capacity in year 1 is going to be the same price as it is in year 20. And so that is unlike for example the operation of coal plants, the operation of natural gas facilities where you don't have a renewable fuel supply that is provided to you by the sun every day. You have to continuously contract the source of fuel and so there can be price variability over the course of 20 years which is why we see fluctuations in the price of natural gas. Does that answer your question?

COMMISSIONER CACARI STONE: That does. And in the second scenario, does inflation fact factor into that or is it actually a flat rate across the lifespan?

MR. MAYER: Yeah. So if we were successful in contracting with PNM in this RFP and they pick our proposal, inflation has zero impact. We could see god forbid 40 percent inflation every year for the next 20 years. And if we execute our contract and build the facility, the price of the power that we supply is the same for the next 20 years because we made an assumption and contracted based on what we know our capital costs to be today. And as I noted, we financed the project fully off of that power contract. So we know or have a very good idea of how much revenue we'll receive and we can cover our capital cost upfront with that. So inflation in years down the road would not have an impact on the price of the power that we're supplying.

COMMISSIONER CACARI STONE: Okay. Thank you. That's helpful for understanding the contractual details. What are the ramifications for consumers? What could consumers in Santa Fe expect to see?

MR. MAYER: So it's indirect. And I can't speak for PNM, but my general understanding is that investor owned utilities are regulated in this case by the Public Regulatory Commission. And there's generally I think it's often 10 percent, but I'm not going to speak for the PRC in New Mexico, but there's a an approved acceptable rate of return for utilities based on, you know, their cost of energy supplied. So all that we can expect is that the contribution of our facility at a fixed rate of energy over 20-year period will overall support the stabilization of energy costs for ratepayers who we are not providing directly to or contracting directly with but we are contracting with their supplier. So it should support price stabilization.

COMMISSIONER JOHNSON: Okay. Thank you.

COMMISSIONER CACARI STONE: Question.

COMMISSIONER JOHNSON: Is this about price fixing?

COMMISSIONER CACARI STONE: No.

COMMISSIONER JOHNSON: Okay, then let's wait. So there were some concerns about, I'm switching to staffing again. Why not provide 24-hour staffing for

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emergency support at the facility?

MR. MAYER: Great question, Commissioner Johnson. So, I'll first say that the technology exists and the monitoring exists. I mean, every battery cell in these containers has a sensor on it. And we have a 24/7 it's called the ROC or remote operations center. It's based in Salt Lake City -- I'm sorry, actually it's based in California. But they are continuously informed of any sensors or alerts for all of our operating fleet across the country. So, in theory, we can very much operate this facility without any on-site personnel. We have committed to provide the on-site personnel in large response to the concerns of the community. And the alternative just would have been that we would have contracted for O&M support, but they just may not have been stationed at the plant full-time. They may -- they still would have been local and they would have maybe just traveled to the site on an as needed basis to provide the full scope of O&M tasks. But we have all the 24-7 monitoring and information being provided to AES personnel. So having site staff there Monday through Friday presumably 9 to5 is an additional layer of personnel But we otherwise have the technology and the capability to fully be monitoring this on a 24-7 basis. I believe Mike Simpson perhaps wanted to add further support to this question.

MR. SIMPSON: Yeah, maybe a bit of extra context. Thank you, Joshua. Is that at our existing sites it's very common to have, you know as Joshua alluded to earlier, some sort of inspection that might make more sense to take place after hours. And so with four O&M personnel, you have the opportunity to have people on call just as the remote operations personnel would be on call, but could actually be available. But what we've seen from all of our other energy storage sites is requests from the community that we incorporate passive response mechanisms, right? Response mechanisms that that don't require some sort of an active attendance. And so while O&M personnel are there to do manual in-person maintenance, the kind of emergency response is actually addressed in all the types of measures we've been talking about that are autonomous. That said, I'll just reinforce and repeat that even though we have those autonomous features, the remote operation control center has all the subject matter expertise and access to the rest of AES staff as well as O&M personnel who would be stationed local.

COMMISSIONER JOHNSON: Okay. Thank you. I think part of my understanding of concerns about the sort of human oversight at the site, it makes sense that when the panels are off, you know, there may not be and there's sophisticated mechanisms for monitoring the BESS there may also be some sort of concern for outside factors that are not monitored by the sensors, right? Where your sensors are monitoring for potential defects or anomalies etc. But the environment that this site is placed in also presents possibilities. So I think there may be some benefit to having even a single person able to respond as a human being with, you know, all the capabilities that we have you know robots AI are getting impressive but there the human assurance is something that I'm hearing from the community.

So I have one final question and then I think at least one other commissioner does. This regards to the PFOA and forever chemicals. You address that in your presentation. What are the PFOA forever chemical levels in parts per billion that are used in this project?

MR. MAYER: I'm not sure if I can give a specific response to your question. I think what I want to attempt to respond with respectfully is there is no

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expected PFA release through the operation of this facility. My understanding is and there and again there's tens of thousands of PFOS, it stands for per- and polyfluoroalkyl substance and if you start to Google it you'll find that they exist in our coffee filters. They exist in water bottles, I mean it's like it's everywhere. So the important thing is what specific PFA is of your concern. And my understanding is that in the construction or the product itself of a battery module or a solar module there may be PFA but it's not in a form that is can be released. And so in the operation in the construction operation of the facility there is no expected manner of a PFA release. And what I understood the PFA concern to be was the conflation and rightly the concern without proper study of prior PFA contamination that is known to occur in New Mexico. I believe La Cieneguilla is a community that I've become aware of that unfortunately suffered from the use of aqueous film foaming – aqueous film foams utilized to suppress fires I think on a National Guard facility and that and that caused groundwater contamination. What our clean agent fire suppressant is, is this FK5112 which unlike aqueous film forming foams is a non PBT. So AFFs are PBTs. They are persistent biocumulative toxic as determined by the EPA. And that was a source of contamination that that community and I believe and some others have become aware of unfortunately and it's arrived in their Groundwater. Ours is a non PBT PFA. So it's not persistent. It's not bio-accumulative. It's not toxic. It's approved by the EPA for use. And so that is utilized only in failure scenarios which are not expected because I do think it's worth mentioning that in our video demonstration of a single cell failure that is only after seven different levels of system redundancy of gas temperature cell sensors that if there's any deviation from an acceptable operating threshold cuts current. So that the cell actually never even arrives to the point of a thermal runaway where the fire suppressant is applied. So, and Mike can verify this for me, but my understanding is that in this system architecture and the product that we proposed use here and it's six plus years of use, the fire suppressant or I believe it's only three years of this specific direct injection, it's not even been deployed in any of our facilities. And I my understanding is we don't even have a single battery cell failure, but that there's several other mechanisms before you get to that point. So again, in a hyper unlikely scenario where the clean agent is even utilized, it's a very small amount. It's vaporized upon contact and again it's within a fully contained vessel which is this battery energy storage container. So there's no mechanism or means for that substance which is deemed safe by the EPA and is vaporized upon contact and has a less than 7-day atmospheric presence to again enter groundwater in any form.

COMMISSIONER JOHNSON: Okay, thank you for that additional detail. I yield.

CHAIR BUSTAMANTE: Thank you. The following actually we will now go into -- actually we have another commissioner who has some more additional follow-up questions. The questions would be directed specifically to the applicant or to staff as it may be applicable to the applicant in their ability to respond. Okay. Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Yes, as all our questions have been. Thank you, Chair. It's been mentioned in your presentation as well as –

CHAIR BUSTAMANTE: I'm sorry. We will have questions specifically for staff because the applicant will be leaving.

COMMISSIONER CACARI STONE: Right. This question is do we had a

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fifth bucket as we agreed that I had a fifth bucket. This question is for AES. Okay.

And it's been mentioned that you will produce power equal to up to 34,000 households. I didn't see in your presentation or any other evidence based on your similar sited solar facilities; what percent actually goes to households in reality and what percent goes to businesses and other receivers of that power?

MR. MAYER: Yes. Thank you for the very good question, , Commissioner Cacari Stone. So, I would like to again clarify and I attempted to do this other day, but I want to further clarify that when we reference the powering of 34,000 homes, that is to help turn energy speak into something that is hopefully understandable for the layperson. So it is an equivalent that we're speaking of, but we're not trying to say that this project's going to directly power all the residences of Santa Fe. We are trying to say, hey, what is 271 gigawatt hours? What does that mean? Because for most people, that's a number without significance. So then if we look at what typical household energy electricity consumption is over a year and when you then look at the amount of energy that we expect to produce that is the number that we communicate is the equivalent. But when you inject electrons in the grid, they are supporting the system throughout and they are largely satisfying the closest demand like the closest demand on the system and so it is reasonable to assert that this project is going to largely provide power to Santa Fe and at times it's going to provide more than that as PNM stated in the *Search Light* media article in which it could further also support loads in Albuquerque.

But we are not trying to say this is specifically powering all the residents of Santa Fe. It's going to power all of their PNM ratepayers. But just to help understand and quantify what that is, that was the purpose of that citation.

COMMISSIONER CACARI STONE: Yes. Thank you. And again, I'm just looking at the CUP approval criteria number one, health benefits, the health and well-being of the actual community here in Santa Fe County. And I'm trying to get a sense of decision-making process or distributive processes, distributive of solar resource, how that happens, who makes that decision, PNM, whether the businesses get it or the households get it based on that comparable estimate of solar power.

MR. MAYER: So once an electron enters the grid, it does not distinguish who is utilizing the power. It supports the system. So again it there would be no number to say that this project specifically supplying power to Ms. Johnson's house but not to you know Mr. Greene's house -- I'm sorry, I didn't mean to reference you commissioner. Trying to think of the first last name I could.

