

Exhibit 1

Staff Memorandum to Planning Commission January 29, 2025

Justin S. Greene
Commissioner, District 1

Lisa Cacari Stone
Commissioner, District 2

Camilla Bustamante
Commissioner, District 3



Adam Fulton Johnson
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

MEMORANDUM

Date: January 29, 2025

To: Santa Fe County Planning Commission

From: Dominic J. Sisneros Building and Development Services Supervisor

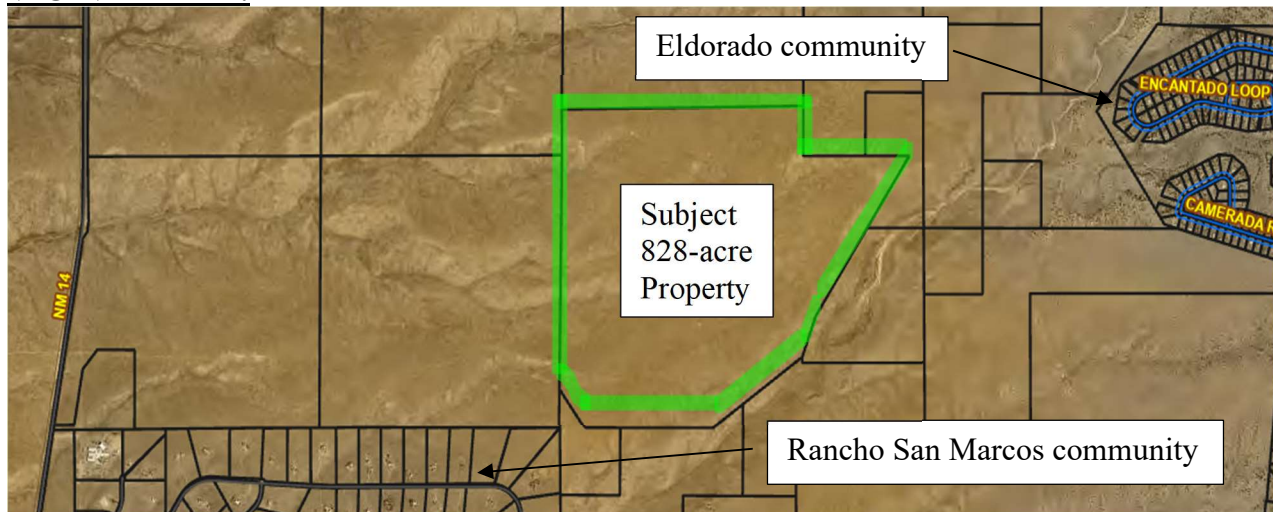
Via: Alexandra Ladd, Growth Management Director
Jordan A. Yutzy, Building and Development Services Land Use Administrator

Subject: **February 3, 2025, Special Santa Fe County Planning Commission Meeting**
Case # 24-5200 Rancho Viejo Solar, LLC Conditional Use Permit (CUP)

ISSUE:

Rancho Viejo Solar, LLC Conditional Use Permit (CUP). Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC; AES Clean Energy Development, LLC (jointly, the Applicant), request approval of a CUP to allow a 96-Megawatt solar facility on 684+/- acres of an 828-acre tract. The site is zoned Rural Fringe (RUR-F). Appendix B, Use Matrix of the Sustainable Land Development Code (Ordinance 2016-9, hereafter SLDC) illustrates that a commercial solar energy production facility is a conditional use within RUR-F zoning. The site is addressed at 211 Twilight Way which will be accessed via Hwy. 14, SDA-2 (Commission District 5). Parcel ID # 99312727.

VICINITY MAP:



SUMMARY / HISTORY:

The 828-acre parcel is currently vacant. The subject property is surrounded by vacant land with the southwestern corner of the parcel being over 550-feet away from the Rancho San Marcos subdivision and the most easterly corner of the subject parcel being more than 4,000-feet away from the community of Eldorado.

The Applicant is requesting approval of a Conditional Use Permit (CUP) to allow a 96-Megawatt solar facility on an 828-acre tract. The proposed solar facility will consist of a 680-acre solar facility, a 1-acre collector substation, a 3-acre battery energy storage system (BESS) containing no more than 38 CEN 40-foot containers, a 30,000-gallon above ground water tank for fire protection, a maximum 5,000-gallon above ground water tank for potable water, and a 1,400-square foot operations building approximately 18-feet in height with an onsite septic system. Offsite and onsite improvement will consist of a 2.3-mile generation tie-in line (gen-tie) with either 70-foot-tall steel monopoles or 50-foot-tall steel H-Frame poles within existing easements, and a 2.1-mile access road also within an existing easement. If the request for a CUP is granted, the Applicant is also requesting a 12-month extension to the 24-month expiration deadline that is set forth at SLDC § 4.9.6.10.

The subject property is zoned Rural Fringe (RUR-F). Appendix B, Use Matrix of Ordinance 2016-9, the Sustainable Land Development Code (SLDC) illustrates that a commercial solar energy production facility is a Conditional Use within RUR-F zoning. Section 7.12.1.3 of the SLDC, states, “above-ground electric utility lines that transmit electricity at a voltage greater than or equal to 46 kilovolts shall be designed and constructed at the minimum height necessary for the proposed structure to function properly and for public health, safety and welfare, as demonstrated by the applicant.” If a CUP approval is granted, Section 4.9.6.10 of the SLDC allows the Planning Commission to extend the expiration of the CUP an additional 12-months, with no further extension allowed under any circumstance.

Applicable SLDC design standards:

ACCESS (section 7.4) ROAD DESIGN (section 7.11) and TRAFFIC IMPACT (section 6.6)

The Applicant proposes a design that will comply and conform with applicable access and easement requirements with a 60-foot-wide access easement, 20-foot-wide road, and 20-foot-wide internal drive aisles/interior roads. The property currently has an existing gated access point off of NM 14 approximately 350 feet north of the existing Turquoise Trail Charter School. This entry will be improved, as specified in the approved permit, to facilitate traffic for the construction of the solar facility and the ongoing operations and maintenance. No additional public road construction is planned as a part of this project.

Bohannon Huston submitted a Site Threshold Analysis (STA) to NMDOT District 5 in support of the NMDOT Access Permit, which was approved on May 31, 2023. The STA examined existing roadway volumes and anticipated site trip generation for the purpose of determining if additional analyses are required as defined by the District Traffic Engineer. Per the STA, NM 14, at Milepost 41.5, has a Roadway ADT of 5,841. Based on the State Access Management Manual (SAMM), a TIA is required for developments that generate 100 or more peak hour total trips. Based on an analysis of the projects trip generation both during the temporary 12-month construction period and

ongoing operations and maintenance, Bohannon Huston has determined that additional traffic impact studies (TIA) are not warranted per the SAMM. This project was submitted to NM DOT for review by staff, but no comments were returned. The Applicant states that access to and from the solar facility will be in conformance with Project-specific NM State Highway access permit issued by the New Mexico Department of Transportation on May 31, 2023. NM DOT indicated on the issued permit that a gate, cattle guard, additional fence, drainage structure will be required, which owner agrees to furnish and hereafter maintain in good repair and close off to livestock. The Applicant will also be required to submit a construction traffic control plan to NM DOT for approval. (Exhibit O)

The SLDC requires that all development shall provide access for ingress and egress, utility service, and fire protection whether by public access and utility easement or direct access to a public right-of-way. No structures are permitted to be built within or obstructing a platted access easement.

WATER SUPPLY (Section 7.13 and Section 6.5) AND WATER CONSERVATION (Section 7.13)

Santa Fe County Utility Water is not available as there is no nearby connection. No well use is being proposed as there is no existing onsite well. The Applicant states that Rancho Viejo Solar will not require a significant long-term water supply. Water will be delivered to the Project site by water trucks. Water may be acquired from the following offsite sources, or a combination thereof: Santa Fe County bulk water station commercial pipe water; Ranchland Utility Company Class A reclaimed water; Santa Fe County reclaimed water; or any other legally permitted commercial water sales. Construction water will be used for equipment washing and dust abatement and to support general construction activities (concrete foundations, etc.).

Water for construction would be approximately 100 to 150 acre-feet over a 12-month construction period. Long term water uses would be approximately 2 to 3 acre-feet per year and would be associated with periodic panel washing, which would occur approximately once per quarter, and to supply potable water to the 5,000-gallon potable water tank at the Operations Building. Portable toilets would be used during construction. Once constructed, a septic tank will be included to meet wastewater needs of the operations building.

Table 7-17.1: When Connection Required to County Utility Water¹¹

Development Type	Property Location		
	SDA-1	SDA-2	SDA-3
Nonresidential Use that Would Otherwise be Supplied Water for Domestic Purposes from a New Domestic well	if within 200 feet	if within service area and within 200 feet	if within service area and within 200 feet

The Applicant does not address water harvesting in their report or on their plans. As described in the SLDC, water catchment will be required. Since no new landscaping is being required the Applicant will be allowed to implement a passive water harvesting system as per Section 7.13.11.7.3.b.iv.

7.13.11.7 Water Harvesting.

1. Rainwater Catchment Systems. Rainwater catchment systems are required for all new residential and all new or remodeled nonresidential development, including a change of use from residential to nonresidential, as required below.
2. Overflow from a cistern shall be directed into a designated retention pond or landscaped area.
3. The requirements of this Section shall not apply where a development proposes to utilize grey water recycling for all outdoor landscaping.

b. Catchment Requirements, Nonresidential structures:

- i. Systems shall be designed to capture rainwater from all of the roofed area.
- ii. Cisterns shall be buried, partially buried or insulated and shall be connected to a pump and a drip irrigation system to serve landscaped areas. Alternatively, if captured water is to be used for domestic purposes, appropriate plumbing and pumps may be used to convey that water to the point of use.
- iii. Cisterns shall be sized to hold a minimum of 1.5 gallons per square foot of roofed area or the equivalent of a one month supply of captured water, as determined by the Administrator.
- iv. Where no new landscaping is required, the Administrator may approve the use of rain barrels or other water catchment system including passive water harvesting and infiltration techniques, berms, swales, and tree wells to capture rainwater.

LIQUID WASTE

No Santa Fe County Utility Sewer, Public Sewer or Publicly Regulated Sewer connection is located nearby. The Applicant states that portable toilets would be used during construction. Once constructed, an NMED approved septic system will be included to meet wastewater needs of the operations building.

Table 7-17.2: When Connection Required to County Utility Sewer^[2]

Development Type	Wastewater Property Location		
	SDA-1	SDA-2	SDA-3
Nonresidential Use	if lot abuts the sewage connection system	if lot abuts the sewage connection system	if lot abuts the sewage connection system

Table 7-18.2: When Connection Required to Public Sewer or Publicly-Regulated Sewer^[5]

Development Type	Wastewater Property Location		
	SDA-1	SDA-2	SDA-3
Non-Residential Use	if lot abuts the sewage connection system	if lot abuts the sewage connection system	if lot abuts the sewage connection system

EIR (Section 6.3)

An EIR was required and submitted by the Applicant. The EIR is being reviewed by third party consultant Glorieta Geoscience, Inc. No review comments have been received yet. (Exhibit J)

APFA (Section 6.4)

An APFA was required and submitted by the Applicant. This Adequate Public Facilities & Services Assessment (APFA) was prepared to support Rancho Viejo's Conditional Use Permit (CUP) application to Santa Fe County for compliance with Santa Fe County's Sustainable Land Development Code (SLDC), which was adopted in Ordinance 2016-9 on December 13, 2016. The APFA includes an assessment of Santa Fe County public facilities and services to the anticipated demand that may result from development of the Project, as specified in Section 6.4 of the SLDC. (Exhibit N)

FIA (Section 6.7)

An FIA was not required as it was deemed unnecessary as changes in revenues and costs of local government jurisdictions will not occur.

FIRE PROTECTION (Section 7.5)

The project has been designed to include 20-foot wide internal roads with fire lanes, minimum inside turning radii of 28-feet, gates that will be equipped with emergency unlocking/opening systems (Knox Box), and a 30,000 gallon above ground water storage tank for fire protection. In addition, AES is working with appropriate third parties to provide safety and fire management training for fire departments located within the vicinity of the project. This training will occur prior to the completion and energization of the facility. The training will also include "train the trainer" sessions for future emergency response teams. A Preliminary Hazard Mitigation Analysis (HMA) has been prepared for the project. A Final HMA will be performed as part of the detailed engineering process. This HMA will include site and product specific fire risk assessment and a first responder plan. Local first responders will have access to these reports. Rancho Viejo will provide on-site and in-person training to the local responders prior to commercial operation of the system. There are no special materials required to respond to a fire event for the containerized BESS units. Only standard water application to the adjacent BESS containers is required, and this is only in the case where all internal fire suppression systems may fail. All information required by the first responders will be included in the first responder plan part of the HMA. If a battery fire is initiated, the enclosures planned for this site would release fire suppressant in large concentrations directly into the initiating cell, removing heat and preventing thermal runaway throughout the enclosure. UL 9540 certification addresses safety and requires UL 9540a test results to be available for review. The UL 9540a tests of this system indicate adequate prevention of thermal runaway. The AES Energy Storage solution will achieve UL 9540 certification prior to site commercial operation. State what the applicant proposes for fire protection (e.g. a hydrant on the northwest side of the property, 50ft from the proposed structure, a turnaround within the proposed parking area which will provide access to the hydrant / a water tank and draft hydrant / a sprinkler system within the structure / include road or driveway width to allow for emergency access / life safety within the building.

The application was sent to the Santa Fe County Fire Department in addition to third party reviewer Atar Fire LLC. The conditional use permit application has been deemed complete by the Santa Fe County Fire Department. Based on Atar Fire's detailed review letter, both Atar Fire and Santa Fe County Fire Department have concluded that a 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 commissioning of the facility. Atar Fire review does not constitute all possible recommendations associated with this installation, as deferred submittals and additional documentation is required prior to the commissioning of this facility, should a CUP approval be granted.

LANDSCAPING AND BUFFERING (Section 7.6)

No new landscaping is being proposed as part of the proposed project. A request to remove the landscaping requirements has been submitted to the Land Use Administrator.

The SLDC allows the Administrator to approve the removal of required landscaping as identified below for the following circumstances.

7.6.8.6 Alternative Landscaping. The Administrator may approve the submittal of an alternative landscaping plan in conjunction with the site development plan, which modifies or removes required landscaping, in the following circumstances:

- 1. in open lands characterized by an absence of significant natural vegetation;*

FENCES AND WALLS (Section 7.7)

The Applicant proposes that the perimeter of the solar project will be enclosed by an agricultural style fence, which is wildlife friendly, and a maximum of 8-feet tall. The on-site collector substation and BESS will more than likely be enclosed by a chain-link fence that will be a maximum of 8-feet in height.

7.7.4.1 Location and Height. Fence and wall locations and heights shall be as follows unless otherwise specified in the SLDC:

- 1. The maximum height of walls or fences shall not exceed eight feet; provided, however, that the height of pedestrian door or gate portals built into a wall or fence may be up to 11 feet.*

7.7.4.2 Materials. A fence may be constructed of permanent material, such as wood (including coyote fences and similar), chain link, stone, rock, concrete block, masonry brick, brick, decorative wrought iron, adobe, straw bale or other materials that are similar in durability. The following materials shall not be used for fencing subject to this Section:

- 1. Cast-off, secondhand, or other items not originally intended to be used for constructing or maintaining a fence, except that such materials may be used to provide artistic decoration or enhancement so long as the primary materials are consistent with this Section;*
- 2. Plywood, particle board, paper, and visqueen plastic, pallets, plastic tarp, or similar material; or*
- 3. In subdivisions along the perimeter of a tract or parcel that abuts a collector or arterial road, barbed wire, razor wire, and other similar fencing materials capable of inflicting significant physical injury.*

LIGHTING (Section 7.8)

The Applicant proposes that there will be motion sensor, downcast shaded security lighting at the access gate, battery storage and substation location, operations building, and solar pads. Lighting will be downcast shaded, per the state and local ordinance. Downcast lighting protects the ability to view the night sky by restricting unnecessary upward projection of light.

A lighting analysis was not required as the proposed lighting will be considered minimal compared to the overall size of the subject property and where the lighting is being proposed.

7.8.2 General Standards. All outdoor lighting fixtures shall be designed, installed, located and maintained to conform to the standards of this Section. Glare onto adjacent properties or roads shall not be permitted.

7.8.2.1 Fixtures (electrical luminaries).All outdoor light sources shall be concealed within cut-off fixtures, except as otherwise specified herein. Fixtures shall be mounted in such a manner that their cones of light are directed down or toward a surface, but never towards an adjacent residence or public road.

7.8.2.2 Lamp (Light Source or Bulb) and Shielding Requirements. Lamps, light sources or bulbs shall be shielded and shall comply with the light source and shielding requirements of Table 7-3. Spillover of lighting onto adjacent properties shall not exceed 0.50 footcandle measured at any point on a property line. No outdoor lighting shall be directed towards any adjacent residential use or public road.

Table 7-3: Shielding Requirements

Lamp Type	Shielding	Special Requirements
LED	Full	None
Metal halide	Full with translucent filter	Subject to timing devices or restricted hours of operation. Limited to recreational facilities, sporting events, and special displays.
Fluorescent and quartz	Full	None
Any light 900 lumens or less	None	None, unless a group of such lamps produce cumulative lighting levels in excess of the levels set forth in Section 7.8.3.6 [Section 7.8.2.6] and Table 7-4.
Halogen	Full with translucent filter	For outdoor display of merchandise or sporting events; may be subject to timing devices or restricted hours of operation. Limited to recreational facilities, sporting events, and special displays.
Other sources	As approved by Planning Commission	May be conditioned as part of development approval/agreement or Temporary Use Permit.

7.8.2.3 Fixture (electrical luminaries). All outdoor light sources shall be concealed within cut-off fixtures, except as otherwise specified herein.

- 1. Fixtures shall be mounted in such a manner that their cones of light are directed down or toward a surface.*
- 2. Spillover of lighting to adjacent properties shall not exceed 0.50 footcandle measured at any point on a property line.*
- 3. No outdoor lighting shall be directed towards any adjacent residential use or public road.*

7.8.2.4 Fixture Height. The lowest fixture height that can serve the lighting purpose shall be used in all cases; lighting specifically focused on paths and other items needing illumination shall be preferred to broadcast floodlighting over large areas. Maximum fixture height above adjacent grade for all fixtures shall be as follows:

- 1. Any pole-mounted lighting shall have a maximum height of twenty-five (25) feet. In or within thirty-five (35) feet of any residential zoning district and all light fixtures shall not exceed sixteen (16) feet in height.*
- 2. Building-mounted light fixtures shall be attached only to walls and the top of the fixture shall not be higher than the top of the parapet or roof, whichever is higher. Said lights shall be shielded and directed downward.*
- 3. Street light standards (upright supports) on a two-lane road shall not exceed the height limitations of the zoning district.*

SIGNS (Section 7.9)

The Applicant states that a small facility identification sign may be posted at the project entry gate. Within the Project site, and adjacent to the water storage tank, signage will be placed along the road, 40-feet apart and centered on the water storage tank, that states: “No Parking – Fire Lane.”

An address sign that meets standards with a minimum 3-inch-tall numerals will also need to be incorporated.

7.9.1 Purpose. All signage shall comply with the requirements of this Section in order to:

7.9.1.1 improve pedestrian and motorist safety by minimizing distractions and obstacles to clear views of the road and of directional or warning signs used for traffic safety;

7.9.1.2 provide businesses with effective and efficient opportunities for identification by reducing competing demands for visual attention;

7.9.1.3 protect and enhance economic viability by assuring that Santa Fe County will be a visually pleasant place in which to live or to visit;

7.9.1.4 protect views of the natural landscape and sky;

7.9.1.5 allow for expression by signage required by state and federal law; and

7.9.1.6 protect the community by ensuring emergency vehicles are able to identify and respond to emergency situations by having all structures in Santa Fe County identified with numerical street address markings that are easily identifiable.

7.9.3 Placement. Signs may not be placed on or over public roads or rights-of-way without approval from the Administrator, who shall ensure that traffic safety is maintained. Signs may not be placed in road or access easements, except for traffic signs and safety warning signs. On private property, signs may be placed in private utility easements.

7.9.11.1 Nonresidential signs in a Residential Zoning District. Nonresidential signs are permitted in a Residential Zoning District in accordance with table 7-5.4 below and the standards of this Section.

Table 7-5.4 Nonresidential Signs Allowed in a Residential Zoning District					
	Size (sq. ft.)	Location	Number of Signs	Height from ground	Permit Required
Permanent	32	See Table 7-5.7	2*	See Table 7-5.7	Yes
Temporary – A/R, RUR	32	See Table 7-5.7	2 per event/subject*	See Table 7-5.7	No
Temporary – All other Res Districts	16	See Table 7-5.7	2 per event/subject	See Table 7-5.7	No
Window	Not Allowed				
Flag	15	5 ft. Setback	2*	14 ft	No

Table 7-5.7 Allowable Height for Permanent Signs.		
Distance from R-O-W (feet)		Max. height (feet)
at least	but less than	
5	25	5.0
25	50	10.0
50	75	15.0
75	100	20.0
More than 100		25.0

PARKING AND LOADING (Section 7.10)

During operations, employee and visitor parking would occur at the Operations Building and any loading activities would generally occur during the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, with the potential for work to occur from 7:00 a.m. to 7:00 p.m. on Saturday.

The Applicant is proposing a graveled parking area with 7 spots but are not identifying any accessible spaces. Minimum parking spaces are being met but the minimum accessible parking space requirements currently are not.

Table 7-6: Parking		
Use classification	Specific use	Minimum # of spaces required
Residential Buildings		
Retail, Service and Commercial Use Categories		
Office	All offices not listed below	1.0 per 200 sq. ft.
	Banks and other financial institutions	1.0 per 200 sq. ft.
	Offices	1.0 per 200 sq. ft.
	Research/development	1.0 per 200 sq. ft.

7.10.8 Space Identification. Parking spaces shall be permanently and clearly marked. Parking facilities shall be clearly marked with appropriate signs, and shall otherwise provide for orderly and safe parking, loading and unloading of vehicles. All markings, including pavement striping, directional arrows and signs shall be properly maintained in a highly visible condition at all times.

7.10.9 Surfacing and Maintenance. Parking lots of forty or more spaces shall be paved, and parking lots containing fewer than forty spaces shall have a properly compacted base course surface. Where paved parking is required, permeable pavement may be used. Parking areas shall be maintained in a dust-free, well-drained, serviceable condition at all times.

7.10.10 Dimensions. Parking spaces shall comply with Table 7-7. The minimum dimension on all parking spaces shall be at least 8.5' by 18'.

Table 7-7: Parking Space Minimum Dimensions		
Use	Type of space	Dimensions
Residential	All	8.5' x 18'
Nonresidential	Angle spaces	8.5' x 18'
All	Parallel spaces	8.5' x 20'

7.10.15 Accessibility Requirements. A portion of the total number of parking spaces shall be specifically designated, located and reserved for use by persons with physical disabilities. The

minimum number of accessible spaces to be provided for all development, except for single-family residential, is set forth in Table 7-9.

Table 7-9: Accessible Parking Spaces		
Total parking spaces provided	Minimum # of accessible spaces	Minimum # of van-accessible spaces
1–25	1	1

7.10.15.1 Location. Accessible parking spaces shall be located on the shortest accessible route of travel from adjacent parking to an accessible building or pedestrian entrance.

7.10.15.2 Minimum Dimensions. All parking spaces reserved for persons with disabilities shall comply with the parking space dimension standards of this section, provided that access aisles shall be provided immediately abutting such spaces, as follows:

1. **Car-Accessible Spaces.** Car-accessible spaces shall have at least a five-foot-wide access aisle located abutting the designated parking space.
2. **Van-Accessible Spaces.** Van-accessible spaces shall have at least an eight-foot-wide access aisle located abutting the designated parking space.

7.10.15.3 Surfacing. All accessible parking spaces and associated access aisles shall be paved or of other hard surface, even if the remainder of the parking lot is unpaved.

7.10.15.4 Signs and Marking. Required spaces for persons with disabilities shall be identified with signs and pavement markings identifying them as reserved for persons with disabilities. Signs shall be posted directly in front of the parking space at a height of no less than 42 inches and no more than 72 inches above pavement level.

OPEN SPACE (Section 7.15)

The Applicant indicates that the project will be located on land that is zoned as Rural Fringe (RUR-F) and is outside of designated open space areas. Out of the 828-acres tract, approximately 340-acres will remain as natural open space (some of which is within the 680-acre solar facility) which meets the minimum requirements of the SLDC.

7.15.3.3 Minimum required open space.

1. *Natural and/or passive: Minimum 30% of gross acreage; and*
2. *Developed: 1 acre per 100 population (based on 2.57 persons per dwelling unit). Any proposed subdivision over 24 lots with a population less than 100 shall provide at least one (1) acre of developed open space.*

PROTECTION OF HISTORIC RESOURCES (Section 7.16)

An archaeology report was submitted. The Archaeological District is Medium Potential with a lot size of 828-acres. SWCA Environmental Consultants (SWCA) was contracted to conduct an intensive, pedestrian cultural resources inventory of all land within the proposed project area.

Fifteen archaeological sites were identified within the proposed analysis area during the cultural resources survey. Consultation with SHPO (HPD Log No. 118484) after the cultural resource survey determined that 13 of these sites are not eligible to the NRHP and two (LA 200751 and LA 200755) are of undetermined eligibility. Sites of undetermined eligibility should be treated as eligible pending further testing and investigation. Rather than proceed with testing of these sites, Rancho Viejo has designed the Project to avoid these resources by at least 100 feet.

In the initial letter from SHPO dated November 29, 2022 (HPD Log No. 118484), SHPO concurred with the initial findings and recommendations of SWCA's cultural resource survey with the exception of the eligibility for LA 200751 and LA 200755 (NMCRIS 150271). SHPO determined that these sites should have an undetermined status until further testing could be conducted. The site plan had already been designed to avoid LA 200751. To avoid LA 200755, adjustments were made to the access road and additional surveying was conducted. No cultural materials were identified during this survey. The report was submitted to SHPO and in a second letter, dated March 16, 2023 (HPD Log No. 119282), SHPO concurred with the report results. A third survey was conducted to accommodate another shift in the proposed Project access road. During the third and final survey of the area, an additional two archaeological sites were identified and recommended as not eligible. In a third letter, dated April 4, 2024 (HPD Log No. 122238), SHPO concurred with the findings and recommendations in SWCA's cultural resource survey report. After the completion of all three surveys for this Project, a total of 17 sites were identified. Based on the avoidance of the two unevaluated sites (LA 200751 and LA 200755) and the remaining 15 sites being listed as not eligible, SHPO concluded that the Project will have no effect on historic properties. The potential for subsurface cultural material within the analysis area is low; however, in the event that a previously undocumented burial site is discovered during Project construction, the appropriate authorities will be notified, which includes notifying HPD (SHPO) of an unanticipated discovery, ceasing work within the discovery footprint, and developing and following an Unanticipated Discoveries Plan. With the avoidance of the two undetermined resources, there will be no effect to any historic resources.

TERRAIN MANAGEMENT (Section 7.17) and FLOOD CONTROL (Section 7.18)

The Applicant states the project has been sited to avoid existing drainages. During construction, a Storm Water Pollution Prevention Plan (SWPPP) would be developed and implemented, which would meet the construction stormwater discharge permit requirements of the New Mexico Environmental Department (NMED) Surface Water Quality Bureau. The SWPPP would include several measures to control runoff and to reduce erosion and sedimentation at construction sites. Stormwater best management practices (BMPs) included in the SWPPP would be used during construction to reduce potential impacts from erosion, sedimentation, and turbidity in surface waters during construction. BMPs would generally include the placement of silt fences and/or straw wattles along the downgradient perimeter of the project to minimize stormwater sedimentation from leaving

the site, and minimizing grading and vegetation removal, and limit surface disturbance during construction to the time just before solar module support structure installation.

