

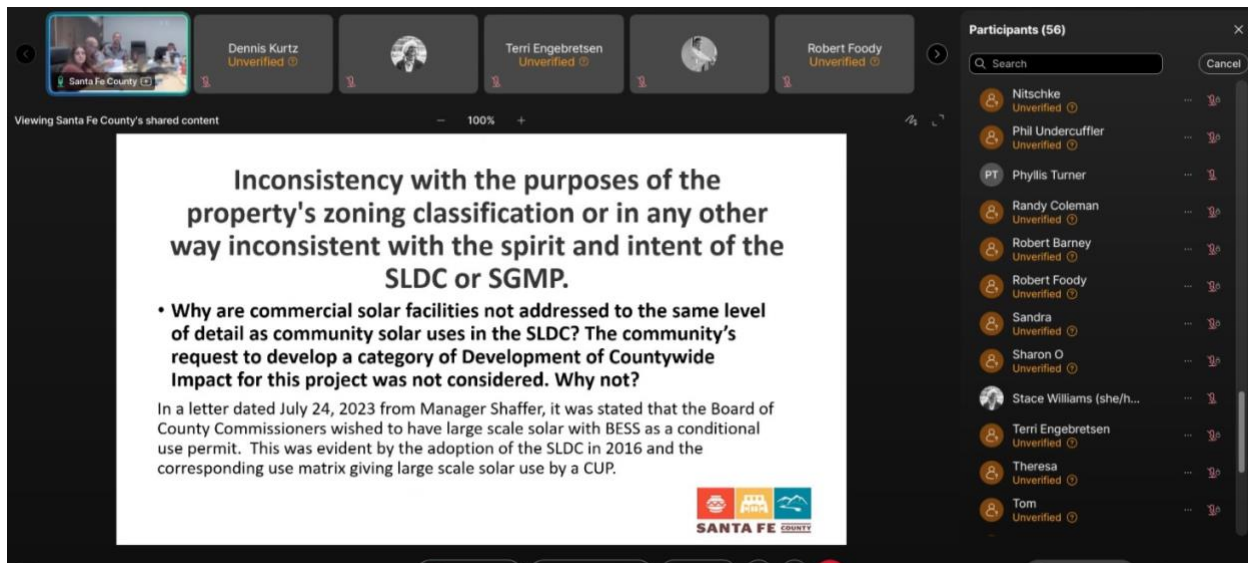
County Manager Gregory S. Shaffer  
Per email: [gshaffer@santafecountynm.gov](mailto:gshaffer@santafecountynm.gov)

Santa Fe, October 24, 2024  
Regarding virtual public meeting October 22, 2024

Dear Mr. Shaffer,

In the virtual public meeting hosted by the County on Tuesday October 22, 2024, I brought to attention several times that an electric power generation facility per the Sustainable Land Development Code (SLDC) is prohibited in the Rural Fringe zone where the Rancho Viejo Solar Project (RVSP) is planned.

At a certain point the subject was whether this project was inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or SGMP, see the screen shot:



Screen shot virtual public meeting

The discussion then focused on whether large-scale solar, which this project by all means and definitions is, was eligible for a CUP. Except for slide 1, which mentioned large-scale solar as the subject of these meeting, this was the first time it was admitted we are dealing here with large-scale solar. Large-scale solar is a more fitting definition than the much more limited commercial solar definition.

To prove this project was not inconsistent with the purposes of the property's zoning classification, a letter dated July 24, 2023, written by you to Mr. D. Kurtz from the San Marcos Association, was put forward by the County Officials. It was stated that the Board of County Commissioners wished to have large scale solar with BESS as a conditional use permit. This was supposed to be evident by the adoption of the SLDC in 2016 and the corresponding use matrix giving large scale solar use by a CUP.

However, in your letter to Mr. D. Kurtz, large scale solar is not mentioned, see Exhibit 1.

Furthermore, Resolution no. 2023-093, introduced by Commissioners Hank Hughes and Anna Hamilton and signed by Commissioner Anna Hansen on September 26, 2023, just 2 months after your letter to Mr. D. Kurtz, directed staff to engage with expert consultants regarding commercial renewable energy projects in Santa Fe County and post information concerning conditional use permit application for such projects on the County's website, see Exhibit 2. This resolution does not mention large scale solar either.

In addition to those two observations, the 2016 SLDC does not cover large scale solar, but does mention an electric power generation facility, see the adapted use matrix.