So does that help? It doesn't go to a specific customer.

COMMISSIONER CACARI STONE: Well, I heard in the testimony and that PNM allows customers to choose if they want solar or –

MR. MAYER: So that's accounting. So, effectively that is and it looks like Mike also wants to pine so I invite his comment but when I was talking about what is broadly called a green tariff. It is a manner on which on paper a new a customer with a new load request seeking a lot of power can help directly finance and contract the addition of that power. If it's a co-located facility then yes it may directly power it but if it's cited somewhere else it's going into the system but there's a means of accounting with PNM that is financing that injection of power. Mike, did you want to add something?

MR. SIMPSON: Yeah, may maybe an analogy that might be helpful. Because I think this is like, this is a great question and it's really I think it's I've had I've

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been challenged to understand it. But maybe a good example would be if -- someone made the example the other day I think in public comment about bringing a bucket of water to a pool and adding that in. I think water is a good analogy. That one might not directly translate to the grid, but we could think about the water system throughout the city as a good example. So, if I dyed a drop if I put a droplet of dye into you know a few droplets of water in a mainline pipe supplied to the city and then trace that throughout, I may not be able to say as Joshua said that it goes to a specific house, right? Because the water is going to go wherever the first faucet turns on basically. But the same thing is basically true of electrons in a network. Really it is a grid. These electrical lines can go multiple different directions and take turns and come back. And at the end of the day those electrons could go to a different household residence, business or other consumptive source. And so what we're doing is we're providing to that main, right? Like your house taps into the main line, receives energy from there. We would be supplying into a main which is the transmission infrastructure and then from there the electrons flow passively to where they're needed. It's not even PNM necessarily controlling them individually. But because we are interconnected to a substation that serves the local community in Santa Fe, the vast majority of those electrons would be expected to flow to the path of least resistance which would be the Santa Fe community.

MR. MAYER: And if I could just finish Commissioner Cacari Stone to address part of your question about the benefit of the residences, as we spoke to the concept of a fixed price contract that PNM being an over sighted investor-owned utility should be expected to translate a fixed low price of energy over 20-year period to their own customers with their own regulatory approved you know markup on that. So by providing a fixed cost of power for two decades, rate payers indirectly from AES but more directly from PNM would benefit from a secure, safe, reliable, secure of power over multiple decades.

And then additionally there's obviously the property tax benefits that we have talked about that would flow to benefit schools first responders other county resources. and there's even scenarios, and Mike would be able to speak to this more, but there are even scenarios where our projects, include something called black start capability or if, you know, PNM operating the larger transmission grid needed to turn down certain or turn off certain transmission lines in light of, you know, high winds or forest fire danger. The benefit of having a generation source close to your city is if you know two of three lines into your city are down for emergency purposes or whatever our facility can provide support to be able to operate to set and operate on a frequency that can provide a resilient source of power when otherwise conditions may/would have otherwise forced a complete blackout or brownout on the facilities. So there are benefits to distributed generation that you get with state-of-the-art facilities like this. Importantly coupled with battery storage. Without the batteries, you would not be able to provide or render the service because the solar can only produce when the sun is out. But with the battery capability, we're storing solar power. If lines go down in the middle of the night and there's people with medical devices, you know, that or hospitals, specifically other resources on the grid, our facility can start itself back up and continue to supply. Obviously, this is in coordination with PNM who's operating the grid, but our facility can provide service to still provide power to a city if two of its three transmission lines are down. And that is worth underscoring as a contribution to the public welfare and

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well-being of a community. It's adding resilience.

COMMISSIONER CACARI STONE: Thank you. I appreciate Mike and Joshua. And again, as commissioners, we're weighing the cost and benefits.

One final category and last in terms of my questions has to do with the site locality. The scale of the commercial solar facility in relation to the location. And in doing analysis of our emails that we've received opposing, support, you know, we're looking at like just over 500 that opposed and the supporters online. We're looking around maybe 250 testimonies, same analysis and bringing because this is evidence. We had about 135 testimonies more or less and a large majority of those were opposers, but we still had strong supporters. About 85 to 90 percent of the opposers on both online pre-hearing and in the last yesterday were from the locality of the surrounding communities. So that's evidence right; lived experience of people. So I just have a question mostly for the Rancho Viejo Solar Project, had you considered other sites and localities other than this particular area? Because when you look at the map and everything provided, you know, at the localities there, but the arguments have been made is that it's really still too close to where I believe 26,000 people 26,000 people live and again 85 to 90 percent of those who oppose live in this area. Did you how did that process come about in decision making?

MR. MAYER: Yeah, certainly. And it's a great question, Commissioner Cacari Stone, which I' I'd love to elaborate on. So, there's many factors in [connectivity issue] Am I back? Okay, I'm back. Let's see if this holds.

Great question. There's many factors that go into site selection. So I'll address them in no particular order. One is as evidenced through the RFP itself is that PNM asks for the ability to deliver energy to very specific service substations in their territory. One of those substations is the Zia substation on Richard's Avenue in Santa Fe. So they are explicitly asking for bids and proposals for projects that can prove that they can deliver power into that substation. They are also asking for powered up other substations throughout the state and AES is actively developing solar power projects in other locations throughout the state, not just this one.

But based on the request from PNM, they would like to see proposals for a project that can deliver into the Zia substation. This location, this site is the closest. If you draw a circle around Santa Fe, this is the closest location that has approximately 700 acres, contiguous acres, that is flat enough, that has the terrain features that support citing the capacity that we're proposing and that is in close proximity to existing transmission line. There's often a talk that there's, you know, millions of acres in New Mexico, let's put it somewhere else. Well, we really need to refine that to what is the suitable land ideally along existing transmission corridors. We could look 30 miles south, but then we likely would instead of hearing from people saying the facility is too close to my house, you're now building this 30-mile long transmission line bringing power to Santa Fe. So by trying to site projects which are in fact safe and reliable enough to be cited in a community again there are solar panels on top of people root people's roofs. There are battery energy storage systems installed in people's garages. So this is something that can be cited in proximity to where energy is consumed. But the land is appropriate. We've performed all of our environmental diligence and surveys and determined that there are not affected threat endangered species or other you know archaeological biological resources that would suggest it not to be suitable for citing a project. So all of these

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factors including successfully securing land because that's not a guarantee. We do not own the land. We have an agreement to lease the land. There could be a brilliant piece of property, but if we cannot come to terms with the landowner, we cannot site a project there. So, we came to terms with a landowner who had land that was close to transmission, close to load that PNM is requesting a project for and all of our valuation, all of our diligence suggests that this is a safe location to build a facility.

COMMISSIONER CACARI STONE: Thank you very much. And the other questions for staff, but I understand, Chair Bustamante, that we'll hold those even if they're similar questions for the staff for another time. Is that correct?

MR. MAYER: I also heard before that AES team has to leave. I just want to say that we are available to continue to answer questions as we obviously support this process and so I'm going to push my flight back in order to support the ongoing questioning here.

CHAIR BUSTAMANTE: You are welcome to stay. We arranged the questioning for staff as a separate to accommodate your schedule. If there are additional and you do leave, if there are additional questions, they would be made public and they would be made available to you and we would ask for a response in writing and they would be posted and made available to the public as well.

Is there any follow up to that, Attorney Boyd, as to how we would ensure that any questions provided to the applicant once they leave would be made available to everyone?

ATTORNEY BOYD: Chair Bustamante and Commissioners, yes, that's correct. And I also want to note that I know that certain parties with standing, I believe at least the Clean Energy Coalition are wishing to submit written responses to some of the materials that have been made part of the record and also the testimony. And certainly, they know there's a service list for providing additional filings and I'll work with growth m management staff to make sure that those submissions are made part of the record and available to the Commissioners as it consider as it continues to consider this case.

CHAIR BUSTAMANTE: Thank you. Okay. We will then take a break until 10 minutes till 12.

MR. MAYER: Okay. So, I'm sorry. May I ask is there not going to be any further questions of AES or will we also be coming back?

CHAIR BUSTAMANTE: There may be other questions of AES that will come up in the discussions, but there aren't currently questions for AES and if there are additional questions that come up, we would submit those in writing and they would be made available to both the parties and the Commission so the public would have access to those.

MR. MAYER: Would this be an appropriate time to request a closing comment from the applicant?

CHAIR BUSTAMANTE: Not at this time, no. We don't have any cross-examination at all at this particular hearing.

MR. MAYER: Okay. Is there an opportunity at all in the remainder of this process prior to your vote in which the applicant AES can make a closing comment or a closing statement?

CHAIR BUSTAMANTE: We were not prepared to have that. We could discuss that with our attorney, but that isn't something that has been scheduled or part of

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the considerations for today. Today was specifically set up for the questions that we had remaining for the applicant, the staff, and any of the parties.

MR. MAYER: Okay, yes, we respectfully would request that given that we went first and then there was obviously significant comment both from the public but also from other parties of standing. We think that it would be appropriate to summarize and provide you know closing comments on behalf of our application in part to respond to many comments that perhaps you did not have questions about but maybe we still feel like we would like to share.

CHAIR BUSTAMANTE: Okay, I appreciate that. And just for clarification, this wouldn't be the time to have any closing comments given that we have a lot of consideration to do and we're not at that point for closing comments. Was there a question from the parties withstanding attorney? I'm sorry, we're not you're not microphoned.

MR. STRANAHAN: Can you hear me now? Okay, just was curious how long the record would remain open for us to be able to file those additional items in response to the late filings that came in. If we had a predetermined time frame of how long that was. And then secondarily, if there is any chance for closing arguments from the applicant, we would ask that we be given a similar opportunity to present closing arguments as well.