Bohannon Huston completed a Hydrologic and Hydraulic (H&H) Study of the project site to estimate existing condition flow depths, flow velocities, and scour potential for 10-year, 100-year, and 500-year storm events. The H&H Study results indicate that flow depths, flow velocities, and scour that are significant enough to impact the layout of proposed solar improvements are generally limited to three unnamed arroyos that flow from east to west through the Rancho Viejo Solar site. Following completion of the H&H Study the project design was refined to avoid placement of solar arrays within the unnamed arroyos. With the exception of approximately 0.5 acre of the proposed gen-tie corridor (an overhead transmission line), the project avoids Zone A floodplain. Zone A floodplains are defined as areas with a 1% annual chance flood event (FEMA 2022).

SOLID WASTE (Section 7.20)

The Applicant states that solid waste generated during construction will be transported for disposal by a private contractor at a licensed waste management facility. Solid waste generated during project operation will be minimal and will be disposed of at a licensed waste management facility. At the conclusion of the approximate 30-year life of the project, the facility will be decommissioned and removed, and materials will be recycled or disposed of in accordance with federal, state, and local requirements.

The Applicant shall utilize either a solid waste collection service or haul all solid waste to the Caja Del Rio Landfill which is nearest in proximity to the proposed solar facility.

7.20.2.2 All subdivisions within SDA-2 or SDA-3 and all nonresidential, multifamily and manufactured home communities shall be served by County curbside collection and recycling as prescribed by separate ordinance, if applicable, or, if inapplicable, utilize one of the following:

- 1. A solid waste collection service; or*
- 2. The nearest existing sanitary landfill or transfer station.*

AIR QUALITY AND NOISE (Section 7.21)

Air Quality:

Project emissions would be greatest during the construction period, which is estimated to be approximately 12 months. Equipment use and ground disturbance associated with the facilities would result in a low level of localized emissions of regulated air pollutants, including PM10, PM2.5, during the construction period. While an air quality permit is not required for the Project, construction activities are governed by the applicable rules and regulations of the NMED Air Quality Bureau rules for fugitive dust emissions from construction activities and clearing of land. These include reasonable precautions to prevent dust from becoming airborne, including 1) using water or chemicals to control dust where possible, 2) covering open-bodied trucks at all times while transporting materials likely to produce airborne dusts, 3) establishing vehicle speed controls, 4) installing wind fences, and 5) promptly removing earth or material from paved streets. In addition to the dust management strategies listed above, Rancho Viejo would implement protection measures to reduce emissions from construction vehicles and equipment by decreasing idling time and

maintaining equipment properly. Only minimal, short-term emissions would be expected from equipment use and fugitive dust from access road travel during the operations and maintenance phase, which consist of a small crew accessing the site once every quarter for visual inspections and routine maintenance actions. Decommissioning emissions would be similar to those emitted during initial construction in character and would be temporary.

Noise:

The Rancho Viejo Solar Project is located in a semi-rural area with low existing noise levels. The construction of the Rancho Viejo Solar Project will result in a temporary increase in ambient noise levels during the construction period as construction equipment noise levels will be expected to dissipate to below background levels within approximately 0.15 mile to 1.2 miles of the Project area. In addition, environmental protection measures are proposed to minimize these impacts. Once in operation, the Project will have a negligible effect on ambient noise levels beyond the immediate vicinity of the Project area as the human perception for change in sound level (i.e., potential increase above ambient) the estimated increase at the property boundary is 2.2 dBA during daytime hours and 4.4 dBA during nighttime hours. According to established thresholds for human perception, an increase of 2–3 dBA is considered barely perceptible, while an increase of 5 dBA is readily noticeable. Therefore, the daytime increase would be barely perceptible to the average human observer, and the nighttime increase would be at the upper end of "barely perceptible" but not reach the threshold of a "readily noticeable" change. Based on noise attenuation, construction equipment noise levels will be expected to dissipate to below background levels (assumed to be 38.4 dBA) within approximately 0.5-miles to 1.7 miles of the Project area. The closest sensitive noise receptor, a residence located approximately 1,400 feet (0.27 miles) away, will experience a temporary increase in ambient outdoor noise levels during the 12-month construction period. At this distance, noise levels from equipment operating at 85 dBA are estimated to attenuate to approximately 56 dBA, comparable to the noise level of a normal conversation in a quiet room or light office noise. (Exhibit J)

7.21.2 General. Nonresidential construction shall utilize standard techniques available in order to minimize noise, vibration, smoke and other particulate matter, odorous matter, toxic or noxious matter; radiation hazards; fire and explosive hazards, or electromagnetic interference.

7.21.4 Noise. Any actual or projected measurement that exceeds the average conditions calculated over a thirty (30) minute period, at the property line, of the limits shown in Table 7-21 shall be grounds for denial of a development application or imposition of noise mitigation efforts sufficient to ensure that the development will not exceed the applicable noise limits.

Table 7-21: Noise Limits		
Zoning District	Daytime 7:00 a.m. to 10:00 p.m.	Nighttime 10:00 p.m. to 7:00 a.m.
All Other Districts	55 dBA, or 5 dBA above ambient; whichever is less	45 dBA, or 5 dBA above ambient; whichever is less

ADMINISTRATIVE HISTORY:

On November 4, 2021, as required by Table 4-1 and Section 4.4.3 the applicant presented the proposed CUP to the Technical Advisory Committee (TAC) at the regularly scheduled bi-monthly meeting. (Exhibit E)

On August 22, 2024, as required by Table 4-1 and Section 4.4.4 of the SLDC, the applicant conducted a pre-application neighborhood meeting on the CUP. The applicant notified surrounding property owners as well as Certified Organizations (CO) and Registered Organizations (RO), 140 individuals attended the meeting. The applicant presented the history of the development and presented, in detail, the proposal for the CUP in the meeting the attendee's had questions and commented about safety risks, fire danger, ground water contamination, power purchase agreement, infrastructure/technology, conditional use permit application process, environmental impacts, insurance, property values and funding. AES addressed most questions and comments the best they could and tried to provide input to the public. (Exhibit F)

Notice requirements were met as per SLDC Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of a hearing on the application, the applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the property, beginning on November 13, 2024. Additionally, notice of hearing was published in the Santa Fe New Mexican on November 19, 2024, as evidenced by a copy of that notice contained in the record. The notice of the hearing was sent to owners of land within 1,120' of the previous bigger parcel of which the 828-acre parcel was derived from (which exceeds the required owners of land within 500' of the subject property) as well as any pertinent CO's and RO's. A list of persons sent a mailing is contained in the record. (Exhibit R)
This Application was submitted on August 30, 2024.

CONDITIONAL USE PERMIT CODE SECTIONS

SLDC, Section 4.9.6. Conditional Use Permits (CUP). *For approval of certain conditional uses as set forth in the Use Matrix and elsewhere in the SLDC, pursuant to this Section.*

SLDC, Section 4.9.6.1. Purpose and Findings. *This Section provides for certain uses that, because of unique characteristics or potential impacts on adjacent land uses, are not permitted in*

zoning districts as a matter of right but which may, under appropriate standards and factors set forth herein, be approved. These uses shall be permitted through the issuance of a conditional use permit (CUP).

SLDC, Section 4.9.6.2. Applicability. *The provisions of this Section apply to any application for approval of a CUP as required by the Use Matrix. Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district but that require individual review of their location, design and configuration, and the imposition of conditions or mitigations in order to ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses that are enumerated as conditional uses in a zoning district, as set forth in the use matrix, may be authorized by the Planning Commission. No inherent right exists to receive a CUP. Concurrent with approval of a CUP, additional standards, conditions and mitigating requirements may be attached to the development order. Additionally, every CUP application shall be required to comply with all applicable requirements contained in the SLDC.*

SLDC, Section 4.9.6.5, Approval Criteria. *CUPs 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 response to the Section 4.9.6.5 CUP Criteria, the Applicant states the following:
(Exhibit B)

1. not be detrimental to the health, safety and general welfare of the area;

The Rancho Viejo Solar project is designed and implemented to not adversely impact the health, safety and welfare of the surrounding area. The Rancho Viejo Solar project is a static, non-obtrusive, use of land that will be compatible with surrounding land uses.

- Solar projects do not create significant noise, light, traffic, or other operational impacts.*
- This project will not endanger the public health or safety in the location proposed.*

Staff response: 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:

- International Fire Code, 2021 Edition
- NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, 2023 Edition

2. not tend to create congestion in roads;

Access to and from the solar facility will be in conformance with NM State Highway access permit standards. The property currently has an existing gated access point on NM 14 approximately 350 feet north of the existing Turquoise Trail Charter School. This entry will be improved to facilitate traffic for the construction of the solar facility and the ongoing operations and maintenance. Bohannon Huston submitted a Site Threshold Analysis (STA) to NMDOT District 5 in support of the NMDOT Access Permit, which was approved on May 31, 2023. The STA examined existing roadway volumes and anticipated site trip generation for the purpose of determining if additional analyses are required as defined by the District Traffic Engineer. Per the STA, NM 14, at Milepost 41.5, has a Roadway ADT of 5,841. Based on the State Access Management Manual (SAMM) a TIA is required for developments that generate 100 or more peak hour total trips. Based on an analysis of the projects trip generation both during the temporary 12-month construction period and ongoing operations and maintenance, Bohannon Huston has determined that additional traffic impact studies (TIA) are not warranted per the SAMM. On October 25, 2022, NMDOT accepted the STA as submitted and requested application for a NMDOT Access Permit. On December 19, 2022, NMDOT Environmental Design Division provided environmental clearance of the application. On January 18, 2023, the NMDOT Drainage Design Bureau provided acceptance of the application. On May 31, 2023, the NMDOT Access Permit was approved.

Construction Phase

- *Temporary, 12-month period.*
- *Construction is anticipated to require approximately 200 workers on-site per day. The personnel will be encouraged to carpool to the site each day.*
- *Typical construction work schedules are expected to be from 7:00 a.m. to 7:00 p.m., Monday through Friday, with the potential for work to occur from 7:00 a.m. to 7:00 p.m. on Saturday. Work on the gen-tie may occur at night to minimize outages. In addition, certain activities, such as concrete pours, may occur outside of the specified hours when heat conditions are conducive to the activity.*

Operations & Maintenance

- *Operations and maintenance of the Project will be performed by qualified personnel, including 4 technicians which will work out of the onsite Operations Building generally during the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, with the potential for work to occur from 7:00 a.m. to 7:00 p.m. on Saturday.*
- *Maintenance of the solar facility may include periodic washing of solar panels, general equipment maintenance, and vegetation trimming.*

- *As a result, the number of employee vehicle trips generated by the site during typical operations is considered negligible.*

In summary, this project will have higher traffic volume during construction but ultimately have exceptionally low traffic generations once operational.

Staff response: The bulk of any added traffic to NM-14, which will be utilized as access to the proposed site, will be for the construction of the proposed solar facility, 2.1-mile access road, and 2.3-mile generation tie-in line (gen-tie). The added traffic will only occur until the completion of the project. After the facility is operational, traffic will be minimal as there will be 4 technicians working onsite Monday through Friday and potentially Saturdays as mentioned by the Applicant, as well as periodic maintenance of the solar facility.

3. not create a potential hazard for fire, panic, or other danger;

Rancho Viejo Solar LLC shall comply with the most current applicable codes adopted by the State of New Mexico, Santa Fe County, and other entities, including but not limited to the following:

- *International Fire Code, 2021 edition, as adopted by 10.25.2 NMAC ("Fire Prevention and Public Occupancy") and 2021 International Wildland Urban-Interface Code (IWUIC) as amended Santa Fe County Ordinance 2023-06.*
- *Santa Fe County Ordinance 2023-06 as adopted by the Board of County Commissioners.*
- *Santa Fe County Ordinance 2023-09 as adopted by the Board of County Commissioners*
- *National Fire Protection Association (NFPA) 855, Standard for the Installation of Energy Storage Systems (2023 edition)*
- *New Mexico Commercial Building Code as adopted by 14.7.2 NMAC ("2009 New Mexico Commercial Building Code") which adopts by reference the 2009 International Building Code.*
- *Proactively, Rancho Viejo Solar LLC has been working closely with Santa Fe County Fire Department to design and construct the project's access, circulation and emergency measures.*

Staff response: The proposed site will include 20-foot-wide drive aisles, 28-foot turning radii, and a 30,000-gallon on-site water tank. The BESS containers will be equipped with internal fire suppression systems. Only standard water application to the adjacent BESS containers is required, and this is only in the case where all internal fire suppression systems may fail. All information required by the first responders will be included in the first responder plan part of the final approved Hazard Mitigation Analysis (HMA). The Applicant will provide on-site and in-person training to the local responders prior to commercial operation of the system.

4. not tend to overcrowd land and cause undue concentration of population;

This project will not be detrimental to the use or development of adjacent land, and in fact is entirely harmonious with its rural agricultural character. The Rancho Viejo Solar project is a static, non-obtrusive, use of land that will not overcrowd the land nor cause undue concentration

of population. The facility will not change any of the existing population patterns.

Staff response: The proposed site will have _ acres of designated natural open space which meets the requirements of the SLDC. The owner of the subject property also owns the surrounding properties and has expressed interest in the Transfer of Development Rights (TDR) program which could potentially remove future development rights from these surrounding properties. The only subsequent development allowed would have to be compatible with the proposed preservation uses such as grazing, agricultural or ranching.

5. not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

As compared to the permitted uses in the Rural Fringe Zone District (RUR-F), this project will provide a net positive impact to Santa Fe County services such as schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements. In terms of water and sewer requirements,

- *Rancho Viejo Solar will not require a significant long-term water supply. Water for construction would be approximately 100 to 150 acre-feet over a 12-month construction period and will be delivered to the Project site by water trucks. Water may be acquired from the following offsite sources, or a combination thereof: Santa Fe County bulk water station commercial pipe water; Ranchland Utility Company Class A reclaimed water; Santa Fe County reclaimed water; or any other legally permitted commercial water sales. Construction water will be used for equipment washing and dust abatement and to support general construction activities (concrete foundations, etc.). Long term water uses would be approximately 2 to 3 acre-feet per year and would be associated with periodic panel washing, which would occur approximately once per quarter, and to supply potable water to the 5,000-gallon potable water tank at the Operations Building.*
- *Portable toilets would be used during construction. Once constructed, a septic tank will be included to meet wastewater needs of the Operations Building.*

Staff response: The proposed solar facility is in a remote area of Santa Fe County and will not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements.

6. not interfere with adequate light and air;

Lighting – Any required lighting will be downcast, and comply with the lighting standards outlined in Section 7.8 of the SLDC. This project will not impact the County’s night sky ordinance.

Air – Only minimal, short-term emissions would be expected from equipment use and fugitive dust from access road travel during the operations and maintenance phase.

Staff response: The proposed solar facility includes what is considered minimal lighting that will be used mainly for security at the access gate, battery storage and substation location, operations building, and solar pads. All lighting will be required to meet SLDC requirements and be shielded and downlit. The “Monopole” or “H-frame” structures allows for air and wind to flow through with minimal obstruction. The poles will be required to blend into the natural landscape and shall be non-reflective. Staff’s recommendation is to utilize the “Monopole” due to the minimal visual impact.

7. not 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;

The project site is within the Rural Fringe (RUR-F) zoning district and the gen-tie corridor extends into the Community College District (CCD) for approximately 1 mile.

The RUR-F zone accommodates primarily large lot residential, ecotourism, equestrian uses and renewable resource-based activities, seeking a balance between conservation, environmental protection and reasonable opportunity for development. Density transfers and clustered development shall be allowed in order to support continued farming and/or ranching activities, conserve open space or protect scenic features and environmentally sensitive areas. Per Appendix B of the SLDC, commercial solar energy production facilities are permitted within the RUR-F zoning district only after review and approval of a Conditional Use Permit.

Staff response: A commercial solar energy production facility within the Rural Fringe (RUR-F) Zoning District is an allowed use with the approval of a Conditional Use Permit. Chapter 7 of the SGMP explicitly supports the development and distribution of renewable energies at a regional scale.

Based on the Visual Impact Assessment Technical Report, the visual Impact of the proposed project is expected to have both long-term and short-term visual impacts. Short-term visual impacts will range from low to moderate due to the presence of construction activity, and installation of permanent project components. The long-term visual impacts will include operation and maintenance of the project. Overall, these new elements would initially be dominant compared to the existing landscape characteristic but with the proximity of viewers to the project, it is expected that the new elements would be subordinate compared to the existing landscape. (Exhibit M)

AGENCY REVIEW COMMENTS: (Exhibits P & Q)

Agency

County Fire Marshal/Atar Fire
Glorieta Geoscience, Inc
County Public Works
County Utilities
SHPO
NMDOT

Review Comment

Sent on 9-6-2024/Received 10-11-2024
Sent on /Anticipated receipt on 12-2-2024
No review needed
No review needed
Sent on 2-18-2023/Received 3-16-2023
Sent on 2-18-2023/Review not received

Building and Development Services staff has reviewed this project for compliance with pertinent SLDC requirements and has found that the facts presented support the request for a Conditional Use Permit (CUP) to allow a 96-Megawatt solar facility on an 828-acre Tract within the Rural Fringe (RUR-F) zoning district. The use is compatible with the current development within the affected Zoning Districts; the use will not impact adjacent land uses; and the Application satisfies the submittal requirements set forth in the SLDC inclusive of the Conditional Use Criteria set forth in Chapter 4, Section 4.9.6.5.

The review comments from Santa Fe County Fire, 3rd party reviewer Atar Fire, State Historical Preservation Office (SHPO), and reviews from County staff have established findings that this application to allow a 96-Megawatt solar facility on an 828-acre Tract within the Rural Fringe (RUR-F) zoning district is in compliance with pertinent design standards set forth in the SLDC.

SLDC HEARING OFFICER MEETING:

The SLDC Hearing Officer heard this case on December 4, 2024. At the public hearing 6 individuals spoke in support for the case and 30 individuals spoke against the case. The objections and concerns to the case were related to:

1. The size of the Project in an area surrounded by residential development, especially with the potential for fire, explosion, thermal runaway resulting in not just fire but wildfire.
2. The increase of noise from such a large installation.
3. The possible toxic gas emissions.
4. The pollution of the shallow aquifer by fire suppressants needed in enormous quantities.
5. The Applicant's history of fires and safety violations at its facilities across the country.
6. The Applicant's choice of the older technology of lithium-ion battery storage rather than newer, safer technology such as iron air or flow batteries.
7. The possible negative effect on home values and difficulty, if not impossibility, of obtaining home insurance because of the proximity to a utility scale solar generation and storage facility.

RECOMMENDATIONS:

On December 4, 2024, this request was presented to the Sustainable Land Development Code Hearing Officer. The Hearing Officer memorialized findings of facts and conclusions of law in a Recommended Order on this request. The Recommendation of the Hearing Officer, based on the evidence presented, is for denial of the Conditional Use Permit request to allow a 96-Megawatt solar facility on an 828-acre tract within the Rural Fringe (RUR-F) zoning district.

Staff reviewed the CUP application and have determined that all criteria for the CUP have been met to allow a 96-Megawatt solar facility on an 828-acre tract within the Rural Fringe (RUR-F) zoning district.

If the Planning Commission finds that the application has met the CUP criteria and grants approval, staff recommends the following conditions be imposed:

CONDITIONS OF APPROVAL:

1. Compliance with all Reviewing Agencies' requirements, including the 90 conditions imposed by Santa Fe County Fire Prevention (see memo from Fire Marshal's office).
2. The drilling or use of individual and/or shared wells for this use on this property is prohibited.
3. The Applicant shall provide proper buffering and screening by installing a paneled fence to a portion of the proposed 8' tall fence that will be located on the southwest portion of the property.
4. Permanent fencing will be required around all designated archeological sites to delineate and preserve the integrity of these areas.
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 guaranties in place.
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 Chapter 4, Section 4.9.6.8.
7. Utilization of the 70-foot-tall steel monopoles 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.
8. A decommissioning bond (may contain salvage value) will be required prior to recordation of the CUP Site Development Plan, and must be in place for the life of the project.
9. The Applicant will be required to apply for all applicable Development Permits after the CUP recordation.
10. Prior to recordation of the CUP Site Development Plan the Applicant will be required to renew its access permit from NMDOT.
11. Applicant shall obtain an approved liquid waste permit from NMED prior to the submittal for a Development Permit.
12. The Applicant is required to work in consultation with the appropriate flood zone authorities to address the requirements specified in Chapter 7, Section 7.18.9.1. of the SLDC for any steel monopole located within a Zone A flood hazard area and submit the findings to staff for the record.
13. Construction activity to be limited to a Monday-through Saturday 7am to 7pm work schedule. Any deviation from these construction hours will require 48 hours' notice to Santa Fe County and neighboring property owners.

14. Prior to operations, the Applicant shall request and pass all required inspections and obtain a Santa Fe County Business License.
15. A detailed water budget is to be submitted and reviewed by Glorieta Geoscience and Santa Fe County Utilities Division.
16. The Applicant will be required to provide a Smoke and Plume Model that will be reviewed by Santa Fe County Fire Prevention prior to the recordation of the CUP.
17. 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.
18. Per Santa Fe County Fire Prevention requirements, a 10' noncombustible defensible space will be required as part of an overall 30' defensible space around the perimeter of the proposed development and to be illustrated on the recorded CUP Site Development Plan.
19. 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.

This Report and the Exhibits listed below are hereby submitted as part of the hearing record.

EXHIBITS:

- A. Submitted CUP Application
- B. Applicants' CUP Written Report
- C. Legal lot of record
- D. Letter of consent
- E. TAC Follow-up Letter
- F. Pre-application Neighborhood Meeting Material
- G. CUP/Site Development Plans
- H. NM DOT access permit
- I. Water availability Letter
- J. Environmental Impact Report
- K. Aquatic Resources Inventory Report
- L. Biological Survey Report
- M. Visual Impact Report
- N. Adequate Public Facilities Assessment
- O. Site Threshold Analysis
- P. State Historical Preservation Office (SHPO) Review
- Q. Santa Fe County Fire & Atar Fire Review
- R. Glorieta Geoscience EIR Review
- S. Legal Notice
- T. Applicable Code Requirements
- U. December 4, 2024, SLDC Hearing Officer Meeting Minutes
- V. December 4, 2024, SLDC Hearing Officer Recommended Order

- W. Letters of Support (via link on Board Docs due to size)
- X. Letters of Opposition/Concern (via link on Board Docs due to size)

Exhibit 2

**Email string September 17-18, 2023 between
Selma Eikelenboom and Fire Marshal Jaome Blay**

From: Jaome R. Blay <jblay@santafecountynm.gov>
Sent: Monday, September 18, 2023 14:59
To: Selma Eikelenboom <s.eikelenboom@ifscolorado.com>
Cc: Jacob Black <jblack@santafecountynm.gov>; Jeffrey Carroll <jcarroll@santafecountynm.gov>;
Wallace S. Starks <wstarks@santafecountynm.gov>
Subject: RE: Follow up on Ms Beidleman correspondence

Ms. Selma Eikelenboom-Schieveld,

Thank you for the email you sent me on August 22. Your letter prompt us to do even more research. Please find attached a report prepared by the Sandia and Pacific Northwest National Laboratories. This report presents a systematic hazard analysis of a hypothetical, grid scale lithium-ion battery power plant to produce sociotechnical "design objectives" for system safety.

Respectfully,

Jaome R. Blay

Santa Fe County Fire Department
Assistant Chief - Fire Marshal
505-995-6526
jblay@santafecountynm.gov

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Facebook [@santafecountyfd](https://www.facebook.com/santafecountyfd)

From: Selma Eikelenboom [mailto:s.eikelenboom@ifscolorado.com]
Sent: Monday, September 18, 2023 2:10 PM
To: Jaome R. Blay <jblay@santafecountynm.gov>
Subject: Re: Follow up on Ms Beidleman correspondence

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear Mr. Blay,

I went to the three days 2023 Energy Storage System Safety and Reliability Forum, organized by Sandia National Laboratories. Maybe you were there as well?

I wrote a summary of what was shared with the public and I attached it to this email.

If you take the trouble and time to read it, you may understand why I am worried.

Regards,

Selma Eikelenboom-Schieveld

From: Jaome R. Blay <jblay@santafecountynm.gov>

Sent: Monday, September 18, 2023 13:46

To: Selma Eikelenboom <s.eikelenboom@ifscolorado.com>

Cc: Jacob Black <jblack@santafecountynm.gov>; Jeffrey Carroll <jcarroll@santafecountynm.gov>;

Wallace S. Starks <wstarks@santafecountynm.gov>

Subject: RE: Follow up on Ms Beidleman correspondence

Ms. Selma Eikelenboom-Schieveld,

We are researching grid-sale energy storage hazard analysis & design objective for system safety by various national laboratories including Sandia and Pacific Northwest. These hazard analyses include information from BESS incidents across the U.S. Hence, why our fire department is not sitting idle and is working diligently to be as informed as possible.

Please let us know if you have any more questions or concerns.

Respectfully,

Jaome R. Blay

Santa Fe County Fire Department

Assistant Chief - Fire Marshal

505-995-6526

jblay@santafecountynm.gov

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Facebook [@santafecountyfd](https://www.facebook.com/santafecountyfd)

From: Selma Eikelenboom [s.eikelenboom@ifscolorado.com]

Sent: Monday, September 18, 2023 1:33 PM

To: Jaome R. Blay <jblay@santafecountynm.gov>

Cc: Jacob Black <jblack@santafecountynm.gov>; Jeffrey Carroll <jcarroll@santafecountynm.gov>;
Wallace S. Starks <wstarks@santafecountynm.gov>
Subject: Re: Follow up on Ms Beidleman correspondence

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear Mr. Blay,

I would think safety is not a prerogative of one of the parties involved.

Safety involves us all.

I wonder how you can research the application of codes and standards if you do not include what caused them to fail in the past.

Knowledge that might be found in incidents reports like the one in the Chandler fire which you are not aware of.

Can you blame me for being able to rest assured?

Regards,

Selma Eikelenboom-Schieveld

From: Jaome R. Blay <jblay@santafecountynm.gov>

Sent: Monday, September 18, 2023 11:28

To: Selma Eikelenboom <s.eikelenboom@ifscolorado.com>

Cc: Jacob Black <jblack@santafecountynm.gov>; Jeffrey Carroll <jcarroll@santafecountynm.gov>;

Wallace S. Starks <wstarks@santafecountynm.gov>

Subject: RE: Follow up on Ms Beidleman correspondence

Ms. Selma Eikelenboom-Schieveld,

In an effort for our fire department to remain neutral, I am declining your request to contact them on your behalf.

Please rest assure that our fire department is continually researching the application of fire safety codes and standards for the installation of these type of facilities.

Respectfully,

Jaome R. Blay

Santa Fe County Fire Department

Assistant Chief - Fire Marshal

505-995-6526

jblay@santafecountynm.gov

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Facebook [@santafecountyfd](#)

From: Selma Eikelenboom [s.eikelenboom@ifscolorado.com]

Sent: Monday, September 18, 2023 10:59 AM

To: Jaome R. Blay <jblay@santafecountynm.gov>

Subject: Re: Follow up on Ms Beidleman correspondence

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear Mr. Blay,

Per the EPCRA, the Chandler facility had to file an emergency release notification and a 30 day notification.

I cannot imagine there was no additional investigation similar to the McMicken report.

Would you be willing to contact the Chandler Fire Department, ask for copies of those reports and share them with me?

They are public records, and I would think they would be of interest to your department as well.

Thank you for any effort you are willing to put into this,
regards,

Selma Eikelenboom-Schieveld

From: Jaome R. Blay <jblay@santafecountynm.gov>

Sent: Monday, September 18, 2023 08:03

To: Selma Eikelenboom <s.eikelenboom@ifscolorado.com>

Cc: Jeffrey Carroll <jcarroll@santafecountynm.gov>; Wallace S. Starks <wstarks@santafecountynm.gov>
Subject: RE: Follow up on Ms Beidleman correspondence

Ms. Selma Eikelenboom-Schieveld,

Glad to hear you had a wonderful time in Portugal.

In response to your inquiry, I am not aware of such report.

Respectfully,

Jaome R. Blay
Santa Fe County Fire Department
Assistant Chief - Fire Marshal
505-995-6526
jblay@santafecountynm.gov

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Facebook @santafecountyfd

-----Original Message-----

From: Selma Eikelenboom [s.eikelenboom@ifscolorado.com]
Sent: Sunday, September 17, 2023 12:43 PM
To: Jaome R. Blay <jblay@santafecountynm.gov>
Subject: Re: Follow up on Ms Beidleman correspondence

WARNING:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear Mr. Blay,

I am sure you are familiar with the McMicken final technical report regarding the fire in the BESS in Surprise.