SUSTAINABLE LAND DEVELOPMENT CODE																
Use	Function	Structure	Activity	Agriculture/Ranching	Rural	Rural Fringe	Rural Residential	Residential Fringe	Residential Estate	Residential Community	Traditional Community	Commercial Neighborhood	Mixed Use	Commercial General	Industrial General	Industrial Light
Gas or electric power generation facility		6400		C	C	X	X	X	X	X	X	X	X	X	C	C

Adapted use matrix SLDC 2016

If we can agree that large scale solar, an electric power generation facility and the RVSP are all synonyms for the same sort of installation, you can see that, contrary to what was presented to the public during that meeting, such a facility is not eligible for a CUP permit.

Can you please explain to me the discrepancy between what is stated in the slide at the meeting and the content of your letter to Mr. D. Kurtz?

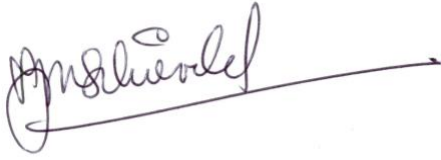
Can you please explain when, where, how and which County Commissioners communicated to you that they wished to have large scale solar with BESS? If there are any minutes of that meeting I would like to receive a copy.

Can you please explain the discrepancy between what is stated in the slide at the meeting and the content of Resolution no. 2023-093?

Can you please direct me to where it is evident in the 2016 SLCD 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 meant to inform the public on a subject that stirs the emotions up high?

Sincerely,  
Dr. S.J.M. Eikelenboom-Schieveld, MD PhD

A handwritten signature in purple ink, appearing to read "M. Schierle", with a long horizontal line extending to the right.

President of the RO New Mexicans for Responsible Renewable Energy  
Santa Fe,  
October 24, 2024  
227 San Marcos Loop  
Santa Fe,  
NM 87508  
303 548 5225

**Justin S. Greene**  
*Commissioner, District 1*

**Anna Hansen**  
*Commissioner, District 2*

**Camilla M. Bustamante**  
*Commissioner, District 3*



**Anna T. Hamilton**  
*Commissioner, District 4*

**Hank Hughes**  
*Commissioner, District 5*

**Gregory S. Shaffer**  
*County Manager*

July 24, 2023

**BY EMAIL AND REGULAR MAIL**

Dennis Kurtz, President  
The San Marcos Association  
PO Box 722  
Cerrillos NM 87010

RE: Commercial Solar Energy Production Facilities

Dear Mr. Kurtz:

I am writing in response to your January 3, 2023, letter to Santa Fe County (County) Commissioners and communications from other community members requesting that (1) the County impose a moratorium on commercial solar energy production facilities and (2) develop regulations to treat commercial solar energy production facilities as a Development of Countywide Impact (DCI) under Chapter 11 of the Sustainable Land Development Code (SLDC). Based on the following, County staff does not support these requests at this time.

First, there is no basis in existing County planning documents to treat commercial solar energy production facilities as a DCI. Neither the SLDC nor the Sustainable Growth Management Plan (SGMP) identifies this use as a potential DCI.

The SGMP has an entire element (Chapter 7) concerning renewable energy and energy efficiency premised on the following:

Energy sources which are not renewable, such as fossil fuels, are not only in limited supply but they contribute detrimentally to the environment, and adversely affect the sustainability of the economy. Greenhouse gas (GHG) emissions contribute greatly to climate change and its negative impact. The implementation of renewable energy and energy efficiency initiatives are vital to sustainability for the County. The SGMP sets forth policies to establish Santa Fe County as a model in the efficient production and use of renewable energy and energy self-reliance through the development of a local green workforce and renewable energy infrastructure.

Second, notwithstanding the above, the SLDC already goes into a significant detail regarding permissible, prohibited, and conditional use locations of commercial solar energy production facilities and contains safeguards to ensure that specific concerns with these facilities can be addressed in almost all instances. In those zoning districts where commercial solar energy production facilities are potentially allowed, they are, with limited

exceptions, a conditional use.<sup>1</sup> The approval criteria for conditional uses also ensure that general health, safety, and welfare concerns, as well as specific fire and other hazards, can be addressed, as follows:

**4.9.6.5. Approval Criteria.** CUPs [Conditional Use Permits] may only be approved if it is determined that the use for which the permit is requested will not:

1. be detrimental to the health, safety and general welfare of the area;
2. tend to create congestion in roads;
3. create a potential hazard for fire, panic, or other danger;
4. tend to overcrowd land and cause undue concentration of population;
5. interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. interfere with adequate light and air; and
7. be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or SGMP.