CHAIR BUSTAMANTE: Absolutely. And we will take that into consideration as we need to. Thank you. You know, recognizing that everyone had specific time frames for the presentation. Commissioner.

COMMISSIONER CACARI STONE: Chair Bustamante, thank you for moving us along. I just want to be clear. I know that one of the commissioners had an appointment prior to our 2 p.m. regular Board of County Commission meeting. Are we going to be taking dedicated time to ask questions of the staff at another day or today?

CHAIR BUSTAMANTE: Thank you for that consideration, Commissioner, and reminding me of this commitment um, that our commissioner has. We did put this in this order because we can ask questions of staff. It's easier to convene at another time and have the applicant participate virtually. At this point I would ask the Commission if we want to take a motion and reconvene to ask the additional questions at another time or take a break and continue with the questioning as staff is here. But that is very much -- this particular conversation has extended past the time that was expected. So, I want to be considerate of the commissioner who has a commitment at this time.

COMMISSIONER HUGHES: Well, I think there's more than an hour worth of questions for the staff. So, probably we should meet at a separate time.

CHAIR BUSTAMANTE: Do we have that as a motion?

COMMISSIONER HUGHES: I move that we meet at a separate time. Do we want to decide now?

COMMISSIONER CACARI STONE: I second it. We have a motion from Commissioner Hughes to meet at a separate date and time.

ATTORNEY BOYD: You want to style this as a motion to recess and reconvene –

COMMISSIONER HUGHES: Recess and reconvene, yes.

COMMISSIONER JOHNSON: Could I move to executive session very, very briefly to discuss scheduling and –

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CHAIR BUSTAMANTE: To assess scheduling.

COMMISSIONER JOHNSON: Specifically for that.

CHAIR BUSTAMANTE: Okay.

COMMISSIONER CACARI STONE: I second.

CHAIR BUSTAMANTE: We have a friendly amendment to step out to executive session but we also have been able to post executive session you know break after that. So to include executive session that we would go into executive session to consider the dates for the following hearing and conclude everything after the executive session.

COMMISSIONER JOHNSON: Yes, though it may be appropriate to announce it in a from the dais if we determine that today.

CHAIR BUSTAMANTE: Yes, it would.

COMMISSIONER HUGHES: So would we come back into session just to announce the time?

COMMISSIONER JOHNSON: I think so.

COMMISSIONER CACARI STONE: Yeah. Okay.

CHAIR BUSTAMANTE: Okay. We have that as a motion from Commissioner Hughes. A second.

COMMISSIONER CACARI STONE: Second it.

CHAIR BUSTAMANTE: Second from Commissioner Cacari Stone. Roll call, please.

The motion to go into executive session passed by unanimous roll call vote as follows:

Commissioner Cacari Stone	Aye
Commissioner Greene	Aye
Commissioner Hughes	Aye
Commissioner Johnson	Aye
Chair Bustamante	Aye

[The Commission met in executive session from 11:46 to 12:10.]

CHAIR BUSTAMANTE: We are out of executive session. We do we have another motion?

COMMISSIONER HUGHES: Yes. I move that we come out of executive session and that nothing was discussed except AES deliberations as allowed by the statute.

COMMISSIONER CACARI STONE: Second.

The motion passed by unanimous [5-0] voice vote.

CHAIR BUSTAMANTE: We are out of executive session. So we have another motion?

COMMISSIONER HUGHES: Yes, I move that recess this session and reconvene on August 26th at 9:00 a.m. to continue this session.

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COMMISSIONER CACARI STONE: I second it.

CHAIR BUSTAMANTE: So we have a motion to reconvene -- to recess and reconvene on August 26th from Commissioner Hughes. We have a second from Commissioner Cacari Stone. At that time, may I include that we will at that time we will condition our questioning.

ATTORNEY BOYD: Madam Chair, I hate to interrupt, but the one remaining issue before this meeting is recessed is the issue of further written submission from either the applicant or parties with standing.

CHAIR BUSTAMANTE: There will be no more written or oral submissions from parties of interest or standing.

ATTORNEY BOYD: I think we need a decision from that. So we need a I would need a motion for that would be a separate motion.

COMMISSIONER HUGHES: I want to make a separate motion on that. Yeah.

[Discussion occurred on which motion to act on.]

CHAIR BUSTAMANTE: We have a motion from Commissioner Hughes that there will be no further written comment.

COMMISSIONER JOHNSON: Second.

CHAIR BUSTAMANTE: A second from Commissioner Johnson.

COMMISSIONER GREENE: And just for clarity, that is from the applicant or parties from with standing.

CHAIR BUSTAMANTE: No written or further comments from the parties of interest. Sorry, why do I keep saying parties of interest?

COMMISSIONER HUGHES: Parties of standing.

CHAIR BUSTAMANTE: Parties of standing and the applicant. We have a motion from Commissioner Hughes, a second from Commissioner Johnson. Can we have a roll call vote, please?

The motion passed by unanimous [5-0] roll call vote as follows:

Commissioner Cacari Stone	Aye
Commissioner Greene	Aye
Commissioner Hughes	Aye
Commissioner Johnson	Aye
Chair Bustamante	Aye

COMMISSIONER HUGHES: Okay, now I can make my motion that we recess this session and reconvene August 26th at 9 a.m.

COMMISSIONER CACARI STONE: I second that motion.

CHAIR BUSTAMANTE: Motion from Commissioner Hughes and second from Commissioner Cacari Stone at that time we will continue questioning.

The motion passed by unanimous [5-0] voice.

This meeting was recesses at 12:15.

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SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS
CONTINUATION OF SPECIAL MEETING

August 26, 2025

CHAIR BUSTAMANTE: We're here to reconvene our Special Meeting before the Board of County Commissioners public hearing appeal of the Planning Commission final order case number 24-5200. May we have a roll call.

Roll Call: Roll was called by Celeste Garcia of the County Clerk's Office and indicated the presence of a quorum as follows:

Members Present:	**Members Excused**:
Commissioner Camilla Bustamante, Chair	None
Commissioner Lisa Cacari Stone, Vice Chair [9:04 arrival]	
Commissioner Justin Greene	
Commissioner Hank Hughes	
Commissioner Adam Johnson	

Continuation of Public Hearing on Application by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC, Applicants, for a Conditional Use Permit (CUP), Case No. 24-5200 (Arising by Appeals in Case Nos. 24-5201, 24-5202, 24-5203 and 24-5204);

CHAIR BUSTAMANTE: I'm going to ask for a motion to go into executive session to clarify what we're going to go over this morning and to set out our understanding of our timing.

COMMISSIONER HUGHES: So moved.

CHAIR BUSTAMANTE: Motion by Commissioner Hughes.

COMMISSIONER GREENE: And I'll second.

CHAIR BUSTAMANTE: Second by Commissioner Greene. Roll call please.

The motion to go into executive session passed by unanimous roll call vote as follows:

Commissioner Cacari Stone	Not Present
Commissioner Greene	Yes
Commissioner Hughes	Yes
Commissioner Johnson	Yes
Chair Bustamante	Yes

[The Commission met in executive session from 9:01 to 9:10.]

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COMMISSIONER GREENE: All right, Madam Chair, I'd like to make motion that we come out of executive session stating that we only talked about this case and it was about procedural process at this point.

CHAIR BUSTAMANTE: We have a motion from Commissioner Greene. Do we have a second?

COMMISSIONER CACARI STONE: I second it.

CHAIR BUSTAMANTE: We have a second from Commissioner Cacari Stone. All in favor?

The motion passed by unanimous [5-0] voice vote.

CHAIR BUSTAMANTE: We are out of executive session. Okay, we are back to our public hearing the continuance in questions for the Land Use Administrator and County staff.

We will start by opening with any statements that you all would have or we're prepared to ask questions. Do you have anything you want to start with, Alexandra?

MS. LADD: Thank you, Madam Chair, members of the Commission.

I think what we would like to touch on be as we get started is follow up to a couple of questions that the Commission had for us. Specifically one of them was related to the a statement or a reference that the applicant had made to a study done at Sandia Labs that compared sodium ion batteries with lithium ion batteries as well as looking at the rates of failure and identifying root causes for that. So, our sustainability staff, Jacqueline Beam and William Donahoo, assembled a whole bunch of resources and wrote a summary about the findings of these studies that were shared with you yesterday afternoon. And the takeaway is sodium, the major takeaway is that in based on the data that's available the rates of failure are not majority related to the battery cell itself but rather the all the other components that go into the systems. And generally that's the older technology that was studied because that's where the failures have been. And then the comparison between the two types of batteries, the biggest issue at this moment in time is that the sodium ion batteries are not available at scale. There isn't what is it called when you buy things? Anyway, there -- it's just not available at this kind of scale. There's one pilot project, a five megawatt project. But it's a immature technology if -- supply chain, that's what I was looking for I'm sorry. So it is a few years down the line I think the other consideration is that sodium is less dense these batteries are less dense so you need more of them and it takes up more space. So that's just a high level summary. Jacqueline and Will are in the chambers if you have any specific questions about that work. So that was one piece we wanted to follow up on.

The other piece was looking at the wage rates. And the applicant responded that the average wage is expected to be $41 an hour. This was it. And approximately 200 employees for construction. I believe that that is our update for today's proceedings and we stand for questions unless Dominic has something to add.