Since then we had the fire in Chandler.

I was wondering if a similar report was already available and whether you have copy of it.

If that is the case, could you share that copy with me?

I hope to hear from you,

Best,

Selma Eikelenboom-Schieveld (BTW: Portugal was beautiful!)

Exhibit 3

County Staff email string June 11-August 7, 2024 on Annex G stakeholder process:

- June 11 email from Blay with proposed press release on HMA stakeholder process**
- August 5 email from Blay to resident on proposed stakeholder process**
- August 6 email from Shaffer scheduling Staff meeting (with proposed resolution) for August 13 BCC meeting**
- August 7 email from Blay to Growth Management to discuss “next course of action” after stakeholder process was rejected at August 7 meeting**

June 11 email from Blay with proposed press release on HMA stakeholder process

From: Jaome R. Blay
Sent: Tuesday, June 11, 2024 3:57 PM
To: Olivia R. Romo; Leandro R. Cordova
Cc: Jordan A. Yutzy; Jacob Black; Jeffrey Carroll; Greg Shaffer
Subject: Press Release Annex G Advisory Committee 6.11.24
Attachments: Press Release Annex G Advisory Committee 6.11.24.docx

Good afternoon Olivia and Leandro,

Please see revised document attached. Let me know if I can assist further.

Respectfully,

Jaome R. Blay
Santa Fe County Fire Department
Assistant Chief/Fire Marshal
(505)995-6526
jblay@santafecountynm.gov

Press Release

For immediate release June 11, 2024

County Solicits Temporary Community Stakeholder Working Group for Hazard Mitigation Analysis (HMA) Applicability

Santa Fe, NM- The Santa Fe County Growth Management Division, in coordination with the Fire Department, is seeking community stakeholders in the formation of a temporary working group to provide input on criteria for fire and explosion protection levels for battery energy storage systems installations. They will also offer perspectives on the acceptability criteria of the Hazard Mitigation Analysis (HMA), as described in the [2023 NFPA 855 Annex G](#).

This temporary stakeholder community working group will comprise of seven (7) members with an interest or experience in zoning, large scale solar installations, battery energy storage systems, or the fire service industry. One member will be appointed from each Commission District (D1-5) and two (2) at large who reside in any area of Santa Fe County. The primary duty of this working group will be to provide public input on the applicability of Hazardous Mitigation Analysis (HMA) for battery energy storage systems as required by the 2023 NFPA 855.

Members of this working group are responsible for attending at least two (2) meetings to be determined once all the members are selected. Once all recommendations are finalized, one community stakeholder working group member may be appointed to the technical stakeholder group tasked with establishing goals and objectives to evaluate whether the requirements of NFPA 855 are adequate to meet the criteria for acceptability of the level of fire and explosion protection. All meetings will be held in person on weekday afternoons. Additional meetings may be scheduled depending on the complexity of the work.

Interested individuals should submit a letter of interest and resume to:

Santa Fe County Growth Management Department
Attn: Jordan Yutzy
P.O. Box 276
Santa Fe, New Mexico 87504-0276
Email: jyutzy@santafecountynm.gov
Phone: (505) 992-9866

Please include your availability to meet and which District you represent in your letter of interest.

Application Deadline is Monday, June 28, 2024 at 5pm.

####

For media inquiries, contact Olivia Romo, Communications Coordinator at orromo@santafecountynm.gov

August 5 email from Blay to resident on proposed stakeholder process

From: Ashley Schannauer <schannauer@comcast.net>
Sent: Monday, August 12, 2024 7:24 PM
To: ASHLEY SCHANNAUER
Subject: Request for Stakeholder Status Participation

From: Jaome R. Blay <jblay@santafecountynm.gov>
To: Camilla Brom <br.camilla@yahoo.com>; Hank Hughes <hhughes@santafecountynm.gov>
Cc: Greg Shaffer <gshaffer@santafecountynm.gov>; Jeff S. Young <jyoung@santafecountynm.gov>; Jacob Black <jblack@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Leandro R. Cordova <lcordova@santafecountynm.gov>; Jeffrey Carroll <jcarroll@santafecountynm.gov>; Nicholas Bartlett <nick@atarfire.com>; Matt Gordon <matt.gordon@aes.com>; Michael A. Nunez <mnunez@santafecountynm.gov>; Roger L. Prucino <rprucino@santafecountynm.gov>; Wallace S. Starks <wstarks@santafecountynm.gov>
Sent: Monday, August 5, 2024 at 11:08:28 AM MDT
Subject: RE: Request for Stakeholder Status Participation

Ms. Brom,

Thank you for reaching out to the fire department with your concern. As the fire code official of Santa Fe County, the safety of this community is of outmost importance to my position. Also, be aware this is the first application of its kind, and all SFC staff involved in this process are working exhaustively to learn how to navigate through such controversial process while ensuring both the public and the applicant are treated fairly and equally.

As you point out, Annex G is vague relative to the definition of interested stakeholder vs. risk assessment stakeholder. Firstly, the Growth Management, County Manager's Office, and the Fire Department are working diligently to set up a process in which interested stakeholders will have an opportunity to participate and provide input. The details of this process are currently being reviewed by the legal department with the intention of presenting it to the BCC, and if approved, make the process permanent for all applications relative to large-scale BESS installations. Also, please note that interested stakeholders will be selected and appointed by Growth Management, County Manager's Office, and Fire Department personnel. Please refer to the Growth Management Department for more details and status of this process.

Secondly, risk assessment design process should be directed by risk assessment stakeholders experienced in the fire protection engineering and in energy storage risk assessment and plant operation of the type of, or similar to the plant under construction to ensure that the fire prevention, fire protection and explosion prevention recommendations have been evaluated in view of the project specific consideration regarding design, layout and anticipated operating requirements. These risk assessment stakeholders will be selected and appointed by the fire department, which include county staff, subject matter expert, fire department plan reviewer, applicant/s, and potentially a representative (with technical knowledge and background in BESS) from the interested stakeholder group. As you can see, there are various moving parts and processes we are currently working on.

I do apologize for not communicating periodically, as some of these processes are being assessed and scrutinized by various departments at different times.

Sincerely,

Jaome R Blay

Santa Fe County Fire Department

Assistant Chief of Support/Fire Marshal

(505) 995-6526

jblay@santafecountynm.gov

From: Camilla Brom <br.camilla@yahoo.com>

Sent: Monday, August 5, 2024 9:17 AM

To: Jaome R. Blay <jblay@santafecountynm.gov>

Cc: Greg Shaffer <gshaffer@santafecountynm.gov>; Jeff S. Young <jyoung@santafecountynm.gov>; Jacob Black <jblack@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Leandro R. Cordova <lcordova@santafecountynm.gov>; Jeffrey Carroll <jcarroll@santafecountynm.gov>; Nicholas Bartlett <nick@atarfire.com>; Matt Gordon <matt.gordon@aes.com>; Michael A. Nunez <mnunez@santafecountynm.gov>

Subject: Re: Request for Stakeholder Status Participation

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear Mr. Blay,

I appreciate your response. I do have a couple of follow up questions. You pointed out that according to Annex G, the risk assessment design process should be directed by parties (stakeholders) experienced in the fire protection engineering and in energy storage risk assessment and plant operation of the type of, or similar to the plant under construction to ensure that the fire prevention, fire protection and explosion prevention recommendations have been evaluated in view of the project specific consideration regarding design, layout and anticipated operating requirements. I am familiar with that section of Annex G, which is section G.3.1.1 (regarding the risk assessment process being done by people with technical experience).

However, in Section G.3.2, it refers to “Stakeholders with an interest in the scope and applicability of the fire protection design.” This would pertain to people such as myself, and so that is why I requested to have Stakeholder status. Annex G does not include a definition which groups a “Stakeholder” into a specific definition, but rather includes different types of Stakeholders. The “Risk Assessment Stakeholder” falls under one type, and the “Interested Stakeholders” (who will be directly affected) falls under another.

I would like to point out that AES held several pre-application neighborhood meetings, in which one of the requirements was to send first class letters to all property owners who bordered Mr. Thompsons parcel. That requirement “indicated” to me, that those of us who border his property, in which AES was required to send notification via USPS (vs a postcard) have more of a vested interest “Stake” in this proposed facility (vested interest meaning financial loss and greatest safety risk).

As I understand this, you are the person who would decide who to include as “Stakeholders” in this process. It would seem that it would be better to be open to those people with a vested interest in this, to be a part of the review process, rather than limiting it to only Atar Fire and County Staff. As you know, many of us are deeply concerned about this project, and I believe including those of us who fall under the section G.3.2 Stakeholder description, would be the best approach.

Sincerely,

Camilla Brom

181 San Marcos Loop

Santa Fe NM 87508

On Thursday, July 18, 2024 at 02:36:18 PM MDT, Jaome R. Blay <jblay@santafecountynm.gov> wrote:

Ms. Camilla Brom,

Thank you for reaching to our office.

Currently, the Growth Management (Land Use) Department is working on developing a County-wide system to evaluate and manage the community stakeholder working group process relative to CUP applications for large scale BESS installations. Please refer to Land Use personnel with questions or concerns relative to that process.

The fire department, in collaboration with a subject matter expert, will evaluate and manage the technical stakeholder process described in the 2023 NFPA 855 Annex G once the community stakeholder working group mentioned above has provided their input and perspective. Per the 2023 NFPA 855 Annex G, the risk assessment design process should be directed by parties (stakeholders) experienced in fire protection engineering and in energy storage risk assessment and plant operation of the type of, or similar to the, plant under consideration to ensure that the fire prevention, fire protection, and explosion prevention recommendations have been evaluated in view of the project specific consideration regarding design, layout, and anticipated operating requirements.

Sincerely,

Jaome R Blay

Santa Fe County Fire Department

Assistant Chief of Support/Fire Marshal

(505) 995-6526

jblay@santafecountynm.gov

From: Camilla Brom <br.camilla@yahoo.com>

Sent: Thursday, July 18, 2024 12:49 PM

To: Jaome R. Blay <jblay@santafecountynm.gov>

Cc: Greg Shaffer <gshaffer@santafecountynm.gov>; Jeff S. Young <jyoung@santafecountynm.gov>; Jacob Black <jblack@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Leandro R. Cordova <lcordova@santafecountynm.gov>

Subject: Re: Request for Stakeholder Status Participation

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear Mr. Blay,

I sent an email to you (and several other people listed below) on June 12, 2024, requesting to be a Stakeholder in the review process of the AES Hazard Mitigation Analysis pertaining to the Lithium-ion Battery Energy Storage System.

After no response from you or the others, I sent a 2nd email on July 1, 2024, once again pertaining to the same request.

After my second email, the **only** response I received (on July 5, 2024) was from AES Senior Permitting Project Manager Matt Gordon who said this.

"Dear Ms. Brom,

Please find attached letter provided in response to prior stakeholder request. As noted in the letter, the Fire Marshal, as the Authority Having Jurisdiction (AHJ) who is responsible for the review of the Rancho Viejo Solar Project's compliance with NFPA 855 has discretion to incorporate this stakeholder process. In this regard, AES Clean Energy will support the Fire Marshal's efforts to evaluate and manage the stakeholder process described in Annex G.

Thank you,

Matt"

The attached letter, which Mr. Gordon cc'd you and others on, is attached to this email today. Key information in the first paragraph of the letter states...

"This letter is in response to Mr. Schannauer's letter dated June 2, 2024, requesting appointment as a stakeholder as referenced in Annex G of NFPA 855 for the Rancho Viejo Solar Project. Annex G, by its own terms is "not a part of the requirements of this NFPA document but is included for informational purposes only." Annex G is a "comprehensive set of guidelines for reviewing and evaluating LIB ESS facilities." As such the Fire Marshal, as the Authority Having Jurisdiction (AHJ) who is responsible for the review of the Rancho Viejo Solar Project's compliance with NFPA 855 has discretion to incorporate this stakeholder process. To the extent that the Fire Marshal intends to incorporate the stakeholder process described in Annex G, AES Clean Energy has no objection to Mr. Schannauer serving as a stakeholder. However, the qualifications and role of the stakeholders must be clearly defined and consistent with what is set forth in Annex G."

Mr. Gordon cc'd you, along with a number of other county staff people.

I am once again emailing you, to find out why you have not responded to this request, given you are specifically the "Authority Having Jurisdiction" for Santa Fe County. I would like to know why you have not provided any type of response to me or county residents regarding our participation to be involved in the process of the AES HMA as Stakeholders?

Sincerely,

Camilla Brom

181 San Marcos Loop

Santa Fe NM 87508

Additional people my emails were sent to:

Leandro Cordorva (Interim Growth Management Director)

Joshua Mayer (AES Senior Manager Project Development)

Nick Bartlett (ATAR Fire)

Other people cc'd in both of my emails included:

Greg Shaffer (Santa Fe County Manager)

Jeff Young (Santa Fe County Attorney)

Jacob Black (Santa Fe County Fire Chief)

Dominic Sisneros (Santa Fe County AES Case Manager)

Jordan Yutzy (Santa Fe County Bldg. and Development Director)

Matt Gordon (AES Senior Permitting Project Manager)

On Monday, July 1, 2024 at 10:17:41 PM MDT, Camilla Brom <br.camilla@yahoo.com> wrote:

Dear All,

I am following up on the below email that I sent to all of you on June 12, 2024. I have not heard a response from anyone at all. I would like to know who I would need to reach out to, if I don't hear back from any of you.

I do believe, based on my below email, that I have justified reasoning as to why I have the right to be an involved Stakeholder in the development and review process of the AES Hazard Mitigation Analysis (HMA) pertaining to the Lithium-ion Battery Energy Storage System (BESS) for the proposed AES Rancho Viejo Solar project.

I would sincerely appreciate a response within the week.

Thank you,

Camilla Brom

181 San Marcos Loop

Santa Fe NM 87508

On Wednesday, June 12, 2024 at 03:54:31 PM MDT, Camilla Brom <br.camilla@yahoo.com> wrote:

June 12, 2024

Jaome Blay, Assistant Fire Chief, Fire Marshal

Leandro Cordova, Deputy County Manager, and Interim Santa Fe County Land Use Administrator/Growth Management Director

Joshua Mayer, Senior Manager, Project Development AES

Nick Bartlett, Atar Fire

Dear Mr. Blay, Mr. Cordova, Mr. Mayer and Mr. Bartlett,

I am writing to request appointment as a Stakeholder, to provide early input in the development and review process of the AES Hazard Mitigation Analysis (HMA) pertaining to the Lithium-ion Battery Energy Storage System (BESS) for the proposed AES Rancho Viejo Solar project.

As part of Annex G, in the 2023 NFPA 855 Standards which Santa Fe County has stated will be applied to the AES Rancho Viejo HMA, it states Stakeholders should have early input during the preparation of an HMA. Based on recent emails between certain county staff and AES, communication suggests that the preparation of an HMA has either already begun or will very soon.

My property is adjacent to the Rancho Viejo property, in which the AES Rancho Viejo Solar Facility is being proposed. I have been involved in following this proposed facility since early Summer of 2022, and throughout this time, have done extensive research regarding Lithium-ion Battery Energy Storage Systems and the dangers they pose. I developed a website to share information with Santa Fe County residents (and the public) about proposed facilities such as the AES Rancho Viejo facility and issues such facilities may present. I've also given presentations to community groups and have been interviewed by newspapers and radio. I have corresponded and/or had meetings with various county staff, and also have had direct communication with representatives of AES, pertaining to concerns over the location and safety of this facility (including the lithium-ion BESS).

Lastly, I'm a healthcare professional (Hospitalist Physician Assistant) employed by Presbyterian. Thus, in the event of a fire, explosion or toxic chemical release from this facility, it is possible that I may become involved in the care of patients requiring hospitalization from sustained injuries or complications from sustained injuries.

In considering the close proximity of this facility (including the lithium-ion BESS) to my own property/home, the knowledge I've acquired and shared over the past 2 years, and my professional background as a Hospitalist Physician Assistant, I hold a significant interest in the scope and applicability of the fire protection design pertaining to the AES BESS. Therefore, I respectfully request to be a Stakeholder, in order to provide input on the AES Hazard Mitigation Analysis, given my background and the risks this proposed facility presents to me.

Sincerely,

Camilla Brom

181 San Marcos Loop

Santa Fe NM 87508

**August 6 email from Shaffer scheduling Staff meeting (with proposed resolution) for
August 13 BCC meeting**

Subject: FW: ESS Stakeholders: Defining Roles, Deliverables, and Membership
Location: Teams Meeting

Start: Wed 8/7/2024 8:15 AM
End: Wed 8/7/2024 9:00 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded


Organizer: Greg Shaffer

FYI

-----Original Appointment-----

From: Greg Shaffer <gshaffer@santafecountynm.gov>
Sent: Tuesday, August 6, 2024 1:59 PM
To: Greg Shaffer; Jordan A. Yutzy; Jaome R. Blay; Jeff S. Young
Cc: Leandro R. Cordova; Jacob Black; Alexandra Ladd
Subject: ESS Stakeholders: Defining Roles, Deliverables, and Membership
When: Wednesday, August 7, 2024 8:15 AM-9:00 AM (UTC-07:00) Mountain Time (US & Canada).
Where: Teams Meeting

The purposes of this meeting is to discuss the roles, deliverables, and membership of the potential stakeholder groups that have been discussed. Background material is attached or sent under previous cover; it consists of:

Appendix G to 2023 NFPA 855 -  [NFPA 855 2023 Annex G Guide for Suppression and Safety of Lithium-Ion Battery Energy Storage Systems.pdf](#)

Recent correspondence with a constituent (sent to you via Teams)
Draft resolution, memo, and press release submitted to CMO yesterday.

Thanks.

Greg

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 216 104 639 51

Passcode: 8aQhs4

Dial in by phone

[+1 773-352-2011,,542947860#](tel:+17733522011542947860) United States, Chicago

[Find a local number](#)

Phone conference ID: 542 947 860#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)



If you have received this meeting invite and are not the intended recipient, please decline and delete this message.

Justin S. Greene
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Camilla Bustamante
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

MEMORANDUM

Date: August 6, 2024

To: Board of County Commissioners

From: Jordan Yutzy, Building & Development Manager

Via: Gregory S. Shaffer, County Manager
Leandro Cordova, Deputy County Manager
Alexandra Ladd, Growth Management Department Director

Subject: **August 13, 2024, BCC Meeting**
Resolution No. 2024-____, A Resolution Authorizing the Growth Management Department, Fire Marshal's Office and County Manager's Office to Appoint Community Members to a Temporary Working Group to Provide Input on Large-Scale Energy Storage Facilities in Relation to Fire Safety

SUMMARY:

Staff is requesting authorization from the Board of County Commissioners (Board) to temporarily appoint community members to a temporary community stakeholder group to provide input on large-scale energy storage facilities throughout Santa Fe County (County) regarding fire safety. These stakeholders will be a representation of the County as a whole and be made up of seven members: one from each Commission District and two at-large members. Due to the time restraints, this temporary group will serve until a formal committee can be created by ordinance as part of the SLDC.

BACKGROUND:

Due to the increased interest in installing and operating large-scale energy storage facilities in the County, staff is seeking input from the community regarding the fire safety of these facilities. The proposed Community Group will consist of seven members, with one from each commission district and two (2) serving at large. The group will be the voice of the community regarding fire safety of any proposed large-scale energy storage facilities in the County and advise the Board to determine additional fire safety submittal requirements as part of the fire review portion of the Conditional Use Permit (CUP).

Staff will issue a press release asking interested parties to apply to be on the Community Group. The press release will provide two weeks for applicants to submit their letters of interest and resumes. Once the application period has closed, staff will temporarily assign members to represent the five

commission districts and the two at-large positions. Staff will present the Board with a resolution to formally establish the working group and recommend members at the first regular meeting in 2025. This group will provide citizen feedback to the Annex G stakeholder group described in NFPA 855.

RECOMMENDED ACTION:

Approve the subject resolution authorizing the Growth Management Department, Fire Marshalls Office, and County Manager's Office to temporarily appoint community members to a Community Stakeholder Group to provide input on large-scale energy storage facilities.

EXHIBITS:

- Exhibit A – Subject Resolution
- Exhibit B – Press Release

**SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS**

RESOLUTION NO. 2024 - _____

**A RESOLUTION AUTHORIZING THE GROWTH MANAGEMENT DEPARTMENT,
FIRE MARSHAL'S OFFICE AND COUNTY MANAGER'S OFFICE TO APPOINT
COMMUNITY MEMBERS TO A TEMPORARY WORKING GROUP TO PROVIDE
INPUT ON LARGE-SCALE ENERGY STORAGE FACILITIES IN RELATION TO FIRE
SAFETY**

WHEREAS, in an effort to encourage a more sustainable Santa Fe County and promote the utilization of renewable resources such as solar energy, which projects often require large-scale energy storage facilities; and

WHEREAS, to be transparent and allow community input in regards to these facilities, staff is recommending the creation of a temporary community working group to assist the County by providing input and feedback on the issues that will arise as developers bring these types of projects before the County for consideration; and

WHEREAS, the group is to consist of seven (7) members, with one (1) from each of the five (5) commission districts and two (2) being at large; and

WHEREAS, the members will be appointed by staff from the Growth Management Department, Fire Marshal's Office and County Manager's Office; and

WHEREAS, the working group will serve for an indefinite time, with the expectation that a more formal stakeholder committee will be established to assess specific projects as they come before the County.

NOW, THEREFORE, BE IT RESOLVED that the Santa Fe County Board of County Commissioners hereby authorizes staff from the Growth Management Department, Fire Marshal's Office and County Manager's Office to appoint members to the community working group to provide input on large-scale energy storage facilities in relation to fire safety.

**PASSED, APPROVED, AND ADOPTED ON THIS THIRTEENTH DAY OF AUGUST
2024.**

**SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS**

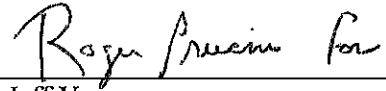
By: _____
Hank Hughes, Chair

ATTEST:

Katharine E. Clark
Santa Fe County Clerk

Date: _____

Approved as to form:



Jeff Young
Santa Fe County Attorney

Press Release

For immediate release August 13, 2024

County Solicits Temporary Stakeholder Working Group for Hazard Mitigation Analysis

Santa Fe, NM- The Santa Fe County Growth Management Division, in coordination with the Fire Department, is seeking stakeholders in the formation of a temporary working group to provide input on criteria for fire and explosion protection levels for solar facilities.

The temporary working group will comprise of seven (7) members with a passion or experience in zoning, development, or the fire industry. One member will be appointed from each Commission District (D1-5) and two (2) at large who may reside in any area of Santa Fe County. The primary duty of the working group will be to provide public input on the applicability and acceptability of solar facilities and battery energy storage systems as required by the 2023 NFPA 855.

Working group members are responsible for attending at least two (2) meetings to be determined once all the stakeholders are selected. After finalizing recommendations, one working group member may be appointed to the Annex G stakeholder committee. All meetings will be held in person on weekday afternoons. Additional meetings may be scheduled depending on the complexity of the work.

Interested individuals should submit a letter of interest and resume to:

Santa Fe County Growth Management Department

Attn: Jordan Yutzy

P.O. Box 276

Santa Fe, New Mexico 87504-0276

Email: jyutzy@santafecountynm.gov

Phone: (505) 992-9866

Please include your availability to meet and which District you represent in your letter of interest.

Application Deadline is Monday, August 28, 2024 at 5pm.

####

For media inquiries, contact Olivia Romo, Communications Coordinator at orromo@santafecountynm.gov

August 7 email from Blay to Growth Management to discuss “next course of action” after stakeholder process was rejected at August 7 meeting

From: Jaome R. Blay <jblay@santafecountynm.gov>
Sent: Wednesday, August 7, 2024 3:30 PM
To: Alexandra Ladd; Jordan A. Yutzy
Cc: Jeffrey Carroll; Jacob Black
Subject: AES CUP application and neighborhood meeting

Good afternoon Ms. Ladd and Mr. Yutzy,

I would like to request a meeting with you to discuss the next course of action after our meeting today. As you know, there will be a substantial change of course from our current intent. I just would like to have some direction. Please let me know when you may be available. I would prefer an in-person meeting.

Thank you.

Jaome R Blay

Santa Fe County Fire Department
Assistant Chief of Support/Fire Marshal
(505) 995-6526
jblay@santafecountynm.gov

Exhibit 4

**Case Timelines and Expiration:
Yutzy Memorandum to
Building and Development Staff
July 2, 2024**

Justin S. Greene
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Camilla Bustamante
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

DATE: July 2, 2024

TO: Building and Development Staff

FROM: Jordan Yutzy, Building and Development Manager, Land Use Administrator

VIA: Leandro Cordova, Interim Growth Management Director

REF.: Case Timelines and Expiration

With the upcoming updates to the Sustainable Land Development Code (SLDC) we need to evaluate all cases that were initiated before July 2021 for land divisions and January 2024 for all other cases. This will apply to all cases handled by the Building and Development Division. Staff will need to create a list of any land division case with a date before July 2021 and any other case with a date older than January 2024. This list shall be emailed to myself and we will set up a time to meet and discuss the cases.

With the update of the SLDC any land division case older than three (3) years will be evaluated to determine which path best fits the circumstance of the case. Cases other than land division older than six (6) months will be evaluated as well. According to the SLDC there are varying timelines depending on case type. In order to standardize the process and create a transparent atmosphere for all applicants the following criteria will be utilized to determine the when the case will be closed due to inactivity:

- **Administrative Cases**- Applicants of these cases will be sent a letter via certified mail and email stating that they have until September 13, 2024 to complete their request or provide a withdrawal letter to staff. If they fail to meet this timeline staff will send them a follow up certified letter stating that the case has been deemed abandoned. If the project is deemed abandoned by the SLDC they will not be able to resubmit the project for two (2) years. If they withdraw the case, they will be able to resubmit when ready. No refunds will be processed for fees already paid in reference to these cases.

- **Hearing Officer and Planning Commission Cases-** These cases will be divided into separate groups depending on their status:
 - Applicants that have not provided the documentation required to start the Hearing Officer and/or Planning Commission will be sent a certified letter and email stating that the case will be closed and deemed abandoned if there is no movement before September 13, 2024. I am aware it will be impossible to get them scheduled for their public hearings before this date, so in order to keep them active the hearing dates will need to be scheduled before September 13, 2024 with the assistance of staff. If they fail to meet the set hearing dates the cases will be closed and deemed abandoned. No refunds will be processed for any fees previously paid. If the case is deemed abandoned by SLDC the applicant will be unable to resubmit for two (2) years. Applicants that present a withdrawal letter to staff will be able to resubmit when ready.
 - Applicants that have started their public hearings but have not completed them due to any reason outside the Building and Development's control will be sent a certified letter and email stating they have until September 13, 2024 to provide the missing items to staff or the project will be closed and deemed abandoned. If the case is deemed abandoned by the SLDC the applicant will be unable to resubmit for two (2) years. Applicants that present a withdrawal letter to staff will no be able to resubmit for twelve (12) months from the date of the withdrawal letter in accordance with Chapter 4, Section 4, Paragraph 15 of the SLDC.
- **Board of County Commissioners (BCC) Cases** - Cases that have proceeded to BCC and have not been finalized will follow the SLDC guidelines for the case type. Staff will review all these cases and will send a certified letter and email to the applicant stating the expiration date of their submittal as stated in the SLDC. The applicant will also be notified that if any time extension is requested when applicable by the SLDC, staff's recommendation will be to deny the time extension to BCC. Ultimately, it will be up to BCC if time extensions are given to the applicant. Any project that has already exceeded the expiration date set forth by the SLDC, the owner will be notified via certified mail and email stating that the project is closed and deemed abandoned.
- **Technical Advisory Committee (TAC)-** Starting in July of 2024 items heard at TAC will be considered valid for submittal for eight (8) months from the date heard in TAC. If the eight (8) month deadline is not maintained the applicant will need to reapply to be heard at TAC at which point the eight (8) month deadline for submittal will start over. Moving forward all TAC follow up letters shall contain notification of the eight (8) month expiration date. Staff is to place the eight (8) month date on the letter as an actual expiration date not just the month. TAC follow up letters are required as part of the submittal. This section will not apply to any cases heard before July 11, 2024.