In addition, the SLDC empowers the Planning Commission (and Board of County Commissioners on appeal) to “[i]mpose such reasonable standards, conditions, or mitigation requirements, in addition to any general standard specified in the SLDC or the SGMP, as the Planning Commission may deem necessary.” [SLDC, Section 4.9.6.6.]

County staff believes that these approval criteria and the authority of the Planning Commission and Board of County Commissioners (on appeal) to impose reasonable standards, conditions, or mitigation requirements are adequate to address any bona fide safety or other concerns related to approval criteria that may be demonstrated by competent evidence introduced at public hearings on conditional use permits.

Further, conditional use permits require hearings before the Hearing Officer and Planning Commission, as well as the Board of County Commissioners (if the Planning Commission’s decision is appealed to it). These hearings allow members of the public to both educate themselves concerning commercial solar energy production facilities as well as voice their concerns regarding such facilities.

The record created during the review and decision on conditional use permit applications for commercial solar energy production facilities could change County staff’s perspective. But, at this time, for the reasons stated above, County staff does not support

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<sup>1</sup> According to the use tables within the SLDC, there are already many areas where commercial solar energy production facilities are prohibited. The only zoning districts where commercial solar energy production facilities are a “permitted use” are Industrial General and Industrial Light (and, potentially, Planned Development Districts). Further, each community district has restrictions on where commercial solar energy production facilities may be located. As one example, commercial solar energy production facilities are not permissible within any zoning districts of the San Marcos Community District.

Dennis Kurtz  
July 24, 2023  
Page 3 of 3

either a moratorium on commercial solar energy production facilities or regulating such facilities as a DCI.

Thank you for your January 3 letter. Please do not hesitate to contact me should you wish to discuss County staff's views on these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory S. Shaffer', with a long horizontal stroke extending to the right.

Gregory S. Shaffer  
County Manager

cc (by email):

Penny Ellis Green, Growth Management Department Director

Lisaida M. Archuleta, Growth Management Department Deputy Director

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

**RESOLUTION NO. 2023 - 093**

Introduced by: Commissioners Hank Hughes and Anna T. Hamilton

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**A RESOLUTION**

**DIRECTING STAFF TO ENGAGE WITH EXPERT CONSULTANTS REGARDING  
COMMERCIAL RENEWABLE ENERGY PROJECTS IN SANTA FE COUNTY AND  
POST INFORMATION CONCERNING CONDITIONAL USE PERMIT  
APPLICATIONS FOR SUCH PROJECTS ON THE COUNTY'S WEBSITE**

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**WHEREAS**, Santa Fe County supports the transition from fossil fuels to renewable sources of energy to combat the climate change crisis; and

**WHEREAS**, Santa Fe County is an area of abundant sunshine with large areas of potential for solar energy production and has some potential for the production of other renewable sources of energy; and

**WHEREAS**, commercial (where energy is produced for sale or profit) renewable energy projects, such as large scale wind facilities and commercial solar energy production facilities, are generally conditional uses in zoning districts where they are potentially allowed under the Sustainable Land Development Code (SLDC); and

**WHEREAS**, pursuant to SLDC, Section 4.9.6.2, "[n]o inherent right exists to receive a [conditional use permit]" but, instead, conditional use permit applications seek discretionary development approval, which may only be granted if established criteria are met (described below); and

**WHEREAS**, conditional use permit applications must be supported by various studies, reports and assessments (SRAs), as determined by the Land Use Administrator and decision-making bodies; and

**WHEREAS**, conditional use permits "may only be approved if it is determined that the use for which the permit is requested will not:

1. be detrimental to the health, safety and general welfare of the area;
2. tend to create congestion in roads;
3. create a potential hazard for fire, panic, or other danger;
4. tend to overcrowd land and cause undue concentration of population;
5. interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. interfere with adequate light and air; and

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7. be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the [SLDC] or [Sustainable Growth Management Plan]" [SLDC, Section 4.9.6.5]; and

**WHEREAS**, the SLDC empowers the Planning Commission (and Board of County Commissioners on appeal) to "[i]mpose such reasonable standards, conditions, or mitigation requirements, in addition to any general standard specified in the SLDC or the SGMP, as the Planning Commission may deem necessary" [SLDC, Section 4.9.6.6]; and