MR. SISNEROS: Madam Chair, Commissioners, I also wanted to bring to your attention it was addressed to me by some of the parties of standing that some of the numbers of the letters of opposition and support were a little bit misinterpreted. I do want to let you know that they are all up on the website and part of the exhibits as part of the record, but there were a lot of letters that were sent in multiple times. So, there's a lot

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of duplicates. Plus, there's also attachments that have more than one letter or petition. So I just wanted to let you know that the numbers that you see on the website and in the exhibits are a little bit misconstrued as they don't exactly you know define that the number of support and opposition that are actually presented.

CHAIR BUSTAMANTE: Thank you for that. Yes, I did notice some redundancy. Appreciate it. Okay, we'll open now to the Commission for any questions. Who would like to start? Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Yes, in response to that, thank you for looking at that and we could verify the numbers, but I did have my liaison go through them and thank you Kim Vigil and Sara Smith, in terms of verification, unduplicated, opposition letters signed and uploaded were 497. If you remove extra duplicates, it was 418. Support letters uploaded and submitted 298 and removing duplicates 280. And then our public comments, we had 112 persons in opposition and 40 in favor. And you could verify those and get those from Kim Vigil and Sarah because I think verification was important out of respect for everyone who submitted testimony whether your opponents are supporters. Thank you very much.

CHAIR BUSTAMANTE: Any questions for staff? I'm seeing none. Someone would like to please start on the questions. Commissioner Johnson.

COMMISSIONER JOHNSON: Okay. Thank you, Madam Chair. And I since I'm going first, I hope I have the right for follow up if needed.

I have a couple of questions. I'll start with the County Manager's Office. Actually, I'm wondering we've talked a little bit about the potential for an industrial revenue bond and I just wanted for the record to hear what the ramifications of an industrial revenue bond are. I know that it's a distinct case and there are there will be some specificities to this particular one if it were to be approved and that were to be sought. But for all of us, what is an industrial revenue bond and how what are the impact potential impacts on the County if such a bond were to be released?

COUNTY MANAGER SHAFFER: Chair Bustamante, Commissioners, couple of points that I would make in response to that question. First, industrial revenue bond applications are a completely separate process under County ordinance. And so the decision, if the Board were to make it to approve this application, would not require the Board to take any particular action on an industrial revenue bond application that may be submitted in the future.

So again, two separate decisions, two separate application processes. This being an administrative adjudicatory process, that being a legislative act by the Board. Assuming that an industrial revenue bond application is submitted and the Board decides as exercising its legislative discretion to issue such bonds, the impact to the County would really depend upon the terms that are negotiated with the applicant.

What I will say without hesitation is that industrial revenue bonds by state statute do not impose any claim upon county revenue or assets. In other words, by state law, industrial revenue bonds are what is called conduit financing. Meaning that while the bonds are nominally issued in the name of the county or other issuer, the only revenue that is pledged to their repayment comes from the project itself. Most typically lease payments that are made by the project sponsor to the County in exchange for leasing the real and personal property associated with the project. So again to summarize that point the County is not on the hook for the repayment of the bonds.

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With regard to potential tax ramifications, depending upon how the bonds are structured and the deal is structured there is the possibility that the real and personal property would be exempt from property taxes under state law. However, the County could negotiate a payment in lieu of taxes with the applicant whereby the applicant would pay a stated amount determined in the bond documents.

So that detail with regard to taxes and payment in lieu of taxes would be something that would be negotiated when and if an application is brought forward for the issuance of industrial revenue bonds.

And then finally again the ownership of the actual project, typically speaking, when you have industrial revenue bonds, the issuer in this hypothetical, the County, owns the assets and then leases it back to the entity that the beneficial user of those facilities.

So again, separate process, separate application, nothing that the Board's deciding relative to the CUP binds its hands with regard to any such hypothetical industrial revenue bond application. But those would be the primary things that I would touch upon in terms of, you know, high level deal points based upon past experience. I hope that answers your question.

COMMISSIONER JOHNSON: Yes, it does. Thank you Manager Schaffer. My next question is I think for growth management it's also looking a little bit forward. I'm just trying to understand because we're ruling on a conditional use permit; if the permit is granted, at what point in the application and development process do the sort of enhanced safety protections, preparation such as evacuation routes for schools and neighborhoods, the training programs that were mentioned by the applicant for the specific materials that are contained in the site, those sorts, when do those preparations begin? And I think that's important for everyone to understand going forward.

MR. SISNEROS: Madam Chair, Commissioners, so the conditions of approval, you know, do address some of those items, but also, Santa Fe County Fire, is going to be involved in any issues on site. And then we do have Brad Call here also to identify any, you know, evacuation plans that may be worked on and he may be able behind.

MS. LADD: Madam Chair, Commissioner Johnson, I think I'll also defer any questions about the specific hazard mitigation assessment and emergency response plan for this site to Fire Marshal Blay. This is something that is worked on throughout the process of commissioning the project because you know certain conditions will emerge so it's sort of one of those -- it's a little bit more of a living document, if you will. But if you have specific questions please Fire Marshal can answer those.

COMMISSIONER JOHNSON: Is there contemplated -- well, actually, let me back up. Do you have any response to that, AC Blay, or something to elaborate on as far as how these sorts of preparations get made? Since this is a unique case, I would imagine that there's some sort of special needs that go into such planning.

FIRE MARSHAL BLAY: Madam Chair, Commissioner Johnson, should this get approved, then they would have to submit a new I mean a whole set of construction documents. And my understanding is that it would take them about 12 months to build. So within that 12 month period, the final approval happens after commissioning of the facility. So prior to the commissioning of the facility, that's when all the training of the fire department would have to take place. The evacuation would have to be part of the emergency operations plan that we would a pre-incident plan,

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response plan and operations plan. All of that will have to be already in place and trained and not only fire department personnel but also representative representatives from AES that are staying on site. So in summary, prior to the commissioning of the facility, all of these would have to be in place.

COMMISSIONER JOHNSON: Okay. Thank you. That's helpful. Does the County have in existence already a sort of community review board that investigates the safety of certain sites throughout the county as an independent entity from the operator?

FIRE MARSHAL BLAY: Not to my knowledge. Commissioner Johnson.

MS. LADD: Madam Chair, Commissioner Johnson, I think maybe the Fire Chief might be able to best describe the fire prevention process that applies countywide.

COMMISSIONER JOHNSON: Okay.

CHIEF BLACK: Good morning, Chair Bustamante, Commissioner Fulton Johnson. So with this, as AC Blay was speaking about just the site preparation and emergency planning there's a lot of documents that we've discussed and a lot of plans that we've discussed when it comes to the operational component of the fire department. All of our certified firefighters are trained not only in fire suppression but in hazardous materials awareness and operations as well. So with that, a part of our duties as firefighters is we work with all commercial structures throughout the county, whether it be a hair salon up to an auto parts store, we do an initial incident pre-plan and then that's required to be updated every year. So for this facility as a part of the construction separate from the fire prevention and the fire inspection that AC Blay would do, our operational teams would also do incident/a pre-incident plan which would entail all of the information that's collected from the higher level plans and bringing them down to a tactical level of how do we respond to an incident at that facility.

And that is something that is updated on a yearly basis. And so we reach out, we'll either do a walkthrough and also speak with representatives from any commercial facility to see if there's been any changes to their facility. And in those things in that time, we update things such as water supply, access, fire flow, how much water we need for certain areas, are there specific hazards in that area. So those are the things that we take those larger plans and take them to an operational component and update them on a yearly basis.

COMMISSIONER JOHNSON: Thank you, Chief Black. And to clarify that is a site specific tactical plan.

CHIEF BLACK: Yes sir. And that is something that we do for all commercial structures whether it be a gas station, a tire store, anything like that, we do that for all commercial structures in Santa Fe County.

COMMISSIONER JOHNSON: Okay. Thank you, Chief Black. I think I'll yield for now. Thank you, Chair.

CHAIR BUSTAMANTE: Thank you, Commissioner Johnson. Commissioner Greene, you had a follow-up.

COMMISSIONER GREENE: I kind of had follow-ups to Commissioner Johnson's question. I'm going to go backwards through them. So in terms of inspections and fire safety, you said that it was a once a year review of the site? It seems like weeds and things like that can be, you know, a twice or three times a year during you, you can

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look at things in April or May and there's nothing there. And it's overgrown by August.

CHIEF BLACK: Chair Bustamante, Commissioner Greene. Yes, sir. So, we do a once a year update to our incident pre-plan. And that is something that we that we are able to do within the Fire Department's scope to be able to go back out and update incident pre-plans for every commercial structure. This being one of those, we would update that on an annual basis.

COMMISSIONER GREENE: Okay. So, that's just the pre-planning, but doing a on-site review of non-combustible areas, these setbacks and areas with weeds or things that could grow and burn. That happens regularly, once a year, twice a year, could be more.

FIRE MARSHAL BLAY: Madam Chair, Commissioner Greene, the Fire Prevention Division will conduct annual fire inspection in addition to the guys in the field doing their own pre-planning on a yearly basis. So, we'll also, a fire inspector will be inspecting the facility to make sure that they're in compliance.

COMMISSIONER GREENE: Okay. And I can think of you know Santa Fe has windy season when a lot of vegetation is dry and you know at most risk for burning. That could be typically in April and May, early spring before things start to green up. It seems like that would be a good time to make sure that all of the combustible areas are at their clearest. Of course, same thing could be said for August when all the weeds have sort of maxed out and need to be cleared. So, I think once a year might not be the best. And of course, they're claiming to have on site people that will keep up on this. So, it would seem like it would be prudent for us to do maybe a twice, a spring one and a later summer one. Is that feasible?

CHAIR BUSTAMANTE: Commissioner Greene, I feel like we're starting to get into conditions.