To ensure consistency within the division the following guidance is to be used with regards to cases. Email communication between a case manager and applicant is not considered sufficient to keep a case active once they have reached the deadlines mentioned above. Applicants must provide the items listed on the incomplete letter to keep a case active. Once a project is deemed incomplete and cannot proceed through the process the above-mentioned time frames will go into effect. The date the case will be moved to the abandoned category must be stated on the incomplete letter sent to the applicant.

The SLDC is a living, breathing document that evolves with time. Due to upcoming changes to the SLDC the timelines set forth in the memo and outlined by the SLDC (Chapter 4) will be enforced going forward to ensure all cases are held to the most current SLDC regulations. The goal of this memo is to ensure staff has a balanced work load that follows the current SLDC regulations and eliminate the possibility of cases using multiple versions of the SLDC.

Exhibit 5

**December 10, 2024 email string between
Fire Marshal Blay and Atar Fire**

From: Jaome R. Blay <jblay@santafecountynm.gov>
Sent: Tuesday, December 10, 2024 1:26 PM
To: Todd LaBerge; Nicholas Bartlett
Cc: Alexandra Ladd; Jordan A. Yutzy; Dominic J. Sisneros; Jacob Black; Jeffrey Carroll
Subject: IMPORTANT-Additional guidance from San Diego County for Santa Fe County
Attachments: SD_Fire_BESS_Attach_B_Iterim Fire Protection Guidelines.pdf

Importance: High

Todd,

Thank you for sharing this critical document with us (Land Use and Fire). As other jurisdictions are proactively preparing themselves to permit BESS installations by adapting and adopting new codes and standards, it behooves us to follow their lead for obvious reasons. I would like to suggest we meet to find out more about your proposal. Please let us know some dates/times that work for you.

Regards,

Jaome R Blay

Santa Fe County Fire Department
Assistant Chief of Support/Fire Marshal
(505) 995-6526
jblay@santafecountynm.gov

From: Todd LaBerge <todd@tlbfpe.com>
Sent: Tuesday, December 10, 2024 8:17 AM
To: Jaome R. Blay <jblay@santafecountynm.gov>
Cc: Nicholas Bartlett <nick@atarfire.com>
Subject: Additional guidance from San Diego County for Santa Fe County

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good morning Jaome,

San Diego County just published this guidance that may have some use for Santa Fe County. Nick and I can help create something like this, and other salient points if that would be useful for the County and any projects looking to develop within. It may be useful to have an overall Guidance Document to help developers ensure that they have all of the required information before they come to the County for review.

Please note that the requirements in this document from San Diego County will present challenges to the developers and the County, due to several factors we can review with the Santa Fe County team. We're

still digesting all of this new guidance. I'm not sure all of it is enforceable or even achievable. Some of the language also needs to be improved.

Please see the attached, and if you'd like, we can meet up and review.

Have a great day

Todd



Exhibit 6

Interim Fire Protection Guidelines for BESS Facilities San Diego County Fire Protection District December 10, 2024

SAN DIEGO COUNTY FIRE PROTECTION DISTRICT

INTERIM FIRE PROTECTION GUIDELINES FOR BESS FACILITIES



PUBLIC SAFETY GROUP

December 10, 2024

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I. PURPOSE

The San Diego County Fire Protection District (SDCFPD) is committed to ensuring the safety of Battery Energy Storage System (BESS) facilities through the application of a comprehensive framework of local, state, and national codes and standards. These regulations are designed to mitigate the risks associated with fire, explosion, and toxic hazards, thereby safeguarding public health and safety. As BESS technologies evolve, existing codes are being adapted to address the emerging and unique risks posed by these systems. Furthermore, the SDCFPD Fire Chief is vested with the authority to amend or modify the Fire Code, as necessary, to address new safety concerns and technological advancements. The regulations in this document are specific to the SDCFPD but may be adopted by other fire protection and municipal water districts in San Diego County.

II. BACKGROUND

The San Diego County Fire Protection District (SDCFPD) currently employs a mix of local, state, and national codes and standards to review Battery Energy Storage System (BESS) facilities, with the goal of mitigating fire and explosion risks and ensuring public safety. However, existing regulations, including the California Fire Code (CFC) and the Consolidated Fire Code, do not fully address the unique hazards posed by modern BESS technologies. For example, current property line setbacks (ranging from 20-50 feet) may not be sufficient for newer BESS designs, and the Consolidated Fire Code remains silent on specific provisions for BESS. While the CFC does not require site-specific emergency response plans, the National Fire Protection Association (NFPA) 855 mandates such plans for all BESS installations. Other NFPA standards guide fire detection, suppression, and system monitoring, while Underwriters Laboratory (UL) standards like UL 9540A ensure that BESS components are rigorously tested for fire and explosion resistance.

In 2024, SDCFPD introduced a requirement for a technical study, which now mandates that BESS facilities conduct comprehensive risk assessments and hazard mitigation plans. These studies are intended to address safety gaps and ensure compliance with fire codes. Under the 2022 California Fire Code, the Fire Chief has the authority to authorize changes to existing fire codes when new risks are identified, especially when dealing with emerging technologies like BESS. This gives the Fire Chief the discretion to adapt safety regulations based on evolving industry standards. By 2025, the Office of the State Fire Marshal (OSFM) will release an updated CFC, which will be enforced locally, and the changes will be incorporated into the San Diego County Consolidated Fire Code in 2026.

In addition to steps taken this year by SDCFPD and future changes by the State to the CFC, SDCFPD will implement Interim Fire Protection Guidelines for BESS facilities. The following are key safety measures in the Guidelines:

- *NFPA and UL Standards:*
 - Compliance with NFPA 855, UL 9540A, and other NFPA standards ensures proper safety measures for fire detection, suppression, and explosion mitigation.

- *Required Technical Studies (2024 Update):*
 - BESS facilities must submit detailed risk assessments and hazard mitigation plans, including plume modeling and failure scenario analysis.
- *Key Safety Measures:*
 - A key safety consideration for BESS facilities is plume modeling to assess toxic off-gassing during failure events. Various validated modeling tools, including AERMOD and Fire Dynamics Simulator (FDS), are approved and must be utilized to evaluate risks and determine appropriate setbacks from sensitive receptors like residential areas and healthcare facilities.
 - The Hazard Mitigation Analysis (HMA) plays a key role in identifying potential failure scenarios, including safety system malfunctions or temperature control failures.
 - All technical reports related to BESS safety, including hazard mitigation and plume modeling studies, must be prepared by a licensed California Fire Protection Engineer to ensure thorough and accurate safety assessments.
 - Separation Distances: BESS must have at least 10 feet of separation between adjacent enclosures within the property and 100 feet from property line to ensure firefighting effectiveness, safe access, equipment placement, and dispersion of toxic gases. Plume modeling may increase the setback distance.
 - Explosion Prevention: BESS facilities must have fire and explosion detection systems in place, including gas detectors that meet UL 9540A and NFPA 72 standards. These systems must be able to detect explosive gases, trigger alarms, and initiate ventilation systems to mitigate risks from thermal runaway.
 - BESS enclosures must meet fire-rated materials standards (e.g., UL 263 or ASTM E119). The enclosures should be capable of withstanding at least one hour of fire exposure, and systems for suppression, alarms, and monitoring must be in place.
 - New technologies for suppressing or minimizing thermal runaway may be emerging, but the current code requires these technologies to be third-party tested for accuracy before implementation.
 - For existing facilities using lithium-ion BESS not UL 9540 listed, HMA and Emergency Response Plans must be reviewed and updated. Local fire departments should conduct annual site familiarization for emergency response training.
- *Cost Recovery:*
 - Facility owners must reimburse emergency services for response costs, ensuring sustainability of public safety operations.
- *Root Cause Analysis:*
 - In the event of a fire, the Fire Chief will conduct a root cause analysis, with costs borne by the facility owner.
- *Ongoing Code Updates:*
 - The California Fire Code will be updated in 2025, with changes incorporated into the Consolidated Fire Code by 2026.

Future Actions to ensure BESS Safety:

- **California Fire Code (2025):**
 - The Office of State Fire Marshal (OSFM) is set to release a revised version in 2025, which will address new requirements for BESS facilities. These changes will be adopted locally by SDCFPD and incorporated into the Consolidated Fire Code in 2026.
- **Consolidated Fire Code New Chapter 2026**
 - Incorporate SDCFPD interim changes/requirements in the Consolidated Fire Code in 2026

This framework ensures that BESS facilities operate safely within the county while keeping pace with technological advancements. By integrating these evolving standards and measures, SDCFPD aims to reduce the risks associated with BESS facilities and ensure the safety of both responders and surrounding communities.

III. CURRENT CODES AND STANDARDS

The San Diego County Fire Protection District (SDCFPD) employs a combination of local, state, and national codes to ensure the safe operation of Battery Energy Storage System (BESS) facilities. These standards aim to mitigate risks such as fire, explosion, and toxic hazards while prioritizing public safety. However, existing codes are evolving to address the unique risks associated with modern BESS technologies.

- **California Fire Code (CFC):** Currently underperforming regarding BESS facilities. It addresses property line setbacks (20-50 feet depending on container venting) but does not fully capture the risks associated with newer technologies. CFC also requires Hazard Mitigation Analysis (HMA) and Emergency Response Plans.
- **Consolidated Fire Code:** Silent on BESS-specific guidelines, While the CFC does not mandate site-specific emergency plans, NFPA 855 requires such plans for all installations.
- **NFPA Standards:** The applicable standards include NFPA 855, 13, 72, 68, and 69, which provide guidance on fire protection, fire alarm systems, gas detection, and explosion prevention.
- **Underwriters Laboratory (UL) Standards:** UL 9540A, UL 1973, and UL 17 provide testing standards for fire safety and performance of battery systems.
- **Technical Study (2024 Requirement):** A technical study is now required for BESS facilities to address potential failure modes and mitigation strategies.

While NFPA standards and Underwriters Laboratory (UL) 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 safe firefighting operations and minimize exposure to toxic fumes.

IV. AUTHORITY

The following 2022 California Fire Code Sections provide the Authorizing Standards for the Fire Chief to implement the Interim Fire Protection Requirements for Battery Energy Storage Systems:

- *Chapter 1:* Gives the fire code official authority to determine requirements for matters that are not provided for in the existing fire code.
 - *102.8 Subjects Not Regulated by This Code:* Where applicable standards or requirements are not set forth in this code, or are contained within other laws, codes, regulations, ordinances or bylaws adopted by the jurisdiction, compliance with applicable standards of the National Fire Protection Association or other nationally recognized fire safety standards, as approved, shall be deemed as prima facie evidence of compliance with the intent of this code. Nothing herein shall derogate from the authority of the fire code official to determine compliance with codes or standards for those activities or installations within the fire code official's jurisdiction or responsibility.
 - *102.9 Matters Not Provided For:* Requirements that are essential for the public safety of an existing or proposed activity, building or structure, or for the safety of the occupants thereof, that are not specifically provided for by this code, shall be determined by the fire code official.

V. INTERIM FIRE PROTECTION GUIDELINES FOR BESS FACILITIES

1. Explosion Prevention, Ventilation, and Gas Detection

- 1.1 Fire and explosion detection, alarming, control, and suppression system must be UL 864 where commercially available. A gas detection system must be provided and meet the following requirements:
- 1.2 Gas detection must be based on UL 9540A data for explosive gas(es) most likely to be detected under fault conditions and located appropriately for the expected gas flows.
- 1.3 The system must trigger visual and audible alarms that are distance from fire alarms. The alarms must also be sent to FRS and must be supervised.
- 1.4 The detector must be able to continue operating under non-flaming thermal runaway conditions and be capable of determining if the environment is in the enclosure is below the flammability limit of the explosive gases.
- 1.5 Air circulation must be provided at 1 CFM per square foot. Hydrogen detectors are required to alarm at ten percent (10%) of LEL and ramp ventilation rate to 2.5 CFM per square foot.
- 1.6 Exhaust ventilation systems must be provided six (6) hours of standby power and provided with clearly identified manual controls.
- 1.7 Gas detection systems are required to comply with NFPA 72.

2. Enclosures

- 2.1 The enclosure and any insulation must be fire-rated using UL 263 (4th Edition) and/or ASTM E119 (2020) or equivalent materials. Fire rating is required to be at least the minimum of a fire event according to UL 9540A test results or one (1) hour, whichever is greater.
- 2.1 Prefabricated BESS enclosures must meet minimum outdoor enclosure rating as specified in NEMA 3R in accordance with ANSI/IEC 60529:2004, or an IP 54 rating.
- 2.2 Contractor licenses: C-16 licenses are required for automatic sprinkler systems and water supplies and C-10 licenses are required for fire alarm systems and gas detection systems.
- 2.3 Where required sprinkler protection for the room must provide a minimum density of 0.6 GPM/square-foot over the room with a 500-GPM hose stream allowing for a two (2) hour duration.
- 2.4 Provide a high temperature alarm, routed to a continuously attended location, for reach room, building or enclosure with BESS.
- 2.5 Battery Management System (BMS) must be approved and meet manufacturer's specifications. The BMS must transmit signals to an approved location if hazardous conditions are detected.
- 2.6 Central station or 24-hour monitoring facility
- 2.7 Alarm and supervisory signals from all fire protection and life safety systems must be transmitted to an approved central station and to the annunciator panel.
- 2.8 Extend signage location requirements beyond BESS to include perimeter fences or security barriers and include a site map. Signage should contain 24-hour emergency contact information and hazard warnings. Signage or maps should identify isolation distances response personnel should maintain from BESS during an emergency. Signage should be provided for grid-interactive BESS operating in parallel with other power generating sources. Signage should be provided indicating explosion hazard zones

3 Site Plans

- 3.1 Construction documents: Additional requirement for a site plan with the layout diagram of enclosures including size, distance between units, and distance to exposures. The plans must also show fire apparatus access and water supply.
- 3.2 Training
 - 3.2.1 Training shall be required of personnel and first responders prior to operation and annually.

4 Separation Distances and Site Requirements:

- 4.1 A fire safety and evacuation plan will be required.
- 4.2 BESS located outdoors must have at least 10 feet of separation between adjacent enclosures within the property.
- 4.3 A minimum 100-foot setback from property lines is essential for ensuring the safety of firefighting personnel and enabling effective tactical operations during a fire emergency at BESS facilities. Plume modeling may increase the setback distance.

4.3.1 Findings

- Tactical Operations: A minimum 100-foot setback from the property line is required for BESS installations to facilitate effective firefighting operations. This setback distance provides ample space for fire apparatus access, positioning of equipment and safe operational distance for firefighting personnel. The 100 foot-distance ensures that fire trucks and emergency responders can safely approach and access the site without risk of exposure to immediate hazards, such as fire or hazardous materials release.
- Ventilation and Evacuation: A 100 foot-setback supports the safe dispersal of smoke and toxic gases, reducing risks to both emergency responders and surrounding communities.
- *Surprise, Arizona*: On April 19, 2019, underlines the critical importance of setback requirements for fire safety in energy storage facilities. The event involved a lithium-ion BESS experiencing thermal runaway, which led to a significant fire and explosion that injured four firefighters.
- *Otay Mesa, California*: The fire that occurred at the Gateway Energy Storage facility in Otay Mesa on May 15, 2024, triggered by a thermal runaway in one of the battery units. The fire lasted 17 days and caused substantial structural damage. One key takeaway from this event is the pressing need to implement a minimum 100-foot setback requirement for BESS facilities. This setback distance is critical to ensuring safe access for fire apparatus, providing sufficient space for effective firefighting operations, and allowing for the safe dispersion of toxic fumes and gases released during a fire.

4.3.2 Supporting Standards

- The **Unified Facilities Criteria (UFC) guidelines** provide clear requirements for safe setbacks and access for high-risk facilities like BESS. These guidelines emphasize the importance of adequate clearance for emergency responder access, equipment positioning, and protection from hazardous conditions during firefighting operations.

5 Plume Modeling

5.1 A range of validated and industry-accepted plume modeling tools is available for analyzing toxic off-gassing during BESS failure events. Applicants may select from the following County-Fire recognized options to include in their technical studies. This list will be reviewed and updated periodically to incorporate advancements in technology and emerging methodologies. The Battery Energy Storage System (BESS) Best Practices report highlights the importance of setbacks and dispersion analysis, commonly referred to as Plume Modeling, as a critical requirement for all utility-scale BESS facilities. This process ensures the incorporation of specific inputs and adherence to established guidelines. To maintain consistency in evaluating potential sites for BESS facilities, SDCFPD requires pre-defined worst-case meteorological conditions based on EPA standards. These conditions include atmospheric stability class F (stable atmosphere), a wind speed of 1.5 meters per second (3.4 miles per hour), and a temperature of 77°F. Furthermore, local meteorological conditions found at the site must be modeled. The following is Acute Exposure Guideline Level (AEGL) 1 shall be evaluated. Ex: Level 1: Notable discomfort, irritation, or certain asymptomatic non-sensory effects. Effects and not disabling and are reversible

5.2 The findings from required plume studies will outline additional mitigation for setbacks beyond 100 feet from sensitive receptors, such as residential areas, care facilities (hospitals, nursing homes, etc.), and educational institutions. These setbacks aim to mitigate potential adverse effects on vulnerable populations.

5.3 Plume Modeling Tools

- 5.3.1 AERMOD (American Meteorological Society Regulatory Model): Used by the United States Environmental Protection Agency (EPA) for facility permitting. However, the program does not account for dense gas effects which may occur during failures at lower states of charge.
- 5.3.2 Fire Dynamics Simulator (FDS): FDS is typically used for modeling of fire and gas plumes in both indoor and outdoor conditions.
- 5.3.3 Process Hazard Analysis Software (PHASt): A proprietary model offered by Det Norske Veritas which can analyze accidental releases.
- 5.3.4 SAFER/TRACE: A proprietary model that was developed to evaluate toxic chemical spills.
- 5.3.5 SCICHEM: This model is used by the US federal government for emergency release models.

6 Hazardous Mitigation Analysis Failure Modes (HMA) and Hazard Identification Analysis (HIA):

- 6.1 HMA and HIA can be requested by the Fire Code Official for any utilities scale BESS facility.
- 6.2 HMA or HIA shall be prepared by a licensed fire protection engineer (FPE)
- 6.3 Three (3) additional failure modes for HMA study are required:
 - 6.3.1 The failure of a single safety system during a thermal runaway event
 - 6.3.2 The failure of multiple safety systems at the same time.
 - 6.3.3 Failure of temperature control required to be addressed by the HMA.

- 6.4 The HMA may identify the need for additional safety features that will need to be mitigated.

7 Emerging Protection Technologies

- 7.1 There are often new technologies emerging geared at suppression or minimizing thermal runaway. Current Code doesn't require these technologies are assessed and tested by third parties to ensure the accuracy of any claims. Third party testing shall be required.

8 Existing BESS Facilities

- 8.1 HMA's shall be prepared and provided to the Fire Authority Having Jurisdiction (FAHJ) for review and approval where existing installations that utilize lithium-ion BESS that are not UL 9540 listed.
- 8.2 Emergency Planning and Training
- 8.3 Operator/manager shall produce emergency planning and training procedures be developed for the existing facility.
- 8.4 Annual site familiarization be held for the local fire department as part of regular inspection activities.

9 Cost Recovery

- 9.1 The guidelines also include a cost recovery component to ensure that the financial burden of emergency response services, such as personnel, equipment, logistics, and other resources, is reimbursed by BESS facility owners or responsible parties. This approach promotes financial sustainability for emergency services while prioritizing public safety and environmental protection. Additionally, these requirements will be periodically reviewed and updated to current operational costs.

10 Cause and Origin

- 10.1 As a part of cause and origin for fires in BESS facilities root cause analysis shall be conducted by the Fire Chief or their designee any associated costs to conduct the analysis shall be borne by BESS facilities owners or responsible parties.

11 NFPA

- 11.1 SDCFPD will employ the latest version of appropriate NFPA standards for BESS facilities.
- 11.2 SDCFPD will monitor and participate to the level we can with the development of NFPA 800 which will specifically pertain to BESS facilities.

12 Technical Reports Requirements

- 12.1 All submitted technical reports shall be produced by California licensed Fire Protection Engineer.
- 12.2 Minimum Requirements
 - 12.2.1 Specific Details of The Project Including a Site Plan
 - 12.2.2 Comprehensive Study of the Projects Fire Code Compliance Including Interim Guidelines
 - 12.2.3 Hazard Mitigation Analysis (HMA)
 - 12.2.4 Hazard Identification Analysis (HIA)
 - 12.2.5 Plume Modeling
 - 12.2.6 Proposed Mitigation

VI. APPROVAL

I hereby certify that these **INTERIM FIRE PROTECTION GUIDELINES FOR BESS FACILITIES** are a part of the San Diego County Fire Protection District, Technical Report Format and Content Requirements and were considered by the Fire Chief, in coordination with the County of San Diego's Public Safety Group on the 10th day of December 2024.

Tony Mecham
Fire Chief, San Diego County Fire Protection District

Exhibit 7

**December 3, 2024 email, Yutzy to Gordon (AES),
Mayer (AES), Gonzales (Staff) and Sisneros (Staff)
re Rancho Viejo – Status Update**

From: Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Sent: Tuesday, December 3, 2024 3:25 PM
To: Matt Gordon; Jessica Gonzales; Dominic J. Sisneros
Cc: Joshua Mayer
Subject: RE: Rancho Viejo - Status Update

Matt,

The only red flag in the third party EIR review was the 100-150 acre feet of water during construction. If this number is correct the number of trucks needed to maintain this usage was not accounted for in your TIA. Your TIA states that you are expecting 10 18 wheelers per day for deliveries. According to the third party to utilize that much water you will need 2 deliveries per hour from 7 am till 7 pm for a year long construction plan. We have added a condition of approval to the report requesting a detailed water budget as part of your submittal for the building permit to help answer these questions.

Thank you,

Jordan Yutzy
Building & Development Manager
(505) 992-9866



From: Matt Gordon <matt.gordon@aes.com>
Sent: Tuesday, December 3, 2024 2:32 PM
To: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: RE: Rancho Viejo - Status Update

Thanks Jessica. Is there any update on the EIR third party review?

Matt

From: Jessica Gonzales <jesgonzales@santafecountynm.gov>
Sent: Tuesday, December 3, 2024 10:00 AM
To: Matt Gordon <matt.gordon@aes.com>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: RE: Rancho Viejo - Status Update

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Thank you I will transfer to a flash drive

Jessica Gonzales
Development Review Specialist Senior
Growth Management
505-986-6229

jessgonzales@santafecountynm.gov



From: Matt Gordon <matt.gordon@aes.com>

Sent: Tuesday, December 3, 2024 10:26 AM

To: Dominic J. Sisneros <djsisneros@santafecountynm.gov>

Cc: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>; Jessica Gonzales <jessgonzales@santafecountynm.gov>

Subject: RE: Rancho Viejo - Status Update

Hi Dominic,

The powerpoint that AES will be presenting at tomorrow's hearing officer meeting can be found at the link below (the file size is too large to email).

<https://aesde.box.com/s/shtlq7ayerrulhyysb92i5l2axqcj8os>

Access has been provided to You, Jordan, and Jessica. Let me know if you are not able to access it.

One question: Has Glorieta Geoscience completed their third party review of the EIR? If so, can you provide it to me?

Thanks,
Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Dominic J. Sisneros <djsisneros@santafecountynm.gov>

Sent: Monday, December 2, 2024 2:29 PM

To: Matt Gordon <matt.gordon@aes.com>

Cc: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>; Jessica Gonzales <jesgonzales@santafecountynm.gov>

Subject: RE: Rancho Viejo - Status Update

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Good Afternoon Matt,

Can you provide a witness list and list of exhibits that you will be presenting. Also if you have a power point presentation if you can also forward that over to me as well.

Thank you,

Dominic J. Sisneros

DOMINIC J. SISNEROS

Building and Development Supervisor
Growth Management Department
505-995-2725



From: Matt Gordon <matt.gordon@aes.com>

Sent: Wednesday, November 27, 2024 1:29 PM

To: Jessica Gonzales <jesgonzales@santafecountynm.gov>

Cc: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>

Subject: Re: Rancho Viejo - Status Update

Thank you Jessica!

Matt

On Nov 27, 2024, at 3:09 PM, Jessica Gonzales <jesgonzales@santafecountynm.gov> wrote:

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Hello Matt,

Below is the link to the posted agenda with the report and exhibits. You will want to click on "Special Sustainable Land Development Code Hearing Officer."

<https://go.boarddocs.com/nm/sfc/Board.nsf/vpublic?open>

Thank you

Jessica Gonzales
Development Review Specialist Senior
Growth Management
505-986-6229
jessgonzales@santafecountynm.gov
<image004.png>

From: Matt Gordon <matt.gordon@aes.com>
Sent: Wednesday, November 27, 2024 9:17 AM
To: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jessica Gonzales <jessgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: RE: Rancho Viejo - Status Update

Thank you for the update. Much appreciated!

From: Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Sent: Wednesday, November 27, 2024 8:15 AM
To: Matt Gordon <matt.gordon@aes.com>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jessica Gonzales <jessgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: RE: Rancho Viejo - Status Update

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

We are finalizing it today. We ran into a problem with the upload for the exhibits and are working to figure it out. Our system is not able to handle to size and quantity. It will be uploaded by 3 pm today. I will have Dom email you the report.

From: Matt Gordon <matt.gordon@aes.com>
Sent: Wednesday, November 27, 2024 9:06 AM
To: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jessica Gonzales <jessgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: RE: Rancho Viejo - Status Update

Hi Jordan,

Has the report been posted? I'm not seeing it on the website.

Thanks,
Matt

From: Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Sent: Tuesday, November 26, 2024 7:15 AM
To: Matt Gordon <matt.gordon@aes.com>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: RE: Rancho Viejo - Status Update

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Matt,

The report is almost complete we will have it posted shortly.

Thank you,

Jordan Yutzy
Building & Development Manager
(505) 992-9866
<image005.png>

From: Matt Gordon <matt.gordon@aes.com>
Sent: Tuesday, November 26, 2024 7:26 AM
To: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: Rancho Viejo - Status Update

Hi Jordan and Dominic,

Can you update me on the status of the staff report? Has it been posted to the County's website? If so, can you send me a link, as I do not see it.

Also, what is the status of the third party review of the EIR? When will the preliminary review be available for our review?

Thanks,
Matt

<image006.png>
Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095
<image007.png>

Exhibit 8

**AES Response to the Third-Party Review of
the Environmental Impact Report for
the Rancho Viejo Solar Project
in Santa Fe County, New Mexico
SWCA Environmental Consultants, January 2025**

**RESPONSE TO THE THIRD-PARTY REVIEW OF THE
ENVIRONMENTAL IMPACT REPORT
FOR THE RANCHO VIEJO SOLAR PROJECT IN SANTA FE
COUNTY, NEW MEXICO,
BY GLORIETA GEOSCIENCE, A DIVISION OF
GZA GEOENVIRONMENTAL, INC.**

Prepared by

SWCA Environmental Consultants
7770 Jefferson Street Northeast, Suite 410
Albuquerque, New Mexico 87109
(505) 254-1115
www.swca.com

January 2025

INTRODUCTION

Glorieta Geoscience (GGI), A Division of GZA GeoEnvironmental, Inc., was retained by Santa Fe County (County) to conduct a third-party review (Review) of an environmental impact report (EIR) submitted by Rancho Viejo Solar, LLC (Rancho Viejo), for technical accuracy and for compliance with the County Sustainable Land Development Code (SLDC) Chapter 6.3: EIR. GGI's Review included a technical accuracy assessment of the EIR followed by an in-depth review of the EIR's compliance with Chapter 6.3 of the SLDC in table format. The sections below include responses and additional information provided by the applicant, Rancho Viejo, to address GGI's assessments.

TECHNICAL ACCURACY ASSESSMENT

Below are items within the EIR that GGI identified as deficient, in need of clarification, and/or inaccurate. These items are in addition to GGI's evaluation of compliance with Chapter 3 of the SLDC and are not addressed in Table 1. The response to each item is followed directly after each comment.