**WHEREAS**, commercial renewable energy production facilities often include battery energy storage systems (BESS), which are thought to be key in the transition to renewable energy sources necessary to combat climate change; and

**WHEREAS**, the Board of County Commissioners recently adopted the 2021 Edition of the International Fire Code (International Fire Code), which, among other things, regulates BESS that exceed specified storage thresholds and requires owners and operators of such BESS to obtain construction permits; and

**WHEREAS**, the International Fire Code also requires a hazard mitigation analysis for BESS that exceed specified storage thresholds and other circumstances; and

**WHEREAS**, the effectiveness and efficiency of this regulatory framework depends upon the availability of independent, subject matter experts to evaluate applications for commercial renewable energy projects, including, but not limited to, any required SRAs and hazard mitigation analysis, and recommend reasonable standards, conditions, or mitigation requirements; and

**WHEREAS**, the conditional use permit process provides ample opportunity for community engagement and input, through any required pre-application neighborhood meeting(s) and public hearings before the Hearing Officer, Planning Commission, and Board of County Commissioners (on appeal); and

**WHEREAS**, the efficacy of such public forums depends upon interested members of the public having ready access to information concerning pending conditional use permit and BESS permit applications for commercial renewable energy projects; and

**WHEREAS**, the Board of County Commissioners wishes to support the efficacy and efficiency of the existing regulatory regime concerning commercial renewable energy projects by directing County staff to take certain steps with regard to commercial renewable energy projects;

**WHEREAS**, Section 4.4.7.8 of the SLDC states, "The County may hire qualified technical experts to review any application submitted at the expense of the applicant in accordance with the approved fee schedule" and such fees are set forth in Ordinance No. 2016-8, An Ordinance



Amending and Restating in Its Entirety Exhibit A to the Fee Ordinance of Santa Fe County, Ordinance No. 2015-10; and

**WHEREAS**, Section 104.8.2 of the International Fire Code maintains that the County may require an applicant to provide, without charge to the County, a technical opinion and report to assist in evaluating a project.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Santa Fe County hereby directs staff of Santa Fe County to:

1. To the extent this has not already been done, procure or otherwise obtain appropriate, necessary, independent, and qualified experts to independently evaluate applications for commercial renewable energy projects, including, but not limited to, any applications for permits under the 2021 Edition of the International Fire Code for BESS.
  - a. In accordance with Section 4.4.7.8 of the SLDC, the County may charge the applicant fees associated with expert review of commercial renewable energy projects applications. In addition, pursuant to the Section 104.8.2 of the International Fire Code, the County may require an applicant to provide, without charge to the County, technical opinions and reports to assist in evaluating permits.
  - b. To the extent any additional funding for such experts is needed, funding shall be included in the budget requests for the Growth Management Department and Fire Department for future fiscal years.
  - c. For Fiscal Year 2024, the County Manager is directed to utilize budgeted Contingency Funds (if necessary) for the purpose of paying such experts.
2. Create a webpage dedicated to conditional use permit applications for commercial renewable energy projects, on which County staff shall post:
  - a. A description of the conditional use permit process and criteria, so as to facilitate the public's participation in that process, including at public hearings before the Hearing Officer, Planning Commission, and Board of County Commissioners (on appeal); and
  - b. Information concerning conditional use permit applications and BESS applications for commercial renewable energy projects.
3. Notify all Community Organizations and Registered Organizations registered pursuant or recognized under the SLDC of such webpage and of any commercial renewable energy project application, as well as provide public outreach and education concerning such webpage.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*

SFC CLERK RECORDED 10/03/2023

PASSED, APPROVED, AND ADOPTED ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2023.

BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

By: Anna C. Hansen  
Anna C. Hansen, Chair

ATTESTATION:

Katharine E. Clark

Katharine E. Clark  
Santa Fe County Clerk

Date: 10/01/2023

Approved as to form:

Jeff Young  
Jeff Young  
Santa Fe County Attorney



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BCC RESOLUTIONS  
PAGES: 4

I Hereby Certify That This Instrument Was Filed for  
Record On The 3RD Day Of October, 2023 at 03:07:54 PM  
And Was Duly Recorded as Instrument # 2020854  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Katharine E. Clark  
Deputy Dusty Romero County Clerk, Santa Fe, NM