COMMISSIONER GREENE: Okay, that's fine. So okay let me ask the next question then go back to going back to the question about the industrial revenue bond. I understand that this is a separate issue and we are not approving it now but because it was brought up in the application and in the discussions it seems to me that it's pertinent and we're just thinking about what's in front of us when they've already told us what the next step is. So we need to definitely understand that comprehensively.

So given that they've quoted that this is a more or less a $200 million construction project, what is the order of magnitude in what an industrial revenue bond could impact in our GRT or our property taxes? Do we have a way of, you know, rough order magnitudes doesn't have to be perfect numbers, but if we're talking about a $200 million project, what is that going to, if they went for industrial revenue bond, how is that going to impact us in the future? Different commission, different things, but you know, I see the future. It's coming if this goes down that path.

MANAGER SHAFFER: Chair Bustamante, Commissioner Greene, the short answer is, it really depends upon how the industrial revenue bond is structured and more specifically what payment in lieu of tax provisions are negotiated. I've seen those transactions be negotiated in a variety of different ways to include periodic reappraisals, to include a flat rate with an annual multiplier based upon either consumer price index increases or changes in the government equivalent relative to the cost of doing business.

So again, it really depends upon what's negotiated with the parties. You could negotiate an agreement where basically there is no impact or you could negotiate an

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impact or an agreement where there's relatively level tax payments that are going to be made over the course of the outstanding debt. So again the honest but short answer is it depends upon what's negotiated.

COMMISSIONER GREENE: But it is possible for a future commission or even this commission and future management to make a deal that is structured that could you know give away a lot more. I just want the -- I want the whole spectrum to be laid out now so that we start to, you know, we have folks up here that have never done one of these. I've never done one of these. But it's been brought up in this as a way to save them money and I guess there's some benefit to that but maybe there's also a risk to this. So I would like to see more information about that so that we might be able to incorporate that and understand that into any discussion here. For instance, like it's property taxes as you mentioned before based, does it also have an impact on gross receipts tax during the construction and does it have impact on any taxes in the sale of energy specific to a project like this?

MANAGER SHAFFER: Chair Bustamante, Commissioner Greene, so again depending upon how the transaction is negotiated and documented that would impact any fiscal impact that would be what determines any fiscal impact to the County. Generally speaking the County pays gross receipts tax on construction projects where that's not tax exempt. So when we, build something, the construction itself is subject to gross receipts tax. County purchases of, equipment are not. And so, we'll receive gross receipts tax, even when you're in a conduit financing situation on the construction itself is my understanding and experience. Whereas some equipment purchases may be exempt from gross receipts tax but again that could be negotiated out with the entity seeking the bonds.

On the property tax itself. Again, the range of outcomes are from 100 percent property tax abatement to something that approximates full recovery of the property taxes that would otherwise be due through the payment in lieu of taxes and potentially even more in theory. So again that's the potential range in my experience. But I know you said this, but I'm just going to repeat it: separate process, separate set of negotiations. Nothing that the board does with regard to the conditional use permit, ties your hands one way or another relative to that discretionary application that might be submitted sometime in the future. I hope that answers your question.

COMMISSIONER GREENE: It gets close. Thank you.

CHAIR BUSTAMANTE: Miss Ladd wants to say something with regard to this matter. Asks to be recognized.

COMMISSIONER GREENE: Sorry. Who? Oh, hi Alex. Yes. Thank you. Absolutely. Please.

MS. LADD: Madam Chair, Commissioner Greene, I just wanted to point out that Juan Torres is online. He's our economic development guru when it comes to IRBs. So, he can answer follow-up questions as well.

COMMISSIONER GREENE: Okay. Juan, did you have anything that wanted to be stated to this to clarify anything further? Okay. Well, thank you very much for being here. Thanks.

CHAIR BUSTAMANTE: Is that all you have for your questions, Commissioner?

COMMISSIONER GREENE: I think for now I'll yield until there might

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be some follow up on something. Thank you.

CHAIR BUSTAMANTE: Okay, Commissioner Hughes.

COMMISSIONER HUGHES: Yeah, I just wanted to know, and this is maybe a question for AES. are there any toxic chemicals used on the site and how are non-toxic chemicals used in terms of PFAS and fire extinguishers, herbicides, stuff like that?

MR. SIMPSON: Yes. Good morning, Madam Commissioner, Madam Chair and Commissioners. Toxic is a term used to qualify lots of different things. You know, the plastic in my pen is toxic, at a certain level. We do use a lot of different materials on the site from metals to plastics. I think we talked a few weeks ago about the fact that the clean agent that we use to suppress thermal runaway propagation is technically classified as a PFAS. Although its global warming potential is extremely small, it degrades in the environment in days and does not pose the same, you know, the same threats as a lot of other PFAS.

COMMISSIONER HUGHES: Yeah. And are there any other chemicals that I mean if that don't bio-compose? In other words bioconcentrate/bioaccumulate pose a risk?

MR. SIMPSON: I'm not aware of any other chemicals that would pose a bioaccumulative risk beyond some of the plastics that are used to manufacture say the shell of the battery module.

COMMISSIONER HUGHES: Thank you.

CHAIR BUSTAMANTE: Thank you commissioner. Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Thank you, Chair Bustamante. Thank you. I have some questions for the staff. Some of them read -- they all pertain to the CUP approval criteria number one, number three. I'll start with the codes, regulatory practices, etc. Could you explain and maybe share currently within the codes that we have, it was discussed a lot around hazards, safety and currently what standards, could you remind us and in the code, for this type of commercial battery regulation exist because they were changed to include solar commercial and solar but what do we currently have and what did you make your decisions on as you think about health safety and general welfare? I'm just trying to understand a little deeper the decision making process and the codes you referred to.

MS. LADD: Madam Chair, Commissioner Cacari Stone, so I want to unpack your question a little bit. There are a few different layers there. I think the whole purpose of land use code is really tied to public health and safety and making sure that the impacts of development aren't overly concentrated. With that said, the exhibit B, which is our use our use matrix table, is very clear that a facility that generates energy using solar power is a conditional use in this zone district where the site is located. I think what's really important to keep in mind too is the difference between a conditional use and a permitted use. So a permitted use is allowed. It has to meet all the standards of code but it's allowed. The conditional use is a whole different kind of approval process because through these conversations we're establishing the conditions that have to be satisfied before the project can even apply for a building permit.

I think what's important and I'll say it again the difference between establishing the conditions and the conditions are not satisfied at this point but we're establishing

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them. And one of the things I failed to do when I began talking this morning was to point out that staff had updated the conditions and added four additional conditions. And I don't think you want to discuss them quite yet, but obviously those are in the record now as well. And that is really important part of this process because through -- when we added conditions, this was based on the testimony. This was based on the expert opinion. This was based on, you know, all of us having staff conversations and talking through the situation. So I think, you know, that's what a conditional use permit is, it actually gives the Board a huge amount of discretion in what this project looks like and how it performs at the end of the day.

COMMISSIONER CACARI STONE: I appreciate that and we appreciate -- I've read through all your reports. Did you want to add something? Thank you.

MR. SISNEROS: Yes, Chair Bustamante, Commissioner Cacari Stone. Just to add to that and what went to the review of criteria 1 and three also is the review of the third party experts and the Santa Fe County Fire. And so we relied on them a lot to go through these documents and give us their consideration for the use of this conditional use permit and any additional conditions that they may have as well. And so with our decision came along their review process. And so that's what was also considered in our decision.

COMMISSIONER CACARI STONE: Thank you so much. And again, I appreciate your reports and everything you provided. So let's go to the health, well-being, safety, and also hazards because that's been discussed a lot in the two and a half days. And so I'll defer to our Fire Chief and also Mr. Call here.

How does the hazard mitigation emergency preparedness plan interface with our fire codes? Because it seems that we're talking separately and we do have an expert external fire code assessment. We've referred to fire codes at the local, state, international level that we've met. But how do how do the two of you interface with regards to large commercial solar and preparedness?

FIRE MARSHAL BLAY: Chair Bustamante, Commissioner Cacari Stone, that's an interesting question. The International Fire Code, it strictly refers to the construction of facilities, commercial facilities in Santa Fe County. When we're talking about a higher mitigation plan which addresses weather related events that is not part of the fire code. The fire code talks about the construction, the safety that goes into building a facility in the safest manner. So again going back to how you reconcile both of them I'm going to let the Chief -- he can elaborate.

CHIEF BLACK: Chair Bustamante, Commissioner Cacari Stone, so as AC Blay and working with Director Call we have implemented the fire codes to adhere to make sure that any construction meets current fire codes. When it comes to the hazard mitigation plan as AC Blay spoke that primarily addresses natural disasters. As there's a number of various plans that all intermix and how we develop a response I believe Director Call and his team is working on a THIRA plan which addresses more hazards facing the County both natural as well as human caused as well. With that, we take that plan and we interlace that into our emergency operations plan, which is much more at a higher level of general emergency operations within the County. And then as we have worked with various, should I say projects such as this, there's the hazard mitigation analysis that is site specific for this project that then plays into uh what we do as we were speaking earlier about our incident pre-plans that go down to the tactical level. And so

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with that there's a very high overarching view from the codes that we have adopted through our higher level planning all the way down to the incident and operational plan on the ground. That is really where we implement tactics and our emergency response.

COMMISSIONER CACARI STONE: Thank you very much. Mr. Call, I don't know if you want to add anything.

MR. CALL: Thank you very much. Commissioner Cacari Stone, Chair Bustamante. Chief Black is correct. We are engaged in developing a THIRA which is threats hazard identification risk assessment that goes beyond the natural hazards that were identified in our hazard mitigation plan and moves to all hazards. And those hazards are future and present hazards that we see in the County and this project would be included in that as a hazard and they would be again directly related to state standards and to those codes.