1. Water Use: Section 2.1.2.4 of EIR

GGI Comment: The EIR states the estimated water use throughout the 12-month construction period will be 100-150 acre-feet. The provided water sources are as follows: "Santa Fe County bulk water station commercial pipe water; Ranchland Utility Company Class A reclaimed water; Santa Fe County reclaimed water; or any other legally permitted commercial water sales" (SWCA 2024a) and are proposed to be delivered by water truck only. The development also proposes to have one 30,000-gallon water tank on site throughout the duration of the Project's operational life.

It is GGI's opinion that more information is necessary to evaluate the potential impacts of water hauling for the project. 100-150 acre-feet is equivalent to 32.6-48.9 million gallons (MG) of water. The report states that working construction hours will be from 7AM to 7PM, meaning that water hauling would occur each day during this 12-hour window. Although not specified in the EIR, if 4,000 gallon water trucks are utilized, and 10,400-15,600 gallons are required each hour, the construction will require between 2-4 water trucks each hour. This magnitude of water hauling requires a much more in-depth analysis of traffic and air quality impacts resulting from the water truck traffic.

During GGI's Project site investigation on November 15, 2024, a fire hydrant was identified at the intersection of the access road and NM Highway 14. If this hydrant is expected to be the sole source of water for Project construction, additional analysis of the impacts of water hauling will not be necessary, and this method should be clearly described in the EIR. It is GGI's opinion that utilizing the fire hydrant would have much less impact on the local environment than the magnitude of water hauling as currently proposed.

In addition, the EIR does not address a water budget for the entire decommissioning process. The EIR should address the expected amount of water needed for the decommissioning process, potential impacts of this water use on the environment, and mitigation measures to be taken during the decommissioning process.

Applicant Response: Water use during construction will be approximately 100 to 150 acre-feet over a 12-month construction period and will be delivered to the Rancho Viejo Solar Project (project) site by water trucks and piped from the existing hydrant located at the intersection of the access road and State Road 14. The water will be leased from Univest-Rancho Viejo, LLC with water rights Univest-Rancho Viejo, LLC owns in the County water system that are not currently being utilized. Water use during

construction will maintain a balance between trucking reclaimed water to the project site and piping hydrant water and/or reclaimed water, to minimize transportation-related impacts and use of hydrant water. Water use will be managed as follows:

- During the months of April through September, when Ranchland Utility Company supplies much of its Class A reclaimed water for irrigation purposes, the majority of project construction water will be piped from the existing hydrant located at the intersection of the access road and State Road 14. This will limit the need for trucking water to the site from April through September. However, there may be several supplemental deliveries of reclaimed water (no more than six per day), when available, during these months. All water trucks will be scheduled outside the peak traffic hours of 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m.
- During the months of October through March, when Ranchland Utility Company has excess Class A reclaimed water available, the majority of project construction water will be trucked to the site. This will allow for the greater use of reclaimed water from October through March. During these months, water truck deliveries will be limited to two water trucks per hour. Remaining construction water will be piped from the existing hydrant located at the intersection of the access road and State Road 14. All water trucks will be scheduled outside the peak traffic hours of 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m. The project also may stage water storage tanks (e.g., frac tanks) on-site to minimize further the need for water trucks during periods of heavy use on State Road 14.

Under a worst-case scenario, there could be up to two water trucks per hour for a total of 20 water trucks per day from October through March and up to six water trucks per day from April through September. The EIR included 10 trips per day for material and equipment over the construction period and between 115 and 190 trips per day for workers commuting to the project for the duration of construction. The addition of six to 20 water trucks per day represents a 3% to 10% increase in vehicle trips. Because this addition of vehicle trips is modest, and because all water trucks will be scheduled outside the peak traffic hours of 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m., there is no change to the traffic and roads effects analysis conclusions in the EIR. See enclosed confirmation letter prepared by Carl Vermillion, Traffic & Transportation Engineer at Bohannon Huston, and author of the Traffic Assessment for the project.

The addition of six to 20 daily water truck trips would increase total vehicle trips beyond the previously estimated 10 material and equipment trips and 115 to 190 worker commuting trips per day. These additional trips would result in a short-term increase in GHG emissions. However, by providing a new source of renewable energy, over its operational life, the proposed Project will reduce GHG emissions generated by the burning of fossil fuels, and thus, will be consistent with the objectives in Santa Fe County's GHG Emissions Reduction Plan.

With respect to the water budget for the entire decommissioning process, Rancho Viejo will comply with Condition #15, which states:

The Applicant shall provide a detailed and accurate water budget for construction, operation and maintained, and decommissioning. The water budget shall include water source and water trucking, and the water budget shall be reviewed by Glorieta Geoscience and approved by Santa Fe County Utilities.

2. Hazardous Wastes and Spill Prevention Protocol: EIR Section 3.6.3

GGI Comment: The EIR describes spill prevention measures that will be taken by construction staff to mitigate construction impacts related to hazardous wastes. The EIR states that "the quantities and concentrations of these hazardous substances are not expected to reach regulated levels" (SWCA 2024a,

Section 2.1.2.6). It is GGI's opinion that an explanation should be added to this statement confirming that should hazardous wastes generated reach regulatory levels, Rancho Viejo Solar, LLC will acquire the necessary permits to comply with state and federal hazardous waste regulations.

Applicant Response: Rancho Viejo will acquire all necessary permits to comply with local, state, and federal hazardous waste regulations. Rancho Viejo will also comply with Condition #11, which states:

Applicant shall obtain an approved liquid waste permit from NMED prior to submittal for a Development Permit.

3. Visual Resources: EIR Section 3.15

GGI Comment: The visual analysis includes a 'viewshed analysis' which utilizes Geographic Information Systems (GIS) to model which surrounding areas are visible when standing at a specific point. To analyze visual impacts to surrounding communities, the viewshed analysis was conducted using several 'viewshed analysis points' within the Project area boundary, assuming that someone was standing at each point and looking out across the landscape from a height of 6 feet. Figure 3.14. shows all areas that are visible from a combination of all 'viewshed analysis points' assuming a height of 6 feet above the ground.

It is GGI's opinion that this viewshed analysis methodology does not accurately represent post-construction conditions. The viewshed analysis should account for actual expected heights of constructed works in the facility (as follows): fence posts are expected to be no taller than 8 feet in height, solar panels will reach a maximum height of 8 feet, and the generation tie-in line expected to be 50-70 feet in height. The viewshed analysis should modify the inputs to utilize the different structure heights for each respective point in the Project area. For example, the viewshed analysis should be conducted so that the viewshed analysis points along the generation tie-in corridor are assumed to be 50-70 feet in height, as opposed to 6 feet in height. This will more clearly represent where construction will be visible to surrounding communities and major arterial roadways.

It is worth noting that the simulation analysis conducted and represented in the Rancho Viejo Solar Project Visual Impact Assessment Technical Report (SWCA, 2024b) does provide a thorough analysis of visual impacts as seen from 9 'key observation points'. These points accurately represent visual impacts to the most-impacted neighboring communities, and from State Highway 14. It is GGI's opinion that the Rancho Viejo Solar Project Visual Impact Assessment Technical Report (SWCA, 2024b), should be referenced in or appended to the EIR to fulfill technical accuracy.

Applicant Response: Contrary to GGI's assessment, as described in Section 3.15.2.1 of the EIR, the viewshed analysis accounted for the maximum height of the photovoltaic arrays and fence posts (8 feet above ground level) and the maximum height of the generation tie line (gen-tie) structures, whether H-frame (50 feet) or monopole (70 feet) is selected. Also described in Section 3.15.1 of the EIR, and in further detail in the 2024 *Rancho Viejo Solar Project Visual Impact Assessment Technical Report* prepared by SWCA, the viewshed analysis was conducted assuming a typical viewer height of 6 feet. This represents the height of the viewer and not the height of the facility components.

4. Biological Assessment

GGI Comment: The EIR addresses the presence of adult burrowing owls in the prairie dog colony in the southwest corner of the project site. Construction activities will avoid this colony and burrowing owl habitat entirely. GGI observed additional prairie dog colonies that were not represented in the EIR during our site visit on November 15, 2024. However, it is GGI's opinion that the mitigation measures described in the EIR to reduce potential impacts to both prairie dogs and burrowing owl species are sufficient.

Applicant Response: Thank you for your comment.

5. Evaluation of Significant and Insignificant Impacts on the Environment

GGI Comment: The EIR evaluates the development's impacts on 17 different environmental resources: air, biological, cultural, historic, archaeological, religious, geological, paleontological, soil, geographic, health and safety, land use, minerals and mining, noise, socioeconomic, roads, water, and visual resources.

For each of these environmental resources, a series of mitigation measures were described which will be implemented to mitigate potential impacts on the environment during the construction, operation, and decommissioning of the development. The EIR describes impacts to all resources as "less than significant" if mitigation measures are implemented. It is GGI's opinion that if all mitigation measures are implemented correctly, and if the fire hydrant is used to supply water for construction, operation, and decommissioning of the development, impacts to each environmental resource will be less than significant.

Applicant Response: Thank you for your comment.

EIR COMPLIANCE WITH SLDC

GGI's detailed Review of the EIR's compliance with SLDC Chapter 6.3, followed by responses from the applicant, Rancho Viejo, are presented in Table 1 below.

Table 1. Comment-Response Matrix for GGI's Assessment of Rancho Viejo Solar EIR Compliance with SLDC Chapter 6.3

Code	Topic	EIR Location	Requirement Satisfied?	Explanation	Applicant Response
Summary					
6.3.3. Summary.	Does the EIR contain a summary of the proposed actions and their consequences?	ES-1	Yes	The EIR satisfies this requirement.	Noted
	Is the language of the summary as clear and simple as reasonably practical?	ES-1	Yes	The EIR satisfies this requirement.	Noted
6.3.3.1.	Does the summary identify each significant adverse effect and impact with proposed mitigation measures and alternatives that would reduce or avoid that effect or impact?	ES-1	Yes	The impacts summary sufficiently describes potential and expected impacts to each resource category. All impacts are defined as “less than significant” throughout the summary and Ch 3 of the report.	Noted
6.3.3.2.	Does the summary identify areas of potential controversy identified in the pre-application TAC meeting?	ES-1	Yes	The Executive Summary states that the TAC letter with these issues in Appendix A. There were no items of potential controversy listed in the TAC letter.	Noted
6.3.3.3.	Does the summary identify issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects?	ES-1	Yes	The summary does identify issues to be resolved. It mentions the “no action” alternative and discusses the actions that went into avoiding impacts to certain environmental resources. No significant effects are expected, according to the EIR.	Noted
Description of the Development, Local Environment and Baseline Conditions					
6.3.4. Project Description.	Does the description of the project contain the following information in a manner that does not supply extensive detail beyond that needed for evaluation and review of the environmental impact? :	1-1	See below	See 6.3.4.1 below	See 6.3.4.1 below
6.3.4.1.	Does the description of the project contain precise location and boundaries of the proposed development project, such location and boundaries shown on a detailed topographical map? Does the description of the project contain the location of the project on a regional map?	1-2, 1-3	No	The regional map appears to be on a topo base, but no elevations are shown/legible, and the contour lines are too difficult to see. A detailed topographic map is needed.	See Figure 1.2 (attached), which has been updated to include detailed topographic contour lines.
6.3.4.2.	Does the description of the project contain a statement of the objectives sought by the proposed development project? The statement of objectives should include the underlying purpose of the project.	1-1	Yes	The EIR satisfies this requirement.	Noted
6.3.4.3.	A general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.	Ch 2, Ch 3	Yes	Technical characteristics are described thoroughly in Ch 2. Environmental characteristics are described thoroughly in Ch 3. Economic characteristics are not specifically described in the EIR, but SLDC Table 6-1 states that Fiscal Impact Assessment is on an “as needed” basis for this project.	Noted
6.3.5. Environmental Setting	Does the EIR include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the environmental analysis is commenced, from the County, area, community, regional, and state perspectives?	Ch 3	Yes	The EIR satisfies this requirement.	Noted
Environmental Effects					
6.3.6. Significant Environmental Effects	Does the EIR demonstrate that the significant environmental effects and impacts of the proposed project were adequately investigated and discussed?	Ch 3	Yes	Significance is defined in the EIR as follows: “An impact would be considered significant if there were a regional or population-level impact and/or the affected resource would not fully recover, even after the impacting agent is gone and remedial or mitigating action is taken.” The EIR states that there will be no significant impacts to the environment based on the definition provided in the report.	Noted
	Does the EIR demonstrate the significant adverse effects or impacts of the project in the full environmental context?	Ch 3	Yes	The EIR states that no proposed impacts are expected to be significant. They use the full environmental context to show this.	Noted
	Has a geotechnical investigation and report been completed for the project?	Ch 3	Yes	The geotechnical report is included in Appendix D.	Noted

Code	Topic	EIR Location	Requirement Satisfied?	Explanation	Applicant Response
	Does the EIR identify and focus on the significant environmental effects of the proposed development project?	Ch 3	Yes	The EIR states that no effects are expected to be significant; however, other impacts considered "less than significant" are identified and focused on in the report.	Noted
	Are direct and indirect significant effects and impacts of the project on the environment clearly identified and described, giving due consideration to both the short term and long-term effects and impacts?	Ch 3	Yes	Significance has been defined once in the EIR. Direct and indirect impacts are described throughout the report, along with short- and long-term duration status.	Noted
	Does the discussion include relevant specifics of the area, the resources involved, physical changes and alterations to soil conditions, water, environmentally sensitive lands and ecological systems, changes induced in the human use of the land, health and safety problems caused by physical changes, and other aspects of the resource base such as historical, cultural and archaeological resources, scenic vistas?	Ch 3	Yes	The EIR satisfies this requirement.	Noted
6.3.7. Significant Environmental Effects Which Cannot be avoided	Does the EIR describe significant adverse effects and impacts, including those which can be mitigated but not reduced to a level of insignificance?	Ch 3	Yes	None of the environmental impacts were listed as "significant." All impacts were discussed in a manner that describes their ability to be mitigated.	Noted
	Where there are effects and impacts that cannot be alleviated without an alternative design, does the EIR describe their implications and the reasons why the development project is being proposed?	Ch 3	Yes	Discussions of locations that were avoided to prevent impacts to visual, archaeological, biological, and wetland resources were included in the EIR. The final design and mitigation measures are presented as not having significant impacts, so these are not discussed.	Noted
6.3.8. Significant Irreversible Environmental Changes	Does the EIR evaluate irretrievable commitments of resources?	Ch 3	Yes	The EIR states "no irretrievable commitments of resources are anticipated" for all resources evaluated. In many places throughout the EIR, it is stated after discussing that mitigation measures will make impacts "less than significant," which alone does not satisfy this requirement. When discussed in regard to the decommissioning process, the EIR satisfies the requirement that the decommissioned project will be restored to pre-development conditions, meaning that there will be no irretrievable commitments of resources after the decommissioning process is complete.	Noted
6.3.9. Other Adverse Effects.	Does the EIR discuss other characteristics of the project which may significantly affect the environment, either individually or cumulatively? The EIR shall discuss the characteristics of the project which may decrease the area's suitability for other uses, such as mixed use, industrial, residential, commercial, historical, cultural, archaeological, environmental, public and non-profit facilities, eco-tourism or scenic uses.	Ch 3	Yes	No elements of the development are expected to have significant impacts on the environment, as long as mitigation measures are successfully implemented. The EIR does not discuss decreasing the area's suitability for other uses, because the decommissioning process will return the project site to its pre-development state if done correctly. The decommissioning bond will ensure that the decommissioning process is carried out properly.	Noted
6.3.10. Mitigation Measures.					
6.3.10.1.	Does the EIR identify mitigation measures for each significant environmental effect identified in the EIR, such as the following? <ul style="list-style-type: none">• inefficient and unnecessary consumption of water and energy;• degradation of environmentally sensitive lands;• sprawl; and noise, vibration, excessive lighting, odors or other impacts	Ch 3	Partially	The water resource plan for the first year (construction) fails to address the inefficiencies and impacts of traffic on the surrounding communities and the environment. Water trucking to satisfy water volume needs would require 10,400–15,600 gallons (2–4 4,000-gallon water trucks) each hour assuming 12-hour workdays and 261 working days per year. This will contribute significantly to traffic, noise, and will increase greenhouse gas emissions associated with the project. If the fire hydrant is used at the access road point on State Road 14, it will reduce the potential impacts associated with hauling.	See "Applicant Response" provided to the Technical Accuracy Assessment from GGI in the above document. Specifically, see Item 1, Water Use: Section 2.1.2.4 of the EIR.
6.3.10.2.	Where several measures are available to mitigate an effect or impact, does the EIR discuss each measure and the basis for selecting a particular measure identified?	Ch 3	Yes	All measures discussed are ones being proposed to mitigate impacts.	Noted
	Does the EIR identify the formulation of mitigation measures at the first discretionary approval? Under no circumstances shall the formulation of mitigation measures be deferred until the ministerial development process.	Ch 3	Yes	The EIR satisfies this requirement.	Noted

Code	Topic	EIR Location	Requirement Satisfied?	Explanation	Applicant Response
	Do recommended measures specify performance standards which would mitigate the significant effect of the project?	Ch 3	Yes	The EIR states that the stormwater pollution prevention plan will outline performance standards for two of the resources being mitigated.	Noted
	Do recommended measures specify which may be accomplished in more than one specified way?	Ch 3	Yes	All mitigation measures discussed are ones planned to be taken by the applicant during development and closure/post closure.	Noted
6.3.10.3.	Does the EIR discuss energy conservation measures, as well as other appropriate mitigation measures, when relevant?	Ch 3	Yes	The EIR satisfies this requirement.	Noted
6.3.10.4.	Does the EIR discuss the adverse effects and impacts of mitigation measure when the mitigation measure would cause one or more significant effects and impacts in addition to those that would be caused by the project as proposed?	Ch 3	Yes	No mitigation measures are presented in a way that would cause additional impact to the environment if properly implemented. If the mitigation measures are not expected to cause more significant impacts, they do not need to be discussed in this context.	Noted
6.3.10.5.	Are the mitigation measures described in the EIR fully enforceable through conditions or a voluntary development agreement?	Ch 3	Yes	The EIR satisfies this requirement.	Noted
6.3.10.6. Were all of the following considered and discussed in the draft EIR:	1. preservation in place is the preferred manner of mitigating impacts to historic, cultural or archaeological sites. Preservation in place maintains the relationship between artifacts and the historical, cultural, and archaeological context. Preservation shall also avoid conflict with religious or cultural values of Indian communities associated with the site;	Ch 3	Yes	This is satisfied by the description provided in the text and the four letters from the SHPO (state historic preservation officer). The cultural sites will be avoided completely for construction and left in place. No religious resources will be impacted.	Noted
	2. preservation in place may be accomplished by, but is not limited to, planning construction to avoid all historical, cultural or archaeological sites; and incorporation of sites within parks, green-space, or other open space;	Ch 3	Yes	The EIR satisfies this requirement.	Noted
	3. when data recovery through excavation is the only feasible mitigation, a data recovery plan which makes provision for adequately recovering the scientifically consequential information from and about the historical, cultural, or archaeological resource, shall be prepared and adopted prior to any excavation being undertaken. If an artifact must be removed during project excavation or testing, storage of such artifact, under proper supervision, may be an appropriate mitigation; and	Ch 3	Yes	Excavation is not necessary as the two cultural sites will be avoided by at least 100 feet from the construction zone. All other artifacts were determined ineligible.	Noted
	4. data recovery shall not be required for an historical, cultural or archaeological resource if the appropriate entity determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the draft EIR.	Ch 3	Yes	The EIR satisfies this requirement.	Noted
6.3.11. Consideration and Discussion of Alternatives to the Proposed Project					
6.3.11.1. Alternatives to the Proposed Project.	Does the EIR describe a range of reasonable alternatives to the project, or to the location, which would feasibly attain some of the basic objectives of the project but would avoid or substantially lessen the significant and adverse impacts or effects of the project?	Ch 2	Yes	The alternatives discussed are ones that would have a greater impact on the environment than the project as proposed. The project as proposed is the least significant alternative.	Noted
	Does the EIR evaluate the comparative merits of the alternatives, even if those alternatives would impede the attainment of the project objectives or would be more costly?	Ch 2	No	Merits of the proposed alternatives are not discussed, only the reasons why the alternatives were not chosen.	As stated in the EIR, alternative locations were considered within the larger parcel. Merits of these alternatives are provided as follows: <ul style="list-style-type: none">Partially siting the Project in Sections 5 and 6 would have allowed the solar arrays to shift to the north and away from the San Marcos subdivisions. This alternative was dismissed due to biological resources constraints along the southern branch of Bonanza Creek and the north-facing slopes.Siting the Project in Section 7, which is generally flat, would have benefited the overall solar production and efficiency rate. This alternative was dismissed based on public feedback related to concerns of potential visual resources effects to residential areas located to the south.

Code	Topic	EIR Location	Requirement Satisfied?	Explanation	Applicant Response
					<ul style="list-style-type: none">Locating the Project closer to State Road 14 would have provided for a shorter access road. This alternative was eliminated because it is within part of the Turquoise Trail National Scenic Byway.
6.3.11.2. Evaluation of alternatives.	Does the EIR include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project?	Ch 2	No	The only information provided about alternatives is reasons why they were not chosen.	See additional details added in the row immediately above, including merits of alternatives considered but eliminated from further analysis. Ultimately, the Proposed Action was chosen because it was the option that minimizes environmental impacts, and it represents the most feasible alternative for implementation.
6.3.11.3. Selection of a range of reasonable alternatives.	Does the EIR briefly describe the rationale for selecting the alternatives discussed?	Ch 2	No	No, the EIR does not explain why the alternatives were selected, but rather why the alternatives were not selected in place of the project as proposed.	The Proposed Action was refined based on public feedback, environmental diligence studies, and design constraints and this refined Proposed Action is the Project that is proposed within the CUP application and EIR. Ultimately, the Proposed Action was chosen because it was the option that minimizes environmental impacts, and it represents the most feasible alternative for implementation.
	Does the EIR also identify any alternatives that were considered but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the determination?	Ch 2	Yes	The EIR satisfies this requirement.	Noted
6.3.11.4. "No project" alternative	Was the specified alternative of "no project" evaluated along with its effects and impacts?	Ch 2, Ch 3	Yes	There is a brief description in Ch 2 of the "no project" alternative. In addition. There are sections labeled "No Action" under every single potentially impacted resource throughout Ch 3. Each of these together satisfies this requirement.	Noted
6.3.11.4	Does the description and analysis of a "no project" alternative allow a comparison of any adverse effects and impacts of the proposed project with effects and impacts if the project were not accomplished?	Ch 2, Ch 3	Yes	The EIR satisfies this requirement.	Noted
6.3.11.4	Is the "no project" alternative identical to the existing environmental setting analysis? If so, the "no project" alternative analysis is the baseline for determining whether the proposed project's environmental effects or impacts may be significant or adverse.	Ch 2	Yes	The "no project" alternative is presented as identical to the existing environmental setting in Section 2.2.	Noted
6.3.11.4.1	1. Does the "no project" analysis discuss the existing conditions at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the development project were not approved, based on current plans and consistent with available infrastructure and community services? Is the environmentally preferred alternative the "no project" alternative, and does the draft EIR also identify an environmentally preferred alternative among the other alternatives?	Ch 2	Yes	<p>The EIR frames the Proposed Project as the environmentally preferred alternative – the "no action" focuses on the potential other types of future development being worse, and the other locations as more impactful to certain resources. SLDC states the following: "If the environmentally preferred alternative is the 'no project' alternative, the draft EIR shall also identify an environmentally preferred alternative among the other alternatives."</p> <p>The EIR does discuss what would be reasonably likely to occur in the foreseeable future.</p>	Noted
	<p>Does the discussion of the "no project" alternative proceed as follows:</p> <p>The "no project" alternative is the circumstance under which the development project does not proceed. Does the discussion compare the environmental effects of the property remaining in its existing state against the environmental and adverse effects which would occur if the project were to be approved?</p> <p>If the consequence of disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other development project, was this discussed? Does the "no project" alternative mean "no build", i.e., where the existing environmental setting is maintained? If failure to proceed with the project will not result in preservation of existing environmental conditions, does the analysis identify the practical result of the project's non-approval?</p>	Ch 2, Ch 3	Yes	<p>Discussions of the No Project alternative are described in Ch 2 as well as throughout Ch 3 as they relate to each potentially affected resource. These descriptions compare the impacts of no development to the impacts of other potential developments.</p> <p>Other potential types of development projects are described in Section 2.2. The consequences of the development are described as follows: "the No Action Alternative could result in impacts to resources that would be similar and potentially greater in magnitude than the Proposed Action. Further, as Santa Fe County and the state of New Mexico both have goals related to renewable energy production, this Project would not contribute to those goals under the No Action Alternative."</p>	Noted
6.3.11.5. Feasibility	<p>Were some or all the following considered when addressing the feasibility of alternatives:</p> <ul style="list-style-type: none">site suitability,economic use and value viability,availability of infrastructure,jurisdictional boundaries (projects with a significant effect or impact should consider the county wide context), and	Ch 2	Partially	<p>Alternative locations for the generation tie line and battery energy storge system were not discussed in the EIR, but alternative locations for the solar array itself were discussed and avoided due to biological resources, potential impacts to the Turquoise Trail National Scenic Byway, cultural resources, visual resources, and jurisdictional wetland boundaries.</p> <p>Additional explanations relating to the feasibility of alternatives is necessary for the project beyond just alternative locations for parts of the development as discussed above.</p>	<p>The battery energy storage system was sited to be approximately 1.5 miles from residential properties. The project collector substation is sited adjacent to the battery energy storage system as a general design standard. The generation tie line alignment is a function of the shortest distance between the project collector substation and the point of interconnection. By minimizing the length of the generation tie line, the project minimizes potential impacts, including potential impacts to visual resources.</p> <p>The Proposed Action was refined based on public feedback, environmental diligence studies, and design constraints and this refined Proposed Action is the</p>

Code	Topic	EIR Location	Requirement Satisfied?	Explanation	Applicant Response
	• whether the applicant can reasonably acquire, control or otherwise have access to an alternative site in the common ownership?				Project that is proposed within the CUP application and EIR. Ultimately, the Proposed Action was chosen because it was the option that minimizes environmental impacts, and it represents the most feasible alternative for implementation.
6.3.11.6. Alternative locations.	Does the analysis identify whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location? Only locations that would avoid or substantially lessen any of the significant effects of the project should be included in the EIR. Does the EIR consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative (this is something that should NOT be done)?	Ch 2	Yes	The analysis does not identify any impacts of the development as “significant” but discusses that alternative locations of the proposed project would have impacted certain cultural, visual, biological, and other resources more than the project as proposed. The SLDC states that only locations which would avoid or substantially lessen any of the significant effects of the project should be included in the EIR; however, the EIR states no “significant” impacts will be associated with the development. The EIR does not consider alternatives that are not reasonably ascertainable and whose implementation is remote and speculative.	Noted
6.3.12. Organizations and Persons Consulted					
6.3.13. Discussion of Cumulative Impacts.	Does the EIR discuss cumulative effects of a project? Does the discussion of cumulative effects and impacts reflect the severity of the effects and impacts and their likelihood of occurrence?	Ch 3	Yes	Cumulative impacts are summarized for every resource (Ch 3) within the cumulative impact analysis area (5-mile radius around project). Likelihood of impact is described, and severity is described (the EIR describes all as insignificant).	Noted
6.3.13.1.	Does the discussion focus on the cumulative effects and impacts to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative effect and impact?	Ch 3	Yes	The EIR satisfies this requirement.	Noted
	Does the EIR discuss the following elements necessary to an adequate discussion of significant cumulative impacts: 1. a list of past, present, and probable future development projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the County (when determining whether to include a related development project, factors to consider should include, but are not limited to, the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue or when an impact is specialized, such as a particular air pollutant or mode of traffic);	Ch 3	Yes	The EIR satisfies this requirement.	Noted
	2. Does the EIR define the geographic scope of the area affected by the cumulative effect and impact and provide a reasonable explanation for the geographic scope utilized?	Ch 3	Yes	The geographic scope is defined as the cumulative impact analysis area, which includes a 5-mile buffer around the proposed project and a reasonable explanation is provided.	Noted
	3. Does the EIR include a summary of the expected environmental effects to be produced by those projects with the specific reference to additional information stating where that information is available?	Ch 2	Yes	The expected environmental effects associated with other projects in conjunction with this project are mentioned briefly in each “cumulative impacts” statement associated with each resource throughout Ch 3. Section 3.2 describes past, present, and probable future development projects citing sources for this information.	Noted
	4. A reasonable analysis of the cumulative impacts of the relevant projects? Does the draft EIR examine reasonable, feasible options for mitigating or avoiding the project’s contribution to any significant cumulative effects or impacts?	Ch 3	Yes	The EIR and Rancho Viejo Solar, LLC, specify their proposed actions to mitigate the development’s contribution to cumulative impacts on the environment.	Noted
6.3.13.2.	Did the cumulative impact analysis use approved land use documents, including the SGMP and any applicable area, district or community plans? Was a pertinent discussion of cumulative effects and impacts, contained in one or more previously certified final EIR development projects and incorporated by reference?	Ch 3	Partially	Ch 3.2 references the SGMP and the Community College District (Plan. The EIR does not reference one or more EIRs in the vicinity.	There are no applicable previously certified EIRs in the vicinity for consideration.