COMMISSIONER CACARI STONE: Thank you so much. And we already explored this question and you answered it, but I just want to reiterate there is currently no section specific mention of lithium ion batteries as a HAZMAT in the hazard mitigation and safety plan. Nor is there mention of BESS or other lithium and hazardous materials in the fire code. I guess it's just a yes no question for each of you.

MR. CALL: Yeah, there is currently no mention of those specific hazards in the hazard mitigation plan. There will be those mentioned in the THIRA should those should it become a hazard should this project be approved.

COMMISSIONER CACARI STONE: Thank you.

CHIEF BLACK: Chair Bustamante, Commissioner Cacari Stone, a specific just for clarification, are you specifically, is your question specific to fire code and what code we use to evaluate this project?

COMMISSIONER CACARI STONE: Yes. And I guess I'm just trying to assess because I'm honoring all the evidence that's come forth today and assessing where we are with the County and where we are with this decision making. Yes. Thank you,

FIRE MARSHAL BLAY: Chair Bustamante, Commissioner Cacari Stone, again, I think there's a lot of confusion between hazard mitigation analysis, the Santa Fe County hazard mitigation plan that only deals with natural events or disasters. But to answer your question, as far as the codes that are going to be implemented for the construction of this facility are going to be the 2021 International Fire Code, 2021 International Wild and Urban Interface Code, the 2023 edition of NFPA 855, as well as ordinances 2023-06 and-9 which actually adopt all of these codes and become Santa Fe County Fire Code.

COMMISSIONER CACARI STONE: Sure. Thank you. This sounds very comprehensive, but does any of these codes are they up to date and modernized to include solar, lithium, and what we have on the market today in terms of those risk?

FIRE MARSHAL BLAY: Chair Bustamante, Commissioner Cacari Stone, yes. IFC 2021 is a whole chapter related to these facilities, chapter 12 specifically section 1207 and the whole of NFPA 855 is dedicated to solar systems and battery energy storage systems and their safety.

COMMISSIONER CACARI STONE: Thank you very much. And if I may, Chair Bustamante, I wanted to go back to a question I had last the last time we met and this is for Miss Ladd and Dominic, Mr. Sisneros. So I noticed there wasn't a fiscal impact report in the staff report regarding the conditional use permit and there has been

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discussion and evidence. In fact, it's been brought up that there would be a fiscal impact on the County and I think Commissioner Johnson and Commissioner Greene were getting a little bit to this. Why was there not a report? Did you see no fiscal was there no cost analysis or cost impact to our County government revenues at all or to our human resource needed?

MS. LADD: Madam Chair, Commissioner Cacari Stone, because of the nature of this project, so the ongoing operations wouldn't use County water, there would not be traffic issues created by this site. There's not really an access, you know, nothing needs to be really improved on Route 14 other than just a minimal access point. There aren't additional kids going to school or creating fiscal impacts that way. It was determined that we didn't need a fiscal impact report at this stage of the game. And as Manager Shaffer pointed out, the IRB conversation is a different process and will dive pretty deeply into some of those issues.

MR. SISNEROS: Chair Bustamante, Commissioner Cacari Stone, and as Alex mentioned you know and in our report we did state that the Land Use Administrator at the time deemed that it was not necessary as we didn't find that there you know were any changes in revenue and cost of any local government jurisdiction that were going to occur for this project.

COMMISSIONER CACARI STONE: Okay. So I'm just curious since this is a first of its kind project and again I commend you all for doing a tremendous job in going through this. Would you say that other solar commercial projects for other counties have? Did you look into any cost analysis or cost benefit analysis to sort of expand the scope of well maybe there would be because it seems like there are costs that would be impacting our County resource, staffing, training, fire we're going from a 30,000 gallon to 60,000, getting trucks out there changing plans -- that there is some sort, and I'm trying to tease that out. So, I appreciate your expertise.

MS. LADD: Madam Chair, Commissioner Cacari Stone, I'm going to defer a little bit of the costs of the fire response and the fire prevention to the Fire Department because that is something that is covered in their budget.

I think to answer the question of whether it was compared to other projects in other counties, you know, that's not typically part of our review. And I think you know the location is very different from the location of other projects. It's a little apples to oranges, I think, at this stage of the game. Of course, the next project that comes along in the County of Santa Fe now we have something to compare it to. So, we'll have gained a better understanding down the road, I think.

MR. SISNEROS: Chair Bustamante, Commissioner Cacari Stone, and just to reiterate, the 30,000 gallon water storage tank for fire prevention that has been a conditional of approval to be upgraded to 60,000 gallons. Those tanks are provided by the applicant, not by the County. So, I just wanted to reiterate that as well.

COMMISSIONER CACARI STONE: Thank you so much. So the next question, let me get my thoughts here together in terms of detrimental to the health, safety, and general welfare of the area. Does the County land use process in looking at CUP approvals consider the cost to human beings? Because we're talking about the public and thinking about the public welfare and there's been a lot of testimony on potential risk and costs to the people that live in the area. I'm just curious, have we ever considered the people-scape, not just the land use?

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MR. SISNEROS: Chair Bustamante, Commissioner Cacari Stone. Yes we do anticipate that and that is another reason why we use the third party resource, you know, with the Atar Fire to review the application as well. And that's why also the additional condition of a plume study was required at the time which had been provided also by the applicant since so we definitely do look at those items and we definitely do look at our third party reviewers to identify those issues as well. And is one of the reasons why there's you know mitigations and you know procedures in place you know such as the 30-foot defensible space to ensure that there's no wildfire spread not just for the for the site and for the surrounding sites but also to make sure that safety that for the surrounding neighborhoods are also taken care of and accounted for as well.

MS. LADD: Madam Chair, Commissioner Cacari Stone, if I could also add to part of, you know, if we tried to have the Land Use Code cover every single possible extenuating circumstance, it would be 7,000 pages long. So what we do a lot of times is we refer to the other laws that apply. So in this case, the fire code laws, if there's a situation, the Environment Department is the one that looks at the septic system and so that the leverage that the land use code has is to make sure those other laws are also followed.

And I would say just at the risk of being philosophical, our Sustainable Growth Management Plan really looks at some of those bigger issues of the impacts of development, but also the benefits of development for current and future populations of our County and how we can set principles to ensure that we are as sustainable as possible in terms of making sure that people have a high quality of life. And I also just wanted to point out that Abby Guidry is here from Gloria Geoscience if you have any questions specifically about the noise study.

COMMISSIONER CACARI STONE: I appreciate that. So I just wanted to reiterate when I we had met last, I requested to Attorney Boyd, I asked the question if are there any state laws that regulate or provide minimal standards for large commercial solar and I believe the answer for the record was no. So you weren't able to refer to state laws. So you're right now dealing with our current codes that were updated in again 2016 is that with some tweaks with the definition of solar. I just want to be sure I'm clear.

MS. LADD: Madam Chair, Commissioner Cacari Stone, that is correct. The code was written in 2016 and the updates were 2022. That's correct.

COMMISSIONER CACARI STONE: And just one last question. Thank you, Chair, for the time and everybody.

One last question is around conditions and currently how many conditions with your initial report plus the current four just for reminder are in there under this conditional re use permit that the staff has recommended in the review of the applicants.

MS. LADD: Madam Chair, Commissioner Cacari Stone, I believe when we went to Hearing Officer, we had 17 and then at the first hearing in front of this body, we had 22 and now we have 26.

COMMISSIONER CACARI STONE: Okay. And for the record, since I don't have the history or the expertise that you have, what's typical for large commercial projects and for solar projects? I'm just curious about is there like a normalized average of conditions when we move forward or do we keep adding conditions? Just give me a sense of where we stand in that continuum?

MS. LADD: Madam Chair, Commissioner Cacari Stone, I will defer the

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institutional historic knowledge to Mr. Sisneros because I haven't been here very long. But I would say like that's the beauty of a conditional use permit. It's applied in situations where there's no on-size-fits-all type of regulation. So that's why it's can be highly customized depending on the specific project proposed and where the site is and the locate and conditions related physical conditions of the site etc. But I'll defer to Dominic to just kind of give context for past CUPs.

MR. SISNEROS: Madam Chair, Commissioner Cacari Stone, so as Alexandra mentioned, you know, conditional use permits vary on what type of project it is. It can go from an accessory dwelling unit that's in an overlay which typically is going to have just a few conditions up to a retreat which has maybe 11 or 12 conditions. This particular project, we looked at with a very prescriptive eye with the help of the third party reviewers, you know, for the environmental impact report and the third party reviewer, Atar Fire for the fire hazard mitigation. And so that's why this one has a high impact and high level of conditions because we wanted to make sure that we met every single one of those conditions that were relayed to us and also acknowledge the concerns that were coming from the public and the parties of standing as well. So this one is going to be you know a non-typical higher level of conditions that we want to implement on any type of approval of this and which may not be necessarily typical of any other CUP.

COMMISSIONER CACARI STONE: And is there at any point with your expertise and the team's portfolio where you decide there's just way too many conditions so it's a not good it's not a good enough fit just so I understand what's the parameters of what we typically do with the County.

MS. LADD: Madam Chair, Commissioner Cacari Stone, I guess the proof is in the pudding. So, we're identifying the conditions that are necessary that we feel need to be satisfied before this project is built. If the applicant gets to the point where they just can't meet the conditions, you know, it's sort of on them. And if they can't meet them, they won't build it. So, that's why, we don't decide there too many conditions. The applicant through the implementation and through satisfying the conditions might get to that point and say I we can't meet all of this but that's not the role of staff and that's not really relevant to approving the conditions if that makes sense because they will fall out the way they fall out.

MR. SISNEROS: And just to add to that I would say that again it is a conditional use permit and the SLDC doesn't recognize any maximum number of conditions that must be implemented either minimum or maximum number of conditions to be to be implemented. And these conditions were added at our discretion um that's just to add to that.

CHAIR BUSTAMANTE: Thank you all so very much that's all I have for now Chair. Thanks are there any further questions for staff? My questions were answered so I don't have any further questions. There any further questions of the Commission at all? There will not be closing statements as stated at our last meeting. We will since there are no further questions, we will -- I'm going to ask for a break to executive session. Can we have a motion?

COMMISSIONER HUGHES: I move we go to executive session.

COMMISSIONER JOHNSON: Second.

CHAIR BUSTAMANTE: We have a motion from Commissioner Hughes to go into executive session and a second from Commissioner Johnson. May we have a –

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COMMISSIONER HUGHES: I guess we should say for the purpose of discussing this project.

CHAIR BUSTAMANTE: For the purpose of discussing this project. Thank you. Can we have a roll call vote, please.

The motion to go into executive session passed by unanimous roll call vote as follows:

Commissioner Cacari Stone	Yes
Commissioner Greene	Yes
Commissioner Hughes	Yes
Commissioner Johnson	Yes
Chair Bustamante	Yes

[The Commission met in Executive Session at 10:02]

CHAIR BUSTAMANTE: We will call this meeting back in session.

COMMISSIONER HUGHES: I move we move out of executive session. Second it.

COMMISSIONER CACARI STONE: Second.

CHAIR BUSTAMANTE: Motion to move out of executive session by Commissioner Hank Hughes. A second by Commissioner Cacari Stone.

Motion carried by [5-0] voice vote.

CHAIR BUSTAMANTE: We have a motion to reconvene at 1:30. We will be reconvening the August 11th meeting to 1:30 today, at which time we will continue with a vote.

COMMISSIONER JOHNSON: So moved.

CHAIR BUSTAMANTE: We have a motion by Commissioner Johnson.

COMMISSIONER GREENE: Second.

CHAIR BUSTAMANTE: A second by Commissioner Greene.

The motion passed by unanimous [5-0] voice vote.

[The hearing recessed at approximately 11:28 and reconvened at 1:30]

* * * * *

CHAIR BUSTAMANTE: We are reconvening our August 11th meeting. Can we have a roll call please.

Roll Call: Roll was called by Celeste Garcia of the County Clerk's Office and indicated the presence of a quorum as follows:

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Members Present:
Commissioner Camilla Bustamante, Chair
Commissioner Lisa Cacari Stone, Vice Chair
Commissioner Justin Greene
Commissioner Hank Hughes
Commissioner Adam Johnson

Members Excused:
None

CHAIR BUSTAMANTE: Okay, we are in our reconvened August 11th special meeting. Is there deliberation?

MR. SISNEROS: Madam Chair, I wanted to make a brief clarification on condition #24; it is not a required of a 60,000 gallon above ground tank. It's actually a requirement of 60,000 gallon capacity. So that could either be two 30,000 gallon tanks, one 60,000 gallon tank, but it's actually the capacity that is the condition in condition #24.

CHAIR BUSTAMANTE: Are then any other outstanding statements. We will not be having closing comments from any of the parties. I'll open this to a vote.

COMMISSIONER HUGHES: I move that the Board deny the appeals and approve the application by Rancho Viejo Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Develop, LLC, for a conditional use permit, Case #25-5200, subject to all staff imposed conditions with the following additional conditions – and let me bring up the list:

- Applicant agrees to use non-persistent, non-bioaccumulating, non-toxic clean agent fire suppressant.
- Applicant agrees to permit County staff to inspect site compliance with hazard mitigation plan, conditions of approval and applicable codes and requirements with at least three-day notice.
- Applicant will submit annual report of reported abnormal reading on battery energy storage system units to the County Fire Department.
- Any agreements regarding supply of power generated by facility must be with a utility that has customers who reside in Santa Fe County.
- Nothing herein precludes the Board from imposing additional conditions in connection with the issuance of Industrial Revenue Bonds, such as precluding the sale of power generated by this facility outside of New Mexico.
- Applicant agrees that there will be no heavy equipment construction traffic before 9 a.m. and no construction related lighting after dark.
- (And this is a modification to condition #8) A decommissioning bond, which may take into account salvage value, will be required prior to recordation of the CUP site development plan. The bond must be in place for the life of the project and will be subject to periodic revisions that account for any increase in the estimated cost of decommissioning no less frequently than every five years.
- Development rights must be irrevocable severed from the 5,700 acres surrounding the project site prior to recordation of CUP site development plan as proposed by applicants and representative of the surrounding landowner during public hearing.

And this Board will issue written findings of fact and conclusions of law in support of this decision at a later meeting.

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And I will comment on my motion later on but that is the motion.

COMMISSIONER CACARI STONE: I will second the motion.

CHAIR BUSTAMANTE: Motion from Commissioner Hughes and second from Commissioner Johnson. We will open the floor to discussion starting with Commissioner Johnson and moving this way.

COMMISSIONER JOHNSON: I want to thank everyone for spending many, many hours with us. This is a very challenging decision. There are a lot from all sides to weigh and it was not an easy decision that I have reached. I want to recognize that there are legitimate worries about safety and that it's very important that we have these public processes where we're able to hear from the community, gather evidence from all corners and weigh the expertise of various fields. This is a complex case as mentioned by the Land Use Director. It was one of a kind, the first that we've seen in Santa Fe County and so it's not easy to come to a conclusion on it. So thank you all for taking the time with us.

My justifications for voting and I will be voting in favor of this condition use permit, the Sustainable Growth Management Plan explicitly supports that type of project. It explicitly calls for renewal energy development. It quotes, Santa Fe County will be a leader in renewable energy regulations, requirements, incentives, production and use and support renewable energy infrastructure to enhance local energy independence as a means to improve economic opportunities. The zoning code within our own code allows for commercial solar facilities as a condition use in the rural fringe zone. This isn't a variance request and is part of our code.

A very important consideration was the expertise of our own County Fire Department, thank you for weighing in on this The County Fire Department has deemed the application complete and safe. An independent third-party consultant has done the same and as we have learned through the extensive documentation, this BESS system uses the latest generation technology meeting NFPA55 and UL9540 standards.

The environmental benefits to this are extremely important to me as an environmentalist myself and as someone with a seven-year old child who will inherent our future.

Projects like this are critical for meeting our renewable energy goals and replacing retired coal plants. This project uses minimal water while also serving 37,000 plus homes. It's just a remarkable rate of efficiency in our water scarce regional. Generation locally reduces transmission losses. It also improves meaning decreases cost for consumers and it is sited in a place that has the lowest wildfire risk in the County.

The technical advantages to solar can't really be overstated. We've heard from many, many experts, including those in the opposition, and that expertise has helped me arrive at a conclusion that there are no ways to zero-out risk. It's very important that we take seriously the considerations of public safety when making this decision but making the – the evidence that I have – that we have weighed has shown me that there are many, many redundant, multi-layered systems for fire prevention. There are both internal and external mechanisms that will prevent the sort of catastrophic fires that have been cited and that the risk of something like this causing a catastrophe are actually much less than 300+ homes, than a gas station, than you name it – people setting off fireworks, etc.

So, I will vote yes, to approve the Rancho Viejo Solar Project conditional use permit with the understanding that AES must fully comply with all of the safety

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conditions and ongoing County oversight requirements and the conditions that we have also imposed as a Board, thank you.

CHAIR BUSTAMANTE: Thank you, Commissioner Johnson. Commissioner Cacari Stone.

COMMISSIONER CACARI STONE: Thank you, Chair Bustamante. First I want to thank everybody for the amount of energy, effort, expertise and time that went into this process dating back since 2023, particularly for our County staff and team. Thank you AES for putting a lot of time into all of your application materials and for all of those who came out in opposition and support.

I want to address not just everyone here but everyone who might be online and later be listening. We are definitely not going backwards. This process has pushed us to see solar as a critical part of our future in Santa Fe County. And we should be a leader in renewable energy. I 100 percent fully recognize the urgency of addressing climate change and the grave need to transition to clean power. I support and have always supported, as another environmentalist, renewable energy development now and solar energy. Yet, the County leadership also demands that we proceed with diligence, transparency, and responsibility. Today's decision sets precedence for how Santa Fe County will evaluate all future projects. My vote is not about against solar energy. It is about against this particular proposal by AES because it does not meet, based on the evidence I've reviewed, written, submitted and testimonies, it doesn't meet the highest standards we owe all of our communities.

After weighing the evidence, the research and testimonies as evidence themselves, I think that the criteria of our Sustainable Land Development Code and growth management that the application falls short to safe guard, particularly, the health, safety and welfare of our communities. Number one, it poses technology risk. AES is proposing outdated lithium battery systems know for fire hazards. We cannot succumb to just moving now for urgency but assure that safer alternatives, such as sodium ion or lithium ion phosphate batteries are used. Just down the road, Sandia is leading this, MIT and globally many. Battery safety and fire risk and real life conditions and not tested just in cement parking lots matter for 26,000 residents and the rest of the community, schools, a state prison. Adult detention facility and many more who live in the area. AES proposes that they do have -- not have had an environmental impact, but yet the environmental impact report in the packet submitted by our County staff, shows that there is impact on our vegetation, on our migratory birds, on the spotted owl, on the wildlife that is in the area and on the landscape itself, including cultural impacts, which I heard no particular plan to mitigate or to assure that we prevent this. There is the importance of the public health impact. The proximity of this large-scale project to neighborhoods in Rancho Viejo continues to create potential hazards and can be very detrimental to all those in the area. This is critical and important. There is also an overlook in terms of the Community College overlay district and the Tesuque Traditional area that has been cited in documents and in testimonies.