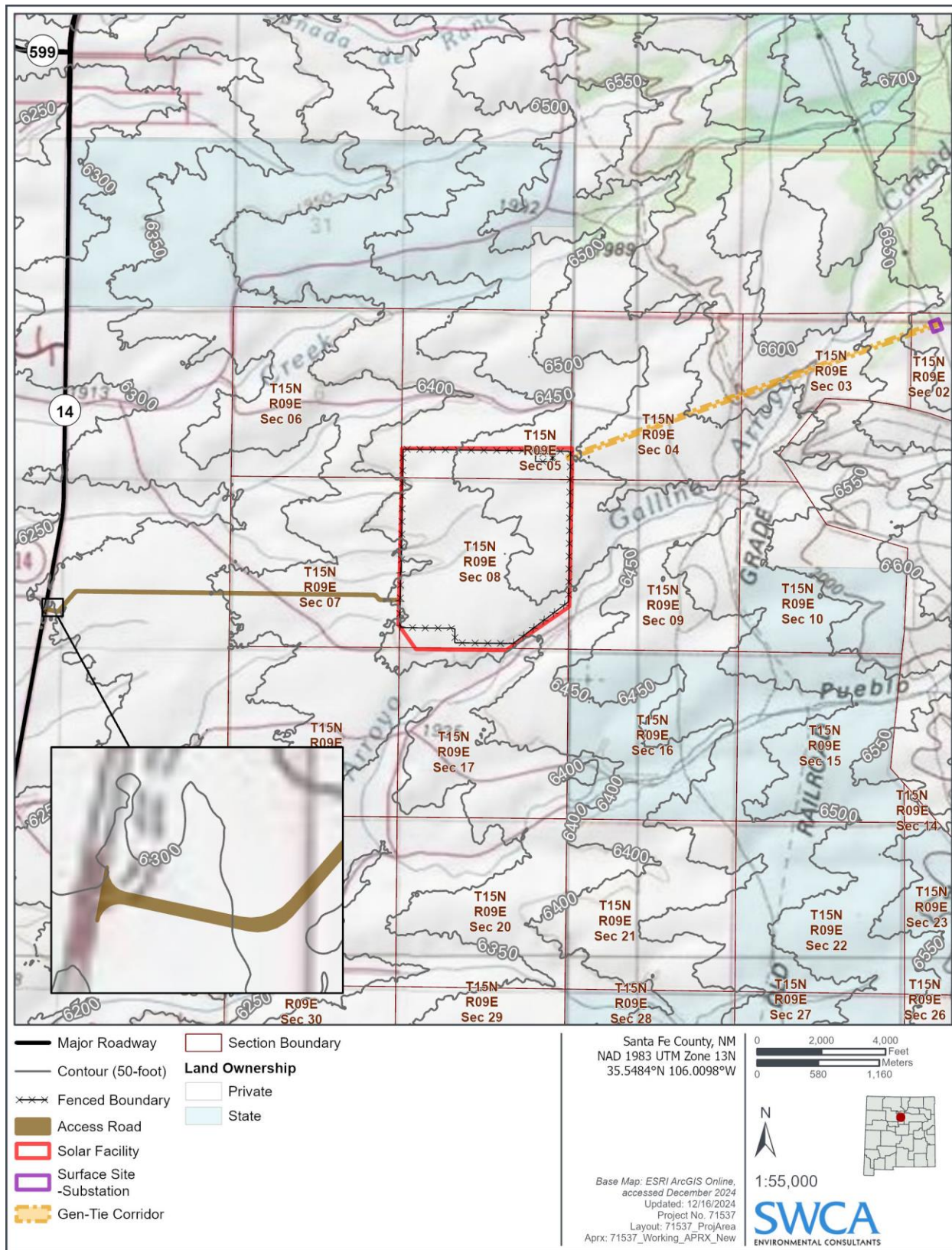


Figure 1.2. Project area.

M E M O R A N D U M

DATE: January 17, 2025
TO: Matt Gordon, Senior Project Manager AES Clean Energy
FROM: Carl Vermillion
SUBJECT: AES Rancho Viejo Solar Development – Traffic Assessment Update

Santa Fe County has released third party review comments for the environmental impact report which includes a worst-case assumption on how many water truck trips will be required for the site during construction.

Initially, the STA provided 10 heavy haul truck trips per day. In response to the third-party review, the number of water truck trips was estimated at two water trucks per hour for a total of 20 water truck trips per day from October through March and 6 water truck trips per day from April through September.

The STA provided an assessment on the peak hour trips which included 150 work trucks (ex: crew, foreman, superintendents) per day, and 40 work trucks specifically for the BESS install per day. Since the water truck trips will be spread out during the day and scheduled outside of the peak traffic hours of 7:30 to 8:30 AM and 4:30 to 5:30 PM, they will not impact the number of trips during the peak hour.

Under worst-case scenario, there could be up to two water truck trips per hour for a total of 20 water truck trips per day from October through March and up to six water truck trips per day from April through September. The EIT and STA included 10 trips per day for material and equipment over the construction period and a maximum of 190 trips per day for workers commuting to the project for the duration of construction. The addition of six to 20 water trucks per day represents a 3% to 10% increase in vehicles trips per day. Because this addition of vehicle trips is modest, and because all water trucks will be scheduled outside of the peak traffic hours of 7:30 to 8:30 AM and 4:30 to 5:30 PM, there is no change to the traffic and roads conclusions in the EIR and STA.

We kindly request formal concurrence that based on our updated traffic findings, the reviewers do not have any further concerns related to traffic. If you have any questions or concerns about this traffic letter, please feel free to contact me at cvermillion@bhinc.com or 505-823-1000 to discuss further.

Thank you for your consideration.

/jma

Enclosures: STH Memo, October 5, 2022



Site Threshold Analysis (STA)

According to NMAC 18.31.6.16, a traffic engineering evaluation shall be required for all land development proposals that may directly or indirectly impact a state highway facility. A Site Threshold Analysis (STA) is required of all developing or re-developing properties that directly or indirectly access a state roadway. The STA examines existing roadway volumes and anticipated site trip generation for the purpose of determining if additional analyses are required as defined by the District Traffic Engineer or designee. If the site characteristics and the trip generation estimate for a proposed development are greater than 100 trips in a peak hour, then requirements for a Traffic Impact Analysis (TIA) may be required as determined by the District Traffic Engineer or designee. See TIA outline for that scope.

The STA shall warrant one or all of the following conditions:

- May or may not warrant an additional traffic analysis.
- May or may not warrant off-site improvements.
- May require a TIA, which may or may not require off-site improvements.

If additional analysis is required based on the results of the STA, the District Traffic Engineer or designee, should indicate to the applicant the level of analysis that is required.

Permit Applicant Information

Applicant Name: Bohannon Huston Inc

Business Name: Rancho Viejo Solar

Business Address: 4173 NM 14 Santa Fe NM 87508
Street Address: City: State: Zip Code:

Site Information (Attach Site Plan to include length of roadway frontage):

Site Description: 96 MegaWatt Solar Farm on ~800 acres

Site Address: 4173 NM 14 Santa Fe NM 87508
Street Address: City: State: Zip Code:

NMDOT Roadway: NM 14 Milepost: 41.5 Roadway ADT: 5,841

Site Information (commercial, retail, industrial, residential, etc):

Development of 800 acres of land to contain 96 MegaWatt solar farm.

Minimal traffic to site after construction (See attached Memo)

Building Size (SF): 0 Parcel Size (acre): ~800

Trip Generation:

ITE Trip Generation Land Use Category: See Attached Memo for Trip Generation

AM Peak Hour Trips Enter: 4 Exit: 0

PM Peak Hour Trips Enter: 0 Exit: 4

Exceeds Threshold for TIA (100 or more peak hour total trips):

Yes ☐ See Attached memo for additional details for STA and
No ☒ TIA determination

MEMORANDUM

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335

www.bhinc.com

voice: 505.823.1000

facsimile: 505.798.7988

toll free: 800.877.5332

TO: Javier Martinez, PE, NMDOT District 5 Assistant District Engineer
FROM: Carl Vermillion
DATE: October 5, 2022
SUBJECT: AES Rancho Viejo Solar Development – Traffic Assessment

Bohannon Huston has prepared a site threshold assessment for a proposed 800-acre solar farm to be developed by the AES corporation. This memorandum includes an assessment of the vehicle trip generation anticipated during typical operations after the project is build and traffic during project construction along with discussion on access points onto NM 14.

Project Description

The proposed project is a new solar farm installation located in Santa Fe County east of NM 14 in the vicinity of the existing Turquoise Trail Charter school. Construction of the site will consist of a 96 Megawatt (MW) installation within an area of approximately 800 acres of land (see attached figure for location). This installation may incorporate a Battery energy storage system (BESS) on the property. The main assessment of traffic will result from the operational activities of the site after construction and the second traffic assessment will focus on traffic impacts related to the construction of the proposed facility including the BESS system.

Once operational, the site will be staffed with up to 4 permanent employees on-site to conduct operations and maintenance activities. As a result, the number of employee vehicle trips generated by the site during typical operations is considered negligible. The information provided will result in the following peak hour traffic generation distribution:

AM Peak Hour: Entering – 4 vehicles; **Exiting** – 0 vehicles

PM Peak Hour: Entering – 0 vehicles; **Exiting** – 4 vehicles

Based on the State Access Management Manual (SAMM) a TIA is required for developments that generate 100 or more peak hour total trips. As the worst case trip generation results in 4 vehicles per hour for either peak hour, a TIA for this development is not required.

However, the primary traffic concern for the proposed project is associated with the potential temporary construction traffic impacts. The construction of the site is anticipated to last approximately 12 months. Construction is anticipated to require an estimated 190 workers on-site per day. The personnel will be local workforce and they will be encouraged to carpool to the site each day. Construction staff will be on-site between 7 AM to 4 PM Monday through Friday.

Similar to the construction of solar facilities in other locations, the number of employees for the first 2 months and the last 2 months of construction will be lower with peak on-site employment occurring for the eight months in the middle of the project schedule. The traffic generation values incorporate both the solar farm and the BESS. This estimate is considered conservative for this site since the BESS system may or may not be constructed as part of the solar facility.

The number and type of vehicles planned to be involved during peak construction are described as follows:

- 10 heavy haul trucks (ex: 18 wheeler deliveries, water trucks, garbage trucks) per day
- 75 to 150 work trucks (ex: crew, foreman, superintendents) per day
- 40 work trucks specifically for the BESS install per day

As construction activities will be a much higher generator than the day-to-day activities of the site, the NMDOT may want to consider traffic impacts based on the traffic during the construction phase. It is anticipated that 190 work trucks will arrive between 6:30 and 7AM and will depart the site at 4PM. The 10 heavy trucks will arrive on the site outside of the anticipated peak hours. At the adjacent intersection of NM 14 and NM 599 the peak hours are 7:30 to 8:30AM and 4:30 to 5:30PM. It is anticipated that some of the traffic associated with this site may arrive during the peak hour but the majority will travel prior to the AM and PM peak hours.

With the information provided above, peak hour trips were generated. This will result in the following traffic generation distribution:

AM Peak Hour: Entering – 190 vehicles; Exiting – 0 vehicles

PM Peak Hour: Entering – 0 vehicles; Exiting – 190 vehicles

It is Bohannon Huston's professional opinion that this is a conservative approach to account for all trips during the peak hour associated with the construction activities for the development site.

Vehicle Access

An existing access point for the property has a gated entry on NM 14 1,300 feet to the north of the existing Turquoise Trail Charter School. This entry serves the development property today, but the development wants to improve and realign this access point to facilitate traffic for the construction of the solar farm. As part of this realignment, the access point will be moved to the north approximately 450 feet to align with the existing on site travel pattern. This new location will be located approximately 100 feet to the north of the existing driveway on the west side of NM 14. It is understood that this will require a new driveway permit with the NMDOT and this process will begin soon after this STH process is discussed and approved.

An analysis of the State Access Management Manual (SAMM) was done to determine if any criteria would be met based on requirements by the NMDOT. Criteria for deceleration lanes was validated with a design speed of 55 mph as is posted in the project area. Table 17.B-3 indicates that on a rural two-lane highway such as NM 14 in the project area, a left turn volume of 20 vehicles per hour requires a left turn deceleration lane.

The assessment for the operations of the site indicated a left turn deceleration lane is not warranted due to the small volume that will be traveling to the site. This assessment was also conducted for the site during construction, where a left turn deceleration lane is warranted due to the high volume of construction vehicles accessing the site. Since these traffic volumes will only be applicable during construction the project team believes that these deceleration lanes should not be implemented.

Assessment

Based on our initial traffic evaluation and STA, Bohannon Huston has determined that additional traffic impact studies are not warranted per the SAMM, as the site is expected to generate 4 peak hour total trips during operations. Alternatively, during construction the site is expected to generate 190 peak hour total trips. Based on the SAMM a TIA is required for developments that generate 100 or more peak hour total trips. As this is a temporary condition due to the construction activity at the site, we believe a TIA should not be required for this development.

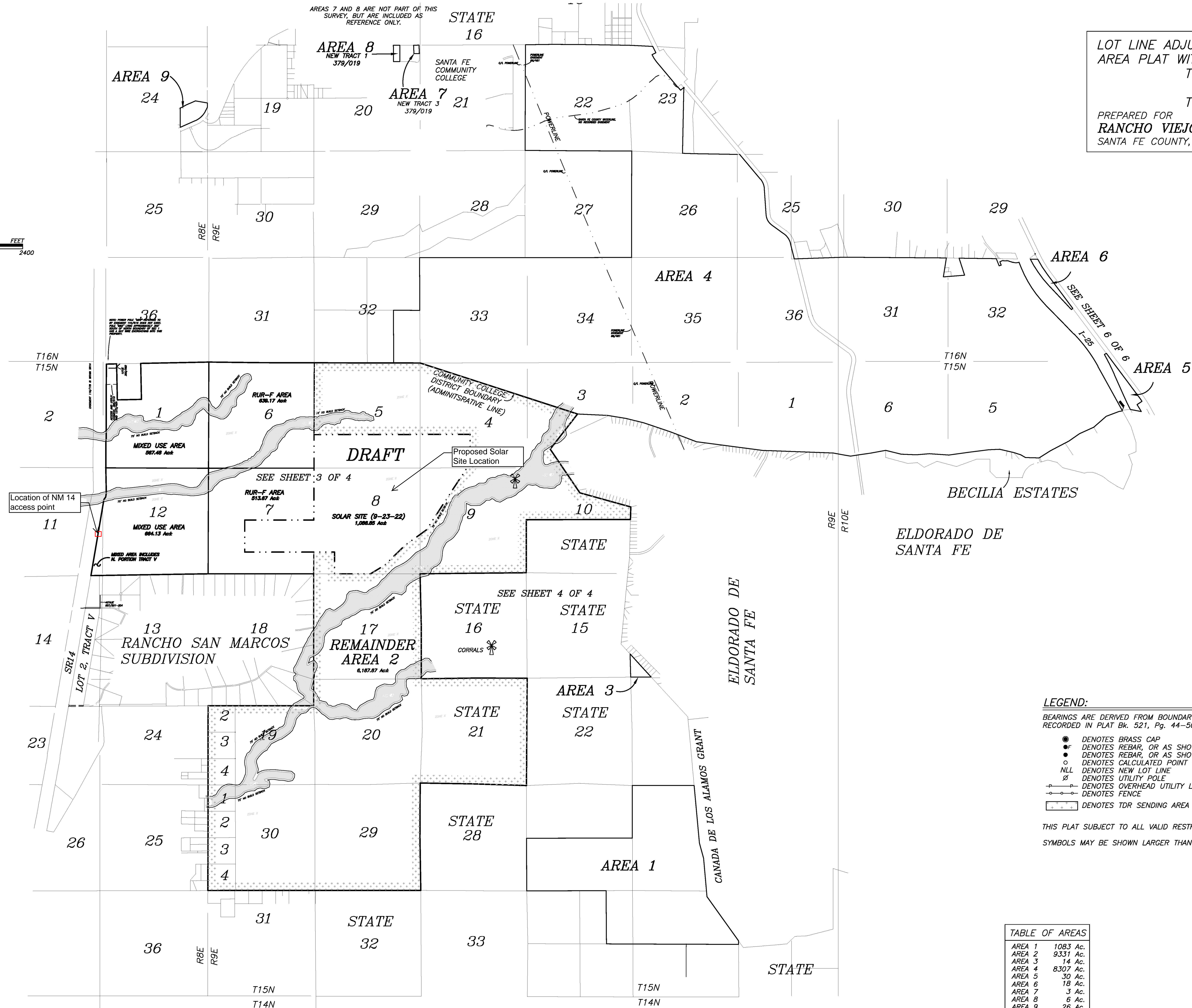
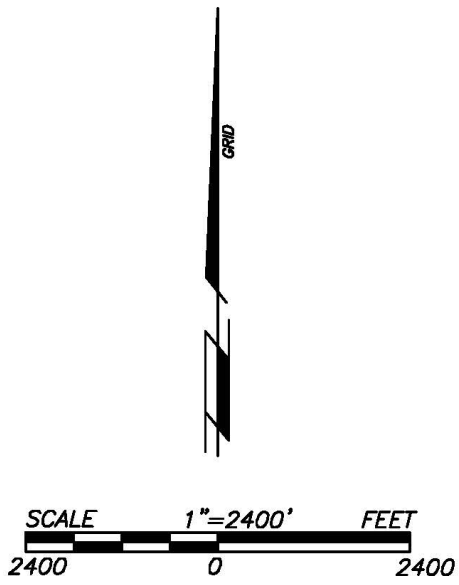
Javier Martinez, PE, Assistant District Engineer
NMDOT District 5
AES Rancho Viejo Solar Development – Traffic Assessment
October 5, 2022
Page 3 of 3

Additionally, a driveway permit will be required to move the access point to the north by 350 feet. Should future development activities propagate additional traffic evaluations, these will be conducted to assess those project-specific needs and traffic generation.

We kindly request formal concurrence that based on our traffic findings, NMDOT does not have any concerns related to traffic and new driveway access off NM 14. Please feel free to contact me at cvermillion@bhinc.com ; 505-923-3318 to discuss. Thank you for your consideration.

/jma

Enclosures: Overall Map
Traffic Signal Counts – NM 14 and NM 599



LOT LINE ADJUSTMENT AND TDR SENDING
AREA PLAT WITHIN AREA 2
T5N, R8E, NMPM,
AND
T5N, R9E, NMPM,
PREPARED FOR
RANCHO VIEJO LIMITED PARTNERSHIP
SANTA FE COUNTY, NEW MEXICO

LEGEND:

BEARINGS ARE DERIVED FROM BOUNDARY SURVEY PREPARED FOR RANCHO VIEJO DE SANTA FE
RECORDED IN PLAT Bk. 521, Pg. 44-50-A OFFICE OF THE SANTA FE COUNTY CLERK

- DENOTES BRASS CAP
- DENOTES REBAR, OR AS SHOWN FOUND
- DENOTES REBAR, OR AS SHOWN TO BE SET UPON RECORDING
- DENOTES CALCULATED POINT NOT SET
- DENOTES NEW LOT LINE
- ⊙ DENOTES UTILITY POLE
- DENOTES OVERHEAD UTILITY LINE
- DENOTES FENCE
- DENOTES TDR SENDING AREA

THIS PLAT SUBJECT TO ALL VALID RESTRICTIONS, COVENANTS AND EASEMENTS OF RECORD
SYMBOLS MAY BE SHOWN LARGER THAN ACTUAL SIZE FOR VIEWING PURPOSES.

TABLE OF AREAS	
AREA 1	1083 Ac.
AREA 2	9331 Ac.
AREA 3	14 Ac.
AREA 4	8307 Ac.
AREA 5	30 Ac.
AREA 6	18 Ac.
AREA 7	3 Ac.
AREA 8	6 Ac.
AREA 9	26 Ac.
TOTAL	18818 Ac.

DRAFT

SHEET 2 of 4
DAWSON SURVEYS INC.
PROFESSIONAL LAND SURVEYORS
7505 MALLARD WAY, SUITE A
SANTA FE, N.M. 87507
FILE#10762\TDR DATE:09\26\2022

NM 14 NM 599

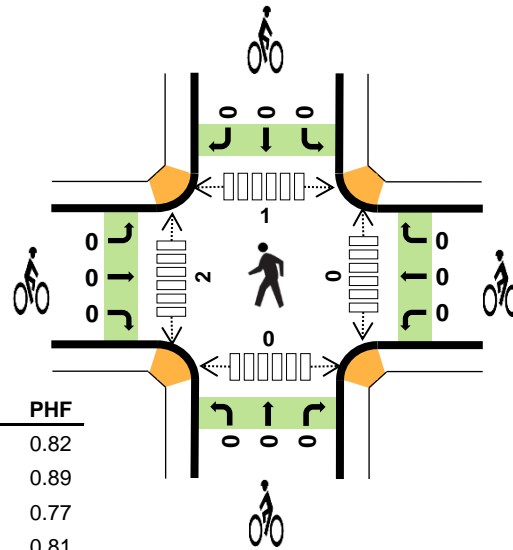
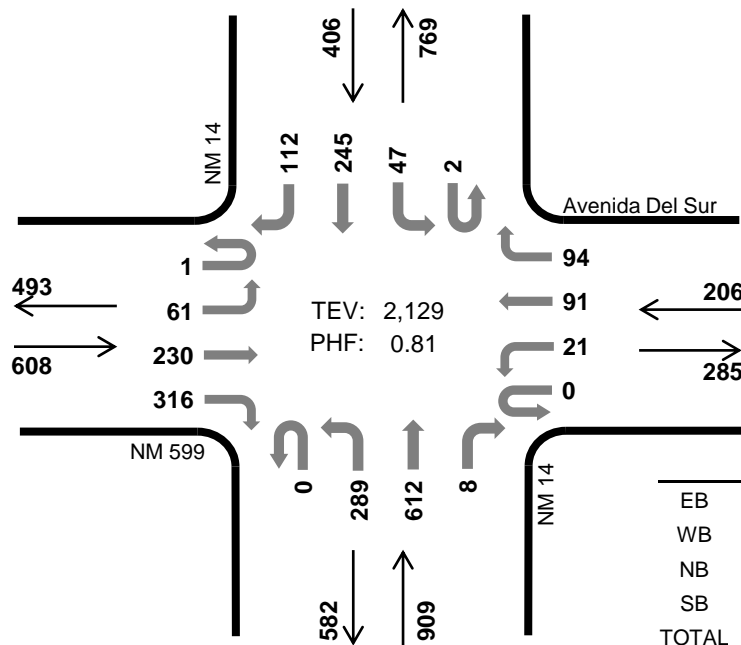


Peak Hour

Date: 09/28/2022

Count Period: 6:00 AM to 9:00 AM

Peak Hour: 7:30 AM to 8:30 AM



	HV %:	PHF
EB	3.5%	0.82
WB	4.4%	0.89
NB	3.0%	0.77
SB	5.7%	0.81
TOTAL	3.8%	0.81

Three-Hour Count Summaries

Interval Start		NM 599				Avenida Del Sur				NM 14				NM 14				15-min Total	Rolling One Hour
		Eastbound				Westbound				Northbound				Southbound					
		UT	LT	TH	RT	UT	LT	TH	RT	UT	LT	TH	RT	UT	LT	TH	RT		
7:30 AM		0	9	65	111	0	7	25	26	0	86	169	0	0	8	70	25	601	0
7:45 AM		0	18	69	99	0	5	23	24	0	98	193	5	0	10	85	31	660	0
8:00 AM		0	13	56	68	0	4	24	26	0	60	133	3	0	17	52	27	483	0
8:15 AM		1	21	40	38	0	5	19	18	0	45	117	0	2	12	38	29	385	2,129
Peak Hour	All	1	61	230	316	0	21	91	94	0	289	612	8	2	47	245	112	2,129	0
	HV	0	3	7	11	0	1	6	2	0	14	12	1	0	2	4	17	80	0
	HV%	0%	5%	3%	3%	-	5%	7%	2%	-	5%	2%	13%	0%	4%	2%	15%	4%	0

Note: For all three-hour count summary, see next page.

Interval Start	Heavy Vehicle Totals					Bicycles					Pedestrians (Crossing Leg)				
	EB	WB	NB	SB	Total	EB	WB	NB	SB	Total	East	West	North	South	Total
7:30 AM	8	5	5	10	28	0	0	0	0	0	0	0	0	0	0
7:45 AM	3	0	11	6	20	0	0	0	0	0	0	2	1	0	3
8:00 AM	5	3	7	2	17	0	0	0	0	0	0	0	0	0	0
8:15 AM	5	1	4	5	15	0	0	0	0	0	0	0	0	0	0
Peak Hour	21	9	27	23	80	0	0	0	0	0	0	2	1	0	3

NM 14 NM 599

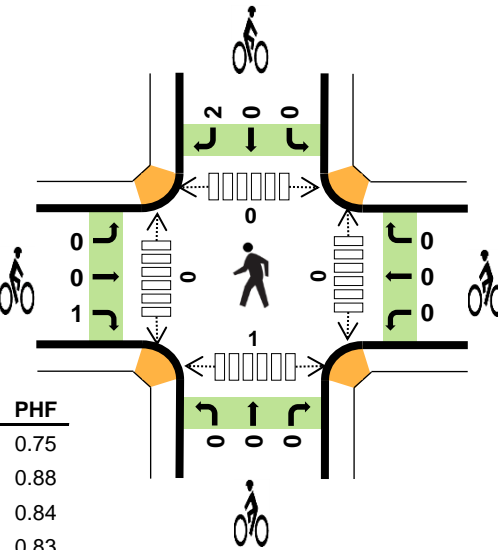
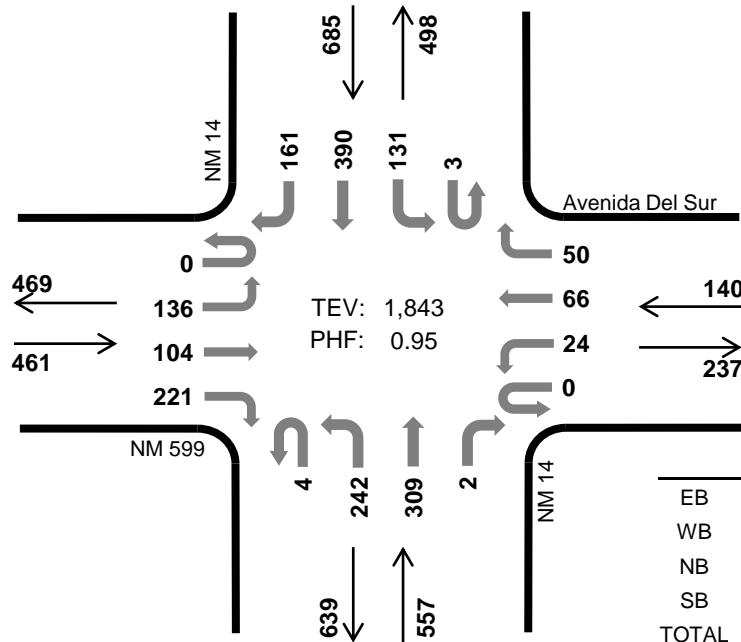


Peak Hour

Date: 09/28/2022

Count Period: 3:00 PM to 6:00 PM

Peak Hour: 4:30 PM to 5:30 PM



	HV %:	PHF
EB	3.9%	0.75
WB	1.4%	0.88
NB	2.9%	0.84
SB	2.0%	0.83
TOTAL	2.7%	0.95

Three-Hour Count Summaries

Interval Start		NM 599				Avenida Del Sur				NM 14				NM 14				15-min Total	Rolling One Hour
		Eastbound				Westbound				Northbound				Southbound					
		UT	LT	TH	RT	UT	LT	TH	RT	UT	LT	TH	RT	UT	LT	TH	RT		
4:30 PM		0	35	16	46	0	9	16	15	2	74	90	0	2	34	91	37	467	0
4:45 PM		0	31	25	49	0	6	21	10	0	56	77	0	0	28	82	26	411	0
5:00 PM		0	28	26	51	0	4	17	15	1	58	102	1	0	26	94	58	481	0
5:15 PM		0	42	37	75	0	5	12	10	1	54	40	1	1	43	123	40	484	1,843
Peak Hour	All	0	136	104	221	0	24	66	50	4	242	309	2	3	131	390	161	1,843	0
	HV	0	9	0	9	0	0	2	0	0	9	7	0	0	5	3	6	50	0
	HV%	-	7%	0%	4%	-	0%	3%	0%	0%	4%	2%	0%	0%	4%	1%	4%	3%	0

Note: For all three-hour count summary, see next page.