Additionally, looking at the evidence and the facts, there has been some overstating of the economic benefits to Santa Fe County, particularly. In fact, people came with misinformation thinking we would long-term jobs. There will 200 jobs for one year, less than 12 months. And possibly at $40-$45 an hour but they are temporary. The jobs, potentially, that have $100k or more are less than a handful and AES will

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mainly rely on remote employment.

There is in some ways a need for us to consider more long-term planning and consider an external risk assessment by those who are scientifically able to do so that would be very – that would show less favoritism to AES but also look at the oversight and enforcement gaps we need in Santa Fe County. We need to have staff resources and real-time monitoring capacity to enforce the safeguard that these projects would require. We also must not settle for minimal compliance. This is very new. It's the first project of its kind but we have a duty to uphold to the highest standards of public safety and environmental protection. Until state level regulations are in place and until AES or any developer can present a proposal that truly meets those standards with independent assessments, enforceable safe guards, and appropriate decommissioning and hazard mitigation plans I believe that we cannot move forward with a yes vote today. Therefore, with respect for all who testified and with deep responsibility to the constituents and I want to quote, 418 unduplicated opposers, 280 supporters, 112 opposers in real live testimony and 40 supporters in real live testimony – the others were unduplicated accounts of what was submitted on line.

At this same time, I urge our staff and our County, as an elected official, while we have done great diligence and I commend you for the work, to explore alternatives. Smaller scale and distributive solar projects, safer battery chemistries and locations better aligned with our community overlays and emergency capacity. With this, this is the way we lead Santa Fe County into a clean energy future, responsibly, equitably and safely. I have not taken this decision lightly and may stand alone in this decision, I am not sure, but this ground is my responsibility as a Commissioner to first protect the current safety and health and trust in our County government. I can't in good conscience looking at all the evidence support it as it is and I believe and assess that if we have so many conditions that this applicant needs to meet that it is not a good fit. It is a right move forward to go toward solar but we need to need to consider the County capacities. We need to consider that our code may not be up to speed and we need to consider, besides our amazing firefighters, but we need to have an integrated hazard mitigation emergency that aligns with lithium batteries and safety. And consider the cost to the County without a fiscal impact report we don't know. Santa Fe County will be bearing the burden along with our residents not AES. Thank you.

CHAIR BUSTAMANTE: Thank you, Commissioner. Commissioner Hughes.

COMMISSIONER HUGHES: Are you going to go last than, Chair?

CHAIR BUSTAMANTE: I am.

COMMISSIONER HUGHES: All right. Well, Adam Johnson gave a very thorough evaluation of all the things I studied and concluded that this is a safe project. So I'd like to say a few things.

I live in Eldorado a couple miles from the project. I think that this project is much, much, much safer than the alternative. The alternative would be a 332 home development with 332 potential fire hazards, 332 people who may or not use PFAS and other chemicals and all sorts of things, create traffic, congestion in the western end of Eldorado. Right now, as it is set up now, you can't even see the project from Eldorado. The chance of fire is so minimal. Again, so minimal compared to anything else. And the chance of a plume reaching Eldorado also minimal. Whereas, if we had cars and trucks

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next door, plumes would reach us every day. There's a gas station on Route 14, who already provides much worse fire hazard than this would.

So I studied this. I've been studying this for literally my whole term, five years, and we introduced the new fire standards so they would meet them. We increased their compliance with fire standards to 10 feet between the containers containing batteries instead of 3 feet, even safer. And so I think this is the right decision.

We are living in a climate crisis. As many of you will remember if you have lived here as long as I have, 30+ years, it used to be cooler in the summer. It used to be cooler in winter, we used to actually get snow. So the climate crisis is already hitting us and we have to act now. We can't wait another two or three years for better technology. The technology will always improved. Maybe the next project will be a different technology even safer. But this is so much safer than fossil fuels – it's ridiculous.

So that is why I am going along with my proposal.

CHAIR BUSTAMANTE: Commissioner Greene.

COMMISSIONER GREENE: Thank you, Madam Chair. First off, thanks to this Board. This has been a great exercise in us discussing – I appreciated this process more than the ones that we have gone through with all of our land use cases that I have been on this Board with for two years and eight months at this point . We were much more deliberative. We took our time. We discussed different perspectives. And that was unique or at least much more in-depth that we have had in the past. So I really appreciate the relationships that we built during this regardless of how this vote goes.

Thank you to staff. You guys have really done most of the legwork. There's a lot of divisions and departments and folks here from Legal to Growth Management to Fire to Public Works to our jails and to everybody who has piped in including the consultants, great job guys, thanks for sticking with us and getting us to where we're at now. And then thank you to the community on both sides of this issue. This is a tough thing to decide. I think we did a very good job and our staff did a good job of getting everybody in an orderly manner to us with their points of view, their opinions, their expertise – all of the different aspects that go into this.

Nonetheless, there are two sides to this and it's easy for them either. So somebody, some people are going to walk away disappointed today and I'm sorry for that but in reality that's where this comes to and we have to make a tough decision here.

I want to add that one of the things we did in some of the meetings is that we really looked at some of the conditions that we could apply to this. And we haven't asked the applicant if they're okay with it. Some of them, I think they agreed to previously. But we did make a condition that this power goes to Santa Fe County utilities so that while there is some low-level risk and some use of pristine ranchland, this helps us by leading by example and to providing power potentially and probably to our community here. We get calls for environmentalism and sustainability and we're answering that call by creating a project and helping a project that will power Santa Fe and Santa Fe County.

We increased the distance between containers because that seems to be a best practice that would help in the off chance of a fire in one container. We increased the bond requirements for decommissioning to make sure that it addresses all of the raising costs and changing times. We also added the condition to make sure that the land around it was preserved in perpetuity so if this project does go forward it will preserve thousands

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of acres around it and to allow for open space and wild life space between Highway 14 and Eldorado and 285 and it will be good for the communities there as well.

At the end of the day, the impacts that we're seeing here do not exceed the impacts that we see with so many projects that we approve here both administratively via the Planning Commission and other developments that pass through the Board of County Commissioners. This seems dramatic but it is actually in some ways a pretty safe project.

That's my comment for now and I look forward to hearing how this vote goes. Thank you, Madam Chair.

CHAIR BUSTAMANTE: Thank you, Commissioner. I want to echo everything everyone has said at the dais in gratitude for staff, for fellow Commissioners I believe that every last one of us did our due diligence in our respect to assure that the community has the safest option for the use of that land.

I do have a few – it just wouldn't be me if I didn't have a few things to say on what could have been done better on behalf of the applicant and for the parties of interest. It is not new to me that people provide incorrect information to community members when something is in their interest. There were scientific otherwise stated facts that were not demonstrated in the science. I am the only Commissioner sitting at this table who has actually carried a business card that said, environmental scientist. I worked at Los Alamos National Laboratory for 17 years. I have a background in health and safety. I understand to the end of what it means – what risk evaluation is, what relative risk is and the risk that has been assessed for this particular operation.

Commissioner Hughes is absolutely right, houses/residential will carry far more impact on any type of potential fire given the equipment that has been stated will be put near the batteries and the separation of those batteries. As well, I am the only person who sits at this dais whoever donned a fully Level A to address a hazardous material event at the technician level. What that means is I am really grateful for our chiefs who have stated that we have people trained at the operations level. The operations level is the coordination and the pulling together of a team that absolutely I have no question can address this type of hazard. Hazards aren't specific to a constituent. They are consistent with the characteristics of a particular anolyte of group of anolytes. The science hold that the risk, the relative risk, to other impositions is relatively low comparably speaking.

That also being said, a big concern that I have with the applicant is, you don't have the trust and I'm sorry but the big issue has been the trust. There have been people who have stated that they don't mind solar at all – and I'm not going to say that I don't believe that there are people who don't have the not-in-my-backyard concern, I understand that – but I also understand having a trustful relationship with community can usually, can usually, open doors for more consideration. And what we heard over and over was that there is a lack of trust.

That being said, I do want to say something about our staff and the rigor that was put into the evaluation. It was stated earlier that there was preferential treatment given to this particular applicant. I don't believe that to be true and we do not have any evidence of it. I do understand that there were opportunities to provide information to the applicant and we did not do it because we were not going to give the applicant a leg-up in any part of the process. Just to be very clear.

I would like to call a roll call vote please, for the motion on the table.

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The motion passed by majority [4-1] roll call vote as follows:

Commissioner Johnson	Yes
Commissioner Greene	Yes
Commissioner Hughes	Yes
Commissioner Cacari Stone	No
Chair Bustamante	Yes

CHAIR BUSTAMANTE: Thank you all.

3. Concluding Business

A. Adjournment

Commissioner Johnson moved to adjourn and Commissioner Greene seconded. The motion passed without opposition and this meeting at 1:57 p.m.

Approved by:

Camilla Bustamante, Chair
Board of County Commissioners

ATTEST TO:

KATHARINE E. CLARK
SANTA FE COUNTY CLERK

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
BCC MINUTES
PAGES: 213

I Hereby Certify That This Instrument Was Filed for Record On The 11TH Day Of September, 2025 at 01:59:09 PM And Was Duly Recorded as Instrument # 2066961 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
Deputy _____ County Clerk, Santa Fe, NM

Respectfully submitted:
Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

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