Interval Start	Heavy Vehicle Totals					Bicycles					Pedestrians (Crossing Leg)				
	EB	WB	NB	SB	Total	EB	WB	NB	SB	Total	East	West	North	South	Total
4:30 PM	7	1	5	5	18	0	0	0	0	0	0	0	0	0	0
4:45 PM	7	1	5	4	17	0	0	0	0	0	0	0	0	0	0
5:00 PM	2	0	3	3	8	0	0	0	1	1	0	0	0	1	1
5:15 PM	2	0	3	2	7	1	0	0	1	2	0	0	0	0	0
Peak Hour	18	2	16	14	50	1	0	0	2	3	0	0	0	1	1

Exhibit 9

Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico Glorieta Geoscience, January 29, 2025 Report



Glorieta
Geoscience
A Division of GZA

WATER / WATER RIGHTS

GEOTECHNICAL

ENVIRONMENTAL

ECOLOGICAL

CONSTRUCTION MANAGEMENT

OFFICE ADDRESS:

Glorieta Geoscience
A Division of GZA
1723 Second Street
Santa Fe, NM 87505

MAILING ADDRESS:

Glorieta Geoscience
P.O. Box 5727
Santa Fe, NM 87502



Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico

January 29, 2025



Prepared by:

Abby Guidry, Jay Lazarus, Dane Goble
Glorieta Geoscience,
A Division of GZA GeoEnvironmental, Inc.
PO Box 5727
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Prepared for:

Jordan Yutzy, Dominic Sisneros
Santa Fe County
Building and Development Services Division

1. INTRODUCTION

Glorieta Geoscience (GGI), A Division of GZA GeoEnvironmental, Inc. was retained by Santa Fe County (County) to conduct a third-party review (Review) of an Environmental Impact Report (EIR) submitted by Rancho Viejo Solar, LLC (Applicant) for technical accuracy and for compliance with the Santa Fe County Sustainable Land Development Code (SLDC) Chapter 6.3.: *Environmental Impact Report (EIR)*. The proposed development is a solar array facility that includes a battery energy storage system (BESS), a substation, a generation tie-in line, water tank, access roads, and an operations building on approximately 724 acres of land in Santa Fe County 3 miles south of Santa Fe City limits, and 4.2 miles east of La Cienega. The development is known as the Rancho Viejo Solar Project (Project, Development), and is proposed to provide New Mexico with additional renewable energy sources and help the state to achieve its goals for cutting fossil-based energy.

The EIR was submitted to the County in July 2024 and summarizes the technical characteristics of the Project, as well as expected impacts to the local environment, and extensive measures that will be taken to mitigate these impacts. This Review summarizes the EIR's compliance with each requirement stated in SLDC Chapter 6.3. noting any deficiencies in the assessment (Table 1).

In addition, this Review assesses the technical accuracy of the EIR. To the best of GGI's ability and specialized knowledge, we evaluated the accuracy of the EIR's assessment of impacts to environmental resources, and claims presented in the EIR that impacts would be significant or insignificant.

On January 22, 2025, the Applicant prepared a response to GGI's draft third party review of the EIR. This Review responds to and addresses the responses provided by the Applicant in their January 22, 2025 report.

2. COMPLIANCE WITH SLDC CHAPTER 6.3.

Table 1 provides an in-depth review of each requirement of SLDC Ch 6.3. The table breaks down each requirement of SLDC Ch 6.3., where the requirement was addressed in the EIR, if the requirement was sufficiently addressed by the EIR, and additional explanations if necessary. Any deficiencies in full compliance with SLDC Chapter 6.3. are identified, along with a brief explanation as to how such deficiencies should be addressed to satisfy each requirement. The Applicant's responses to GGI's draft report (2024) are also included in Table 1, along with GGI's final comments.

3. TECHNICAL ACCURACY ASSESSMENT

In addition to compliance with SLDC Chapter 6.3., GGI evaluated the EIR for technical accuracy, which included the following:

- Identifying deficiencies in the EIR's assessment of anticipated impacts to environmental resources
- Identifying areas where additional explanation is needed to understand potential impacts to environmental resources

- Verifying that the assessment of significant vs. insignificant impacts is accurate based on the information provided

Below are items within the EIR which GGI identified as deficient, in need of clarification, and/or inaccurate. These items include additional deficiencies that are not addressed in Table 1 and should be addressed to ensure technical accuracy.

3.1. Water Use: Section 2.1.2.4 of EIR

The EIR states the estimated water use throughout the 12-month construction period will be 100-150 acre-feet. The provided water sources are as follows: “Santa Fe County bulk water station commercial pipe water; Ranchland Utility Company Class A reclaimed water; Santa Fe County reclaimed water; or any other legally permitted commercial water sales” (SWCA 2024) and are proposed to be delivered by water truck only. The development also proposes to have one 30,000-gallon water tank on site throughout the duration of the Project’s operational life. GGI stated in the December 2024 draft report that more information was necessary to evaluate the potential impacts of water hauling and what proportions of each water source are expected to be utilized.

The Applicant’s written response to this comment was the following:

“Water use during construction will be approximately 100 to 150 acre-feet over a 12-month construction period and will be delivered to the Rancho Viejo Solar Project (project) site by water trucks and piped from the existing hydrant located at the intersection of the access road and State Road 14. The water will be leased from Univest-Rancho Viejo, LLC with water rights Univest-Rancho Viejo, LLC owns in the County water system that are not currently being utilized. Water use during construction will maintain a balance between trucking reclaimed water to the project site and piping hydrant water and/or reclaimed water, to minimize transportation-related impacts and use of hydrant

water. Water use will be managed as follows:

- During the months of April through September, when Ranchland Utility Company supplies much of its Class A reclaimed water for irrigation purposes, the majority of project construction water will be piped from the existing hydrant located at the intersection of the access road and State Road 14. This will limit the need for trucking water to the site from April through September. However, there may be several supplemental deliveries of reclaimed water (no more than six per day), when available, during these months. All water trucks will be scheduled outside the peak traffic hours of 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m.
- During the months of October through March, when Ranchland Utility Company has excess Class A reclaimed water available, the majority of project construction water will be trucked to the site. This will allow for the greater use of reclaimed water from October through March. During these months, water truck deliveries will be limited to two water trucks per hour. Remaining construction water will be piped from the existing hydrant located at the intersection of the access road and State Road 14. All water trucks will be scheduled outside the peak traffic hours of 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m. The project also may stage water storage tanks (e.g., frac tanks) on-site to minimize further the need for water trucks during periods of heavy use on State Road 14.

Under a worst-case scenario, there could be up to two water trucks per hour for a total of 20 water trucks per day from October through March and up to six water trucks per day from April through September. The EIR included 10 trips per day for material and equipment over the construction period and between 115 and 190 trips per day for workers commuting to the project for the duration of construction. The addition of six to 20 water trucks per day represents a 3% to 10% increase in vehicle trips. Because this addition of vehicle trips is modest, and because

all water trucks will be scheduled outside the peak traffic hours of 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m., there is no change to the traffic and roads effects analysis conclusions in the EIR. See enclosed confirmation letter prepared by Carl Vermillion, Traffic & Transportation Engineer at Bohannon Huston, and author of the Traffic Assessment for the project.

The addition of six to 20 daily water truck trips would increase total vehicle trips beyond the previously estimated 10 material and equipment trips and 115 to 190 worker commuting trips per day. These additional trips would result in a short-term increase in GHG emissions. However, by providing a new source of renewable energy, over its operational life, the proposed Project will reduce GHG emissions generated by the burning of fossil fuels, and thus, will be consistent with the objectives in Santa Fe County's GHG Emissions Reduction Plan" (SWCA, 2025).

It is GGI's professional opinion that this additional detail is sufficient to satisfy the requirements of SLDC Chapter 6.3. with the following conditions:

- The Applicant shall provide to the County a copy of an executed lease agreement with Univest-Rancho Viejo, LLC for the water rights required for this project including the applicable New Mexico Office of the State Engineer (OSE) permit and permit conditions.
- The Applicant shall obtain a letter from the Santa Fe County Utilities Department stating that the Santa Fe County Water System has the capacity and capability of providing up to 150 acre-ft of water.
- The Applicant shall obtain all required OSE permits under the New Mexico Water Rights Leasing Act.
- If reclaimed water is piped directly to the project site, the Applicant shall provide to the County an approved New Mexico Environment Department (NMED) Ground Water Discharge Permit.

The Applicant stated in the EIR that the large vehicle traffic would include approximately 10 trucks per day. The Applicant revised this number in their above response to include six to 20 additional large vehicles per day to account for water hauling. With an additional 115-190 passenger vehicle trips per day, the Applicant states that this increase in large vehicle traffic is only a 3-10% increase. It is GGI's opinion that this 3-10% increase is not an accurate representation of this increase in traffic, and that it would be more accurate to consider the increase in large vehicle traffic as an increase of 60-100%, as large vehicles have considerably higher greenhouse gas (GHG) emissions than passenger vehicles. However, GGI agrees with the Applicant that the results of developing this solar array will generate renewable energy that will more than offset the implications of this increase in vehicle traffic.

3.2. Evaluation of Significant and Insignificant Impacts on the Environment

The EIR evaluates the development's impacts on 17 different environmental resources: air, biological, cultural, historic, archaeological, religious, geological, paleontological, soil, geographic, health and safety, land use, minerals and mining, noise, socioeconomic, roads, water, and visual resources.

For each of these environmental resources, a series of mitigation measures were described which will be implemented to mitigate potential impacts on the environment during the construction, operation, and decommissioning of the development. The EIR describes impacts to all resources as "less than

significant” if mitigation measures are implemented. It is GGI’s opinion that if all mitigation measures are implemented correctly, and if all permitting requirements are approved prior to construction, impacts to each environmental resource will be less than significant.

GGI’s detailed review of the EIR’s compliance with SLDC 6.3. is presented in Table 1 below.

4. REFERENCES

Glorieta Geoscience, A Division of GZA GeoEnvironmental, Inc (2024). Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico. Unpublished draft report for Santa Fe County.

SWCA Environmental Consultants (2024). Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico. Unpublished consultant report for Rancho Viejo Solar, LLC.

SWCA Environmental Consultants (2025). Response to the Third-Party Review of the Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, by Glorieta Geoscience, A Division of GZA GeoEnvironmental, Inc. Unpublished consultant report for Rancho Viejo Solar, LLC.

Table 1. Assessment of Rancho Viejo Solar EIR Compliance with SLDC Ch 6.3

Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
Summary						
6.3.3. Summary.	Does the EIR contain a summary of the proposed actions and their consequences?	ES-1	Yes	The EIR satisfies this requirement.		
	Is the language of the summary as clear and simple as reasonably practical?	ES-1	Yes	The EIR satisfies this requirement.		
6.3.3.1.	Does the summary identify each significant adverse effect and impact with proposed mitigation measures and alternatives that would reduce or avoid that effect or impact?	ES-1	Yes	Impacts summary sufficiently describes potential and expected impacts to each resource category. All impacts are defined as “less than significant” throughout the summary and Ch 3 of the report.		
6.3.3.2.	Does the summary identify areas of potential controversy identified in the pre- application TAC meeting?	ES-1	Yes	The Executive Summary states that the TAC letter with these issues in Appendix A. There were no items of potential controversy listed in the TAC letter.		
6.3.3.3.	Does the summary identify issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects?	ES-1	Yes	The summary does identify issues to be resolved. It mentions the ‘no action’ alternative and discusses the actions that went into avoiding impacts to certain environmental resources. No significant effects are expected according to the EIR.		
Description of the Development, Local Environment and Baseline Conditions						
6.3.4. Project Description.	Does the description of the project contain the following information in a manner that does not supply extensive detail beyond that needed for evaluation and review of the environmental impact? :	1-1	See below	See 6.3.4.1 Below		
6.3.4.1.	Does the description of the project contain precise location and boundaries of the proposed development project, such location and boundaries shown on a detailed topographical map? Does the description of the project contain the location of the project on a regional map?	1-2, 1-3	Yes	The regional map appears to be on a topo base, but no elevations are shown/legible and the contour lines are too difficult to see. A detailed topographic map is needed.	See Figure 1.2 (attached), which has been updated to include detailed topographic contour lines.	This satisfies SLDC 6.3.4.1. ‘Requirement Satisfied?’ column changed to ‘yes’.
6.3.4.2.	Does the description of the project contain a statement of the objectives sought by the proposed development project? The statement of objectives should include the underlying purpose of the project.	1-1	Yes	The EIR satisfies this requirement.		
6.3.4.3.	A general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.	Ch 2 Ch 3	Yes	Technical characteristics are described thoroughly in Ch 2. Environmental characteristics are described thoroughly in Ch 3.		

				Economic characteristics are not specifically described in the EIR, but SLDC Table 6-1 states that Fiscal Impact Assessment is on an 'as needed' basis for this project.		
Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
6.3.5. Environmental Setting	Does the EIR include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the environmental analysis is commenced, from the County, area, community, regional, and state perspectives?	Ch 3	Yes	The EIR satisfies this requirement.		
Environmental Effects						
6.3.6. Significant Environmental Effects	Does the EIR demonstrate that the significant environmental effects and impacts of the proposed project were adequately investigated and discussed?	Ch 3	Yes	Significance is defined in the EIR here: "An impact would be considered significant if there were a regional or population-level impact and/or the affected resource would not fully recover, even after the impacting agent is gone and remedial or mitigating action is taken." The EIR states there will be no significant impacts to the environment based on the definition provided in the report.		
	Does the EIR demonstrate the significant adverse effects or impacts of the project in the full environmental context?	Ch 3	Yes	The EIR states that no proposed impacts are expected to be significant. They use the full environmental context to show this.		
	Has a geotechnical investigation and report been completed for the project?	Ch 3	Yes	Geotechnical report is included in Appendix D.		
	Does the EIR identify and focus on the significant environmental effects of the proposed development project?	Ch 3	Yes	The EIR states no effects are expected to be significant, however other impacts considered 'less than significant' are identified and focused on in the report.		
	Are direct and indirect significant effects and impacts of the project on the environment clearly identified and described, giving due consideration to both the short term and long-term effects and impacts?	Ch 3	Yes	Significance has been defined once in the EIR. Direct and indirect impacts are described throughout the report, along with short- and long-term duration status.		
	Does the discussion include relevant specifics of the area, the resources involved, physical changes and alterations to soil conditions, water, environmentally sensitive lands and ecological systems, changes induced in the human use of the land, health and safety problems caused by physical changes, and other aspects of the resource base such as	Ch 3	Yes	The EIR satisfies this requirement.		

	historical, cultural and archaeological resources, scenic vistas?					
Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
6.3.7. Significant Environmental Effects Which Cannot be avoided	Does the EIR describe significant adverse effects and impacts, including those which can be mitigated but not reduced to a level of insignificance?	Ch 3	Yes	None of the environmental impacts were listed as “significant”. All impacts were discussed in a manner that describes their ability to be mitigated.		
	Where there are effects and impacts that cannot be alleviated without an alternative design, does the EIR describe their implications and the reasons why the development project is being proposed?	Ch 3	Yes	Discussions of locations that were avoided to prevent impacts to visual, archaeological, biological, and wetland resources were included in the EIR. The final design and mitigation measures are presented as not having significant impacts, so these are not discussed.		
6.3.8. Significant Irreversible Environmental Changes	Does the EIR evaluate irretrievable commitments of resources?	Ch 3	Yes	The EIR states ‘no irretrievable commitments of resources are anticipated’ for all resources evaluated. In many places throughout the report, it is stated after discussing that mitigation measures will make impacts ‘less than significant’, which alone does not satisfy this requirement. When discussed in regards to the decommissioning process, the EIR satisfies the requirement- the decommissioned project will be restored to pre-development conditions, meaning that there will be no irretrievable commitments of resources after the decommissioning process is complete.		
6.3.9. Other Adverse Effects.	Does the EIR discuss other characteristics of the project which may significantly affect the environment, either individually or cumulatively? The EIR shall discuss the characteristics of the project which may decrease the area’s suitability for other uses, such as mixed use, industrial, residential, commercial, historical, cultural, archaeological, environmental, public and non-profit facilities, eco-tourism or scenic uses.	Ch 3	Yes	No elements of the development are expected to have significant impacts on the environment as long as mitigation measures are successfully implemented. The EIR does not discuss decreasing the area’s suitability for other uses, because the decommissioning process will return the project site to its pre-development state if done correctly. The decommissioning bond will ensure that the decommissioning process is carried out properly.		

Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
6.3.10. Mitigation Measures.						
6.3.10.1.	Does the EIR identify mitigation measures for each significant environmental effect identified in the EIR, such as the following? <ul style="list-style-type: none"> inefficient and unnecessary consumption of water and energy; degradation of environmentally sensitive lands; sprawl; and noise, vibration, excessive lighting, odors or other impacts 	Ch 3	Yes	The water resource plan for the first year (construction) fails to address the inefficiencies and impacts of traffic on the surrounding communities and the environment. Water trucking to satisfy water volume needs would require 10,400-15,600 gallons (2-4 4,000-gal water trucks) each hour assuming 12-hour workdays, and 261 working days per year. This will contribute significantly to traffic, noise, and will increase GHG emissions associated with the project. If the fire hydrant will be utilized at the access road point on NM 14, this will reduce the potential impacts associated with hauling.	See "Applicant Response" provided to the Technical Accuracy Assessment from GGI in the above document. Specifically, see Item 1, Water Use: Section 2.1.2.4 of the EIR.	The explanation is sufficient provided that all required permits and approvals are met for water resources at the project site. 'Requirement Satisfied?' column changed to 'yes'.
6.3.10.2.	Where several measures are available to mitigate an effect or impact, does the EIR discuss each measure and the basis for selecting a particular measure identified?	Ch 3	Yes	All measures discussed are ones being proposed to mitigate impacts.		
	Does the EIR identify the formulation of mitigation measures at the first discretionary approval? Under no circumstances shall the formulation of mitigation measures be deferred until the ministerial development process.	Ch 3	Yes	The EIR satisfies this requirement.		
	Do recommended measures specify performance standards which would mitigate the significant effect of the project?	Ch 3	Yes	The EIR states the SWPPP will outline performance standards for two of the resources being mitigated.		
	Do recommended measures specify which may be accomplished in more than one specified way?	Ch 3	Yes	All mitigation measures discussed are ones planned to be taken by the applicant during development and closure/post closure.		
6.3.10.3.	Does the EIR discuss energy conservation measures, as well as other appropriate mitigation measures, when relevant?	Ch 3	Yes	The EIR satisfies this requirement.		
6.3.10.4.	Does the EIR discuss the adverse effects and impacts of mitigation measure when the mitigation measure would cause one or more significant effects and impacts in addition to those that would be caused by the project as proposed?	Ch 3	Yes	No mitigation measures are presented in a way that would cause additional impact to the environment if properly implemented. If the mitigation measures are not expected to cause more significant impacts, they do not need to be discussed in this context.		

Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
6.3.10.5.	Are the mitigation measures described in the EIR fully enforceable through conditions or a voluntary development agreement?	Ch 3	Yes	The EIR satisfies this requirement.		
6.3.10.6. Were all of the following considered and discussed in the draft EIR:	1. preservation in place is the preferred manner of mitigating impacts to historic, cultural or archaeological sites. Preservation in place maintains the relationship between artifacts and the historical, cultural, and archaeological context. Preservation shall also avoid conflict with religious or cultural values of Indian communities associated with the site;	Ch 3	Yes	This is satisfied by the description provided in the text and the four letters from the SHPO (state historic preservation officer). The cultural sites will be avoided completely for construction and left in place. No religious resources will be impacted.		
	2. preservation in place may be accomplished by, but is not limited to, planning construction to avoid all historical, cultural or archaeological sites; and incorporation of sites within parks, green-space, or other open space;	Ch 3	Yes	The EIR satisfies this requirement.		
	3. when data recovery through excavation is the only feasible mitigation, a data recovery plan which makes provision for adequately recovering the scientifically consequential information from and about the historical, cultural, or archaeological resource, shall be prepared and adopted prior to any excavation being undertaken. If an artifact must be removed during project excavation or testing, storage of such artifact, under proper supervision, may be an appropriate mitigation; and	Ch 3	Yes	Excavation is not necessary as the two cultural sites will be avoided by at least 100 ft from the construction zone. All other artifacts were determined ineligible.		
	4. data recovery shall not be required for an historical, cultural or archaeological resource if the appropriate entity determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the draft EIR.	Ch 3	Yes	The EIR satisfies this requirement.		
6.3.11. Consideration and Discussion of Alternatives to the Proposed Project						
6.3.11.1. Alternatives to the Proposed Project.	Does the EIR describe a range of reasonable alternatives to the project, or to the location, which would feasibly attain some of the basic objectives of the project but would avoid or substantially lessen the significant and adverse impacts or effects of the project?	Ch 2	Yes	The alternatives discussed are ones that would have a greater impact on the environment than the project as proposed. The project as proposed is the least significant alternative.		

Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
	Does the EIR evaluate the comparative merits of the alternatives, even if those alternatives would impede the attainment of the project objectives or would be more costly?	Ch 2	Yes – see GGI Response	Merits of the proposed alternatives are not discussed, only reasons why the alternatives were not chosen.	As stated in the EIR, alternative locations were considered within the larger parcel. Merits of these alternatives are provided as follows: <ul style="list-style-type: none"> Partially siting the Project in Sections 5 and 6 would have allowed the solar arrays to shift to the north and away from the San Marcos subdivisions. This alternative was dismissed due to biological resources constraints along the southern branch of Bonanza Creek and the north-facing slopes. Siting the Project in Section 7, which is generally flat, would have benefited the overall solar production and efficiency rate. This alternative was dismissed based on public feedback related to concerns of potential visual resources effects to residential areas located to the south. Locating the Project closer to State Road 14 would have provided for a shorter access road. This alternative was eliminated because it is within part of the Turquoise Trail National Scenic Byway. 	The merits of the alternatives as described in SWCA's response were not described in the EIR. Adding this response to the EIR would satisfy SLDC 6.3.11.1. 'Requirement Satisfied?' column changed to 'yes'.
6.3.11.2. Evaluation of alternatives.	Does the EIR include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project?	Ch 2	Yes	The only information provided about alternatives is why they were not chosen.	See additional details added in the row immediately above, including merits of alternatives considered but eliminated from further analysis. Ultimately, the Proposed Action was chosen because it was the option that minimizes environmental impacts, and it represents the most feasible alternative for implementation.	If added to the EIR, the merits of the alternatives as described in SWCA's response would satisfy SLDC 6.3.11.2. 'Requirement Satisfied?' column changed to 'yes'.

6.3.11.3. Selection of a range of reasonable alternatives.	Does the EIR briefly describe the rationale for selecting the alternatives discussed?	Ch 2	Yes	No, the EIR does not explain why the alternatives were selected, but rather why the alternatives were not selected in place of the project as proposed.	The Proposed Action was refined based on public feedback, environmental diligence studies, and design constraints and this refined Proposed Action is the Project that is proposed within the CUP application and EIR. Ultimately, the Proposed Action was chosen because it was the option that minimizes environmental impacts, and it represents the most feasible alternative for implementation.	SWCA's responses satisfy SLDC 6.3.11.3. 'Requirement Satisfied?' column changed to 'yes'.
Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
	Does the EIR also identify any alternatives that were considered but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the determination?	Ch 2	Yes	The EIR satisfies this requirement.		
6.3.11.4. "No project" alternative	Was the specified alternative of "no project" evaluated along with its effects and impacts?	Ch 2 and Ch 3	Yes	There is a brief description in Ch 2 of the 'no project' alternative. In addition. There are sections labeled "No Action" under every single potentially impacted resource throughout Ch 3. Each of these together satisfies this requirement.		
6.3.11.4	Does the description and analysis of a "no project" alternative allow a comparison of any adverse effects and impacts of the proposed project with effects and impacts if the project were not accomplished?	Ch 2, Ch 3	Yes	The EIR satisfies this requirement.		
6.3.11.4	Is the "no project" alternative identical to the existing environmental setting analysis? If so, the "no project" alternative analysis is the baseline for determining whether the proposed project's environmental effects or impacts may be significant or adverse.	Ch 2	Yes	The 'no project' alternative is presented as identical to the existing environmental setting in Section 2.2.		
6.3.11.4.1	1. Does the "no project" analysis discuss the existing conditions at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the development project were not approved, based on current plans and consistent with available infrastructure and community services? Is the environmentally preferred alternative the "no project" alternative, and does the draft EIR also identify an environmentally preferred alternative among the other alternatives?	Ch 2	Yes	The EIR frames the Proposed Project as the environmentally preferred alternative – the 'no action' focuses on the potential other types of future development being worse, and the other locations as more impactful to certain resources. The EIR does discuss what would be reasonably likely to occur in the foreseeable future.		

Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
	Does the discussion of the “no project” alternative proceed as follows: The “no project” alternative is the circumstance under which the development project does not proceed. Does the discussion compare the environmental effects of the property remaining in its existing state against the environmental and adverse effects which would occur if the project were to be approved? If the consequence of disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other development project, was this discussed? Does the “no project” alternative mean “no build”, i.e., where the existing environmental setting is maintained? If failure to proceed with the project will not result in preservation of existing environmental conditions, does the analysis identify the practical result of the project’s non-approval?	Ch 2, Ch 3	Yes	Discussions of the No Project alternative are described in Ch 2 as well as throughout Ch 3 as they relate to each potentially affected resource. These descriptions compare the impacts of no development to the impacts of other potential developments. Other potential types of development projects are described in Section 2.2. The consequences of the development are described as follows: “the No Action Alternative could result in impacts to resources that would be similar and potentially greater in magnitude than the Proposed Action. Further, as Santa Fe County and the state of New Mexico both have goals related to renewable energy production, this Project would not contribute to those goals under the No Action Alternative.”		
6.3.11.5. Feasibility	Were some or all the following considered when addressing the feasibility of alternatives: <ul style="list-style-type: none"> • site suitability, • economic use and value viability, • availability of infrastructure, • jurisdictional boundaries (projects with a significant effect or impact should consider the county wide context), and • whether the applicant can reasonably acquire, control or otherwise have access to an alternative site in the common ownership? 	Ch 2	Partially	Alternative locations for the gen-tie and BESS were not discussed in the EIR, but alternative locations for the solar array itself were discussed and avoided due to biological resources, potential impacts to the Turquoise Trail National Scenic Byway, cultural resources, visual resources, and jurisdictional wetland boundaries. Additional explanations relating to the feasibility of alternatives is necessary for the project beyond just alternative locations for parts of the development as discussed above.		
6.3.11.6. Alternative locations.	Does the analysis identify whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location? Only locations that would avoid or substantially lessen any of the significant effects of the project should be included in the EIR. Does the EIR consider an alternative whose effect cannot be reasonably ascertained and whose implementation is	Ch 2	Yes	The analysis does not identify any impacts of the development as ‘significant’ but discusses that alternative locations of the proposed project would have impacted certain cultural, visual, biological, and other resources more than the project as proposed. The SLDC states that only locations which would avoid or substantially lessen any of the significant effects of the project should be included in the EIR, however the EIR		

	remote and speculative (this is something that should NOT be done)?			states no “significant” impacts will be associated with the development. The EIR does not consider alternatives that are not reasonably ascertainable and whose implementation is remote and speculative.		
Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
6.3.12. Organizations and Persons Consulted						
6.3.12. Organizations and Persons Consulted.	Does the EIR identify all federal, state, or local agencies, tribal governments, or other organizations or entities, and any interested persons consulted in preparing the draft?	Ch 5	Yes	The EIR satisfies this requirement.		
6.3.13. Discussion of Cumulative Impacts						
6.3.13. Discussion of Cumulative Impacts.	Does the EIR discuss cumulative effects of a project? Does the discussion of cumulative effects and impacts reflect the severity of the effects and impacts and their likelihood of occurrence?	Ch 3	Yes	Cumulative impacts are summarized for every resource (Ch 3) within the cumulative impact analysis area (CIAA – 5-mile radius around project). Likelihood of impact is described, and severity is described (the EIR describes all as insignificant).		
6.3.13.1.	Does the discussion focus on the cumulative effects and impacts to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative effect and impact?	Ch 3	Yes	The EIR satisfies this requirement.		
	Does the EIR discuss the following elements necessary to an adequate discussion of significant cumulative impacts: 1. a list of past, present, and probable future development projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the County (when determining whether to include a related development project, factors to consider should include, but are not limited to, the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue or when an impact is specialized, such as a particular air pollutant or mode of traffic);	Ch 3	Yes	The EIR satisfies this requirement.		

Code	Topic	EIR Location	Requirement Satisfied?	GGI Explanation (GGI, 2024)	Applicant Response (SWCA, 2025)	GGI Response to Applicant
	2. Does the EIR define the geographic scope of the area affected by the cumulative effect and impact and provide a reasonable explanation for the geographic scope utilized?	Ch 3	Yes	The geographic scope is defined as the cumulative impact analysis area (CIAA) which includes a 5-mile buffer around the proposed project and a reasonable explanation is provided.		
	3. Does the EIR include a summary of the expected environmental effects to be produced by those projects with the specific reference to additional information stating where that information is available?	Ch 2	Yes	The expected environmental effects associated with other projects in conjunction with this project are mentioned briefly in each 'cumulative impacts' statement associated with each resource throughout Ch 3. Section 3.2 describes past, present, and probable future development projects citing sources for this information.		
	4. A reasonable analysis of the cumulative impacts of the relevant projects? Does the draft EIR examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects or impacts?	Ch 3	Yes	The EIR and Rancho Viejo Solar, LLC specify their proposed actions to mitigate the development's contribution to cumulative impacts on the environment.		
6.3.13.2.	Did the cumulative impact analysis use approved land use documents, including the SGMP and any applicable area, district or community plans? Was a pertinent discussion of cumulative effects and impacts, contained in one or more previously certified final EIR development projects and incorporated by reference?	Ch 3	Partially	Ch 3.2 references the SGMP and the Community College District (CCD) Plan. The EIR does not reference one or more EIRs in the vicinity.	There are no applicable previously certified EIRs in the vicinity for consideration.	A 70-acre solar array exists 3.5 miles west of the project site. If an EIR was prepared for this, then this would be a relevant reference.

Exhibit 10

**April 24, 2025 email from Roger Prucino
to Selma Eikelenboom-Schieveld**

From: Roger L. Prucino <rlprucino@santafecountynm.gov>
Sent: Thursday, April 24, 2025 16:48
To: Selma Eikelenboom <s.eikelenboom@ifscolorado.com>
Cc: Abby Guidry <Abby.Guidry@gza.com>; Dominic J. Sisneros
<djsisneros@santafecountynm.gov>
Subject: Communications

Dr. Eikelenboom-Schieveld,

As you know, Glorieta Geoscience was retained by Santa Fe County to conduct a review of an Environmental Impact Report prepared for the applicant in the Rancho Viejo Solar Project case. The results of that review are a part of the record in the proceeding before the Planning Commission. The County does not want its experts engaging in informal discussions with other parties. Putting aside the fact that no appeal has yet been filed, it is not appropriate for certain parties to have the benefit of private communications, while other parties – including the BCC if we are to assume that an appeal is forthcoming – would not. We would prefer that you submit written questions to staff, which can then be addressed in the more formal setting of a hearing (again, assuming an appeal is eventually filed). While I cannot guarantee that any particular expert or witness will testify at a future hearing, staff will be sure to inform the Board of questions it receives.

Roger L. Prucino

Assistant County Attorney II

Santa Fe County

505.995.2755

Exhibit 11

Email communications between Staff and AES regarding Staff's third-party reviewers:

-- December 10-16, 2024 email string: Staff and AES re Rancho Viejo - EIR Third Party Review Comments

-- January 3-10, 2025 email string: Staff and AES re Rancho Viejo Follow-up Items

-- January 17-February 22, 2024 email string: Staff and AES re Questions and Comments related to January 17 meeting with Glorieta Geoscience

-- January 31, 2025 email string: Staff and AES re Rancho Viejo Solar – Atar Fire Review

From: Matt Gordon <matt.gordon@aes.com>
Sent: Monday, December 16, 2024 12:18 PM
To: Dominic J. Sisneros
Cc: Jessica Gonzales; Joshua Mayer; Jordan A. Yutzy
Subject: RE: Rancho Viejo - EIR Third Party Review Comments

Hi Dominic,

Tomorrow at 3pm works. I will send out an invite.

Thanks,
Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Sent: Monday, December 16, 2024 9:14 AM
To: Matt Gordon <matt.gordon@aes.com>
Cc: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: RE: Rancho Viejo - EIR Third Party Review Comments

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Good Morning,
I am not in the office today. Let's set something up for tomorrow afternoon at 3pm. Would you like to set up and send us the invite?
Sincerely,

Dominic J. Sisneros

DOMINIC J. SISNEROS
Building and Development Supervisor
Growth Management Department
505-995-2725



From: Matt Gordon <matt.gordon@aes.com>
Sent: Monday, December 16, 2024 8:28 AM
To: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: RE: Rancho Viejo - EIR Third Party Review Comments

Hi Dominic,

Are you available this afternoon or tomorrow for a call?

As noted below, I want to discuss several of the EIR third party comments and get clarity on the timing and expectations for addressing them.

Thanks,
Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Matt Gordon
Sent: Thursday, December 12, 2024 9:20 AM
To: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: RE: Rancho Viejo - EIR Third Party Review Comments

Hi Dominic,

Are you available tomorrow (any time) or Monday afternoon for a call?

I want to discuss several of the EIR third party comments and get clarity on the timing and expectations for addressing them.

Let me know.

Thanks,
Matt

Matt Gordon

Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation

matt.gordon@aes.com

Mobile: 562.233.2095



From: Dominic J. Sisneros <djsisneros@santafecountynm.gov>

Sent: Tuesday, December 10, 2024 7:52 AM

To: Matt Gordon <matt.gordon@aes.com>

Cc: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>

Subject: RE: Rancho Viejo - EIR Third Party Review Comments

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Good Morning Matt,

Attached is the draft report from Glorieta Geoscience. Condition #15 states “*Provide a detailed and accurate water budget for construction, operation & maintained and decommissioning. The water budget is to include water source and water trucking. Water budget will be reviewed by Glorieta Geoscience and approved by Santa Fe County Utilities*”

Sincerely,

Dominic J. Sisneros

DOMINIC J. SISNEROS

Building and Development Supervisor

Growth Management Department

505-995-2725



From: Matt Gordon <matt.gordon@aes.com>

Sent: Tuesday, December 10, 2024 8:45 AM

To: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>

Cc: Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>

Subject: Rancho Viejo - EIR Third Party Review Comments

Hi Jordan, and Dominic,

Can you send me the third party review comments on the EIR?

Also, can you send me the exact language of the additional condition that was added re: report on detailed water budget?

Thanks,

Matt

Matt Gordon

Senior Project Manager, Environmental Permitting

AES Clean Energy | The AES Corporation

matt.gordon@aes.com

Mobile: 562.233.2095



From: Matt Gordon <matt.gordon@aes.com>
Sent: Friday, January 10, 2025 2:15 PM
To: Dominic J. Sisneros; Jordan A. Yutzy
Cc: Alexandra Ladd; Jessica Gonzales; Joshua Mayer
Subject: RE: Rancho Viejo - Follow-up Items

Hi Dominic,

Thank you for the updates. Much appreciated.

I'm available anytime next Friday afternoon (1/17) to meet with Glorieta GeoSciences. We have developed a water management strategy that I believe will address their concerns with respect to truck trips while also being good stewards of Santa Fe County's water resources. I look forward to discussing this with them. Please send a meeting invite at your convenience.

I also saw that the updated Pre-Incident Plan and First Responder Mitigation Guidelines were posted yesterday to the County's website. Thank you!

Enjoy your weekend,

Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Sent: Friday, January 10, 2025 12:54 PM
To: Matt Gordon <matt.gordon@aes.com>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Cc: Alexandra Ladd <aladd@santafecountynm.gov>; Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: RE: Rancho Viejo - Follow-up Items

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Good Afternoon Matt,
To answer your questions:

- A special meeting has been confirmed for next Thursday January 16, 2025.
- We would like to set up a meeting for next Friday afternoon if available with Glorieta GeoScience and AES. Glorieta GeoScience did have the following questions:
 1. Will the fire hydrant on the edge of the property be utilized for construction and operation?
 2. Has the estimated construction water use changed from the original 100-150 acre-feet (32.6-48.9 million gallons)? The report states that working construction hours will be from 7AM - 7PM meaning the water hauling would occur each day during this 12-hour window. Although not specified in the EIR, if 4000-gallon water trucks are utilized and 10,400-15,600 gallons are required each hour, the construction will require between two and four water trucks each hour. This magnitude of water hauling requires a much more in-depth analysis of traffic and air quality impacts, resulting from the water truck traffic.
- Site visits are not planned for the Planning Commission members.
- If the updated Pre-Incident Plan and First Responder Mitigation Guidelines have not been updated I will be sure to get those to the site admin.

Please let me know your availability for next Friday afternoon,
Thank you,

Dominic J. Sisneros

DOMINIC J. SISNEROS

Building and Development Supervisor
Growth Management Department
505-995-2725



From: Matt Gordon <matt.gordon@aes.com>

Sent: Wednesday, January 8, 2025 1:02 PM

To: Jordan A. Yutzy <jjutzy@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>

Cc: Alexandra Ladd <aladd@santafecountynm.gov>; Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>

Subject: RE: Rancho Viejo - Follow-up Items

Hi Jordan, and Dominic,

Can you provide updates to these questions:

- Has it been confirmed if a Special Planning Commission meeting will be held on January 16?
- Will you be scheduling a meeting with Glorieta Geoscience so we can get clarification on their third party review comments?
- Does the County intend to schedule site visits for the Planning Commission members in advance of the February 3 meeting?

Also, when will the revised Pre-Incident Plan and First Responder Mitigation Guidelines provided on October 10, 2024, be updated on the County's website?

Thanks,
Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Matt Gordon
Sent: Friday, January 3, 2025 9:16 AM
To: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Alexandra Ladd <aladd@santafecountynm.gov>; Jessica Gonzales <jesgonzales@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>
Subject: Rancho Viejo - Follow-up Items

Hi Jordan, and Dominic,

Happy New Year!

Here are several follow-up items I'd like to get updates on:

- Has it been confirmed if a Special Planning Commission meeting will be held on January 16?
- Will you be scheduling a meeting with Glorieta Geoscience so we can get clarification on their third party review comments?
- Does the County intend to schedule site visits for the Planning Commission members in advance of the February 3 meeting?

Please let me know if you have any updates on these items or if you'd prefer to have a meeting to discuss.

Thanks,
Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Matt Gordon <matt.gordon@aes.com>
Sent: Wednesday, February 12, 2025 7:32 AM
To: Dominic J. Sisneros
Cc: Joshua Mayer; Jordan A. Yutzy
Subject: RE: Glorieta Geo Science questions and comments
Attachments: Exhibit R Glorieta Geoscience EIR Review.pdf;
RanchoViejo_Response_to_GGI_Comments_20250122.pdf

Hi Dominic,

I reviewed Exhibit R Glorieta Geoscience EIR Review that was linked to the Planning Commission agenda, and attached here. There are two items in the table that that are marked as “Partially” satisfying the SLDC requirement that I would like to get clarification on.

- 6.3.11.5. This is marked as “Partially”. In the response to the draft GGI review we provided on January 22 (also attached) this item with was addressed with a response on the bottom of page 8 and the top of page 9. However, the table in Exhibit R omits the response that was provided. Can you check with GGI to see why our response was omitted and if something more is needed to demonstrate compliance with this SLDC requirement?
- 6.3.13.2. This is marked as “Partially”, because the EIR does not reference other EIRs for development projects in the vicinity. Through discussions with County staff we’d been informed that there are no applicable previously certified EIRs in the vicinity that we should consider. Can you confirm if this is still correct, and if not can you provide the relevant EIR for consideration?

Thanks,
Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Matt Gordon
Sent: Wednesday, January 22, 2025 9:57 AM
To: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Joshua Mayer <Joshua.Mayer@aes.com>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: RE: Glorieta Geo Science questions and comments

Hi Dominic,

Please find attached responses to the comments provided by Glorieta Geoscience on the EIR.

Thanks,
Matt

Matt Gordon
Senior Project Manager, Environmental Permitting
AES Clean Energy | The AES Corporation
matt.gordon@aes.com
Mobile: 562.233.2095



From: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Sent: Friday, January 17, 2025 10:33 AM
To: Matt Gordon <matt.gordon@aes.com>
Cc: Joshua Mayer <Joshua.Mayer@aes.com>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: Glorieta Geo Science questions and comments

CAUTION: This email originated from outside AES. Do not click links or open attachments unless you recognize the sender.

Good Morning Matt,
Attached are questions and comments that were brought up by Glorieta Geo Science that they would like to discuss during today's meeting. Please let me know if you have any questions.
Thank you,

Dominic J. Sisneros

DOMINIC J. SISNEROS
Building and Development Supervisor
Growth Management Department
505-995-2725



From: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Sent: Friday, January 31, 2025 11:28 AM
To: Matt Gordon
Cc: Jordan A. Yutzy; Jaome R. Blay; Joshua Mayer; Mike Simpson
Subject: RE: Rancho Viejo Solar - Atar Fire Review - Response

Good Morning Matt,
I was able to get your PowerPoint to run with the video. The pdf version of the presentation has been uploaded to BoardDocs. I also forwarded your responses to Atar Fire.
Thank you,

Dominic J. Sisneros

DOMINIC J. SISNEROS
Building and Development Supervisor
Growth Management Department
505-995-2725



From: Matt Gordon <matt.gordon@aes.com>
Sent: Friday, January 31, 2025 10:55 AM
To: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Cc: Jordan A. Yutzy <jyutzy@santafecountynm.gov>; Jaome R. Blay <jblay@santafecountynm.gov>; Joshua Mayer <Joshua.Mayer@aes.com>; Mike Simpson <mike.simpson@aes.com>
Subject: Rancho Viejo Solar - Atar Fire Review - Response

Hi Dominic,

Attached are responses to the comments provided by Atar Fire on their review of the CUP application. As noted in the cover letter, Rancho Viejo Solar intends to address all comments, as appropriate, and at the proper development stage of the Project. Responses include status and timing for addressing comments, where applicable.

Please share with Atar Fire.

Thank you,
Matt

Matt Gordon

Senior Project Manager, Environmental Permitting

AES Clean Energy | The AES Corporation

matt.gordon@aes.com

Mobile: 562.233.2095



Exhibit 12

October 16, 2024 Hearing Officer Order on Motion to Intervene

**HEARING OFFICER MEETING
CASE NO. 24-5200
RANCHO VIEJO SOLAR LLC
AES CLEAN ENERGY DEVELOPMENT LLC, APPLICANTS
CONDITIONAL USE PERMIT**

ORDER ON MOTION TO INTERVENE

THIS MATTER came before the Sustainable Land Development Code (“SLDC”) Hearing Officer on the Motion for Leave to Intervene (“Motion”) by Ashley C. Schannauer (“Movant”) on September 21, 2024.

There has been no response to the Motion on behalf of the Applicants or the Santa Fe County. However, the Movant states in the Motion that the County Attorney’s response to the Motion was, in part, that the SLDC and the Rules of Order do not specifically reference the filing of this type of motion, but that the County Attorney defers to the Hearing Officer regarding the determination on the filing and the applicable procedures for the hearing. (Motion ¶ 20) The Movant states that counsel for the Applicants take no position on the Motion. *id.*

After due consideration, the Hearing Officer determines that the Motion should be granted for the following reasons:

1. The procedural rules for a conditional use permit (“CUP”), Chapter 4.9.6, do not provide for intervention in the hearing. Compare this to the procedural rules for beneficial use and value determination hearings, Chapter 4.9.8.5, which explicitly provide for intervenors in the hearing and include in that category those who own land within 500 feet of the subject property.
2. Additionally, the general procedural rules for quasi-judicial public hearings of Chapter 4.7.2 regarding questioning witnesses, provide, in part: “... the Hearing Officer ... may ,, require cross-examination by persons with standing in the proceeding to be conducted through questions submitted to ... the Hearing Officer, who will in turn direct questions to the witness.”
3. In support of Movant’s constitutional procedural due process argument establishing standing to intervene, Movant states that he resides in the Eldorado subdivision of Santa Fe County, which is approximately one mile east of the proposed CUP site. Movant states that the CUP site, if allowed, would consists of a 680-acre solar farm, a 3-acre complex of lithium-ion battery storage

facilities, a 1-acre collector substation, and a 2.3-mile transmission line. (Motion ¶ 5). The Motion states that the risk of fire at the site poses an unacceptable risk to him, his wife and other residents of Eldorado. (Motion ¶ 11)

4. Movant's status as a resident of the Eldorado community, a subdivision of 5,000 plus individuals, would not in itself confer standing to intervene. If even a small fraction of the Eldorado residents were granted intervention in the hearing based solely on being a member of the general public of Eldorado, the hearing would be very difficult to manage and lengthy.
5. Movant, however, is an attorney who has presided over and participated in many administrative adjudicatory hearings, some involving battery energy storage systems and utility facility siting. (Motion ¶15 & ¶17)
6. The process for the questioning of witnesses set forth in Chapter 4.7.2, whereby the hearing officer questions the witnesses with submitted questions, could be unnecessarily cumbersome and repetitive in a matter of this complexity and public interest.
7. Movant, while only representing his own interests, would likely pose many of the inquiries that would be submitted by other Eldorado residents making the process more efficient.
8. Movant's participation as an intervenor in this CUP application could be beneficial to the process.

For the foregoing reasons, the Motion for Leave to Intervene is hereby granted.

/s/ Marilyn S. Hebert_____

MARILYN S. HEBERT

Hearing Officer

Date: October 16, 2024

Exhibit 13

**Motion Requesting Order Addressing *Ex Parte*
Communications and County Staff's Blocking of the
Hearing Officer's October 16, 2024 Order on
Motion to Intervene, November 20, 2024**

BEFORE THE SUSTAINABLE LAND DEVELOPMENT CODE
HEARING OFFICER OF SANTA FE COUNTY

CASE NO. 24-5200
RANCHO VIEJO SOLAR LLC
AES CLEAN ENERGY DEVELOPMENT LLC, APPLICANTS
CONDITIONAL USE PERMIT

MOTION REQUESTING ORDER ADDRESSING *EX PARTE* COMMUNICATIONS
AND COUNTY STAFF'S BLOCKING OF THE
HEARING OFFICER'S OCTOBER 16, 2024 ORDER ON MOTION TO INTERVENE

This Motion requests that the Hearing Officer issue an Order addressing *ex parte* Communications initiated by the Growth Management Department Staff ("County Staff") on October 16, 2024. The *ex parte* communications were improper and reveal that County Staff blocked the distribution of an October 16, 2024 Order duly executed by the Hearing Officer granting my Motion to Intervene. County Staff lacked any legal authority under the Sustainable Land Development Code (SLDC) to block the distribution of the October 16 Order. County Staff improperly interfered with and exercised the legal authority reserved to the Hearing Officer through the following series of prohibited *ex parte* communications.

Prohibited *ex parte* communications between County Staff and the Hearing Officer

1. On September 21, 2024, I filed a Motion for leave to intervene as a party with standing in this case. The Motion to Intervene reflected that, prior to filing, I contacted the County Attorney and counsel for the Applicants and neither objected to the Motion.

2. On November 18, 2024, I received a response from the Santa Fe County Records Custodian to an Inspection of Public Records Act (IPRA) request that included copies of *ex parte* communications between County Staff and the Hearing Officer related to the Motion to Intervene and an Order issued by the Hearing Officer granting my Motion. The *ex parte* communications most relevant to my Motion to Intervene are discussed below.

3. On October 16, 2024, the Hearing Officer executed an Order on Motion to Intervene granting my Motion to Intervene.¹ The Order referred to my background as an attorney “who has presided over and participated in many administrative adjudicatory hearings, some involving battery energy storage systems and utility facility siting” (para. 5). The Order stated that, while the Movant’s issues might be similar to those of other Eldorado residents, the Movant’s experience as an attorney could make “the process more efficient” (para. 7). The Order said that “Movant’s participation as an intervenor in this CUP application could be beneficial to the process” (para. 8).

4. On October 16, 2024, the Hearing Officer sent the Order to Dominic Sisneros of the County Staff notifying him of the “signed Order” and indicating that she will email the Order to the attorneys:

Good morning, Dominic

Attached please find the Order on the Motion for Leave to Intervene in the AES case. I will be dropping off the signed Order sometime today at your office. After that, I will email the Order to the attorneys.
Thank you.

Marilyn²

5. Within two hours, Mr. Sisneros sent a reply to the Hearing Officer asking her not to send the Order to the parties. He said she and County Staff need to meet with the County’s “legal department” on October 18, 2024:

Good Morning Hearing Officer Hebert,
We need to consult with our legal department prior to you sending this off to the attorneys. We have a meeting set up for Friday afternoon at 3pm. Let me know if you have any questions.
Thank you,³

¹ Exhibit 1 October 16, 2024 Order on Motion to Intervene.

² Exhibit 2 October 16, 2024 email Hearing Officer Hebert to Dominic Sisneros.

³ Exhibit 3 October 16 email Sisneros to Hearing Officer Hebert with copies to Alexandra Ladd, Jordan Yutzy, Jeffrey Young, and Roger Prucino.

6. Mr. Sisneros' email was copied to Growth Management Department Director Alexandra Ladd, County Staff member Jordan A. Yutzy, County Attorney Jeffrey Young and Assistant County Attorney Roger Prucino.

7. On October 28, 2024, the Hearing Officer asked if there is an issue of releasing her October 16 order allowing my motion in light of requests from Mr. Sisneros and Jordan Yutzy that the release not occur until they had an opportunity to consult with the County Attorney's Office:

Good morning, All,

On October 16, 2024, I dropped off an Order on the Motion to Intervene of Ashley Schannuer [*sic*], which he submitted on September 21, 2024. At that time, Jordan and Dominic requested that I not send out the order to the attorneys until they had an opportunity to consult with the County Attorney Office.

As noted in the email of October 18, below, I was informed that a meeting would be scheduled, and I responded my availability on the 29th or 30th. No meeting has been scheduled.

I have since received a Motion to Set a Prehearing Conference from Mr. Schannuer [*sic*] and an additional Motion to Intervene from another Eldorado resident, which I forwarded to Dominic.

Is there an issue of releasing my order allowing Mr. Schannuer's motion to intervene? Please note that the motion stated that the County Attorney was informed of the motion and indicated that while the rules did not provide for intervention, the County Attorney deferred to the hearing officer.

I believe a meeting should be scheduled as soon as possible to discuss procedural matters such as these pending motions and the County's experience with the process of public questioning of witnesses by submittals through the BCC or a hearing officer. It is not clear to me how that process is to be accomplished, and I would appreciate knowing your experience with this.

I understand the hearing on the AES application is set for December 4, less than six weeks from today.

Please advise.

8. The Hearing Officer's October 28 email was sent to Dominic Sisneros, Jordan Yutzy and Roger Prucino.⁴

9. It is unclear whether a meeting was held, and, if it was held, who attended and what was discussed. The discussions at any such meetings would also constitute *ex parte* communications. It is also unclear whether there were any further written or oral *ex parte* communications. But the October 16 Order was never distributed.

10. On November 1, 2024, Mr. Sisneros sent to me a Request to Conduct Preliminary Hearing to Identify Parties with Standing and Address Other Procedural Issues. The Request recommended that a special meeting be scheduled immediately prior to the Hearing Officer's November 14 regular meeting. County Staff issued a Notice of Special Meeting for newspaper publication, which required: "All parties wishing to participate as a party with standing . . . to notify the Hearing Officer (via the Division [Santa Fe County Growth Management Department]) of their request no later than 10 am Monday November 11, 2024." County Staff's Notice said, "All requests sent after 10 am MST will not be considered." County Staff directed that all requests be sent to the "Division" at the email address of Mr. Sisneros.

11. The November 14, 2024 prehearing conference was held, where I and others, unaware of the Hearing Examiner's October 16, 2024 Order and the *ex parte* communications that followed, discussed with the Hearing Officer our requests to intervene. The Hearing Officer indicated that she would issue a decision by November 21, 2024.

12. On November 19, 2024, Mr. Sisneros sent an email to me, with a copy to Assistant County Attorney, Roger L. Prucino, attaching an order dated November 18, 2024 "with the decision made by Hearing Officer Hebert on your request for standing:"

⁴ Exhibit 4 (emphasis added) October 28, 2024 email Hearing Officer Hebert to Jordan Yutzy, Dominic Sisneros and Roger Prucino.

Good Morning Mr. Schannauer,
Attached is the order with the decision made by Hearing Officer Hebert on your request for standing.
Sincerely,

Dominic J. Sisneros
DOMINIC J. SISNEROS
Building and Development Supervisor
Growth Management Department
505-995-2725⁵

13. Mr. Sisnero's email to me was not cc'd to anyone other than the County's Assistant County Attorney Mr. Prucino. And I was not cc'd with any emails that may have been sent to the other parties.

14. The November 18 Order did not revoke or even mention the Hearing Officer's October 16, 2024 Order. Instead it granted standing to two parties that are not represented by attorneys.⁶ It also directed the parties to make further filings directly with the County Staff, including witness lists, with times required for presentations; exhibit lists; and any digital presentations.

15. Section 30.25(A) of the Santa Fe County Code of Ordinances prohibits *ex parte* communications involving Hearing Officers assigned to Conditional Use Proceedings:

30.25 Ex parte communications

(A) An elected official or appointed official designated to hear an administrative adjudicatory matter pursuant to a county ordinance, including but not limited to the county's land development code, shall not initiate, permit or consider an ex parte communication. (Emphasis added).

16. Section 30.25(B) states that *ex parte* communications must be disclosed and parties must be given an opportunity to respond:

(B) An elected official or appointed official who receives or who makes or causes to be made a communication prohibited by the county's code of conduct

⁵ Exhibit 5 November 19, 2024 email Sisneros to Schannauer.

⁶ Exhibit 6 November 18, 2024 Order on Requests for Standing.

shall disclose the communication to all parties and give other parties an opportunity to respond.

17. *Ex parte* communications that block the mailing of a duly executed order granting intervention status to a party and that lead to a further order denying intervention status qualify as prohibited *ex parte* communications. Section 30.18 defines “*ex parte* communication” as follows:

A direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceeding. *Ex parte* communications do not include statements that are limited to providing publicly available information about a pending adjudication or solely related to the status of the proceeding.

18. As one of the items discussed at the prehearing conference held on November 14, 2024, I requested that the Hearing Officer establish a Service List. The purpose, in part, is to prevent *ex parte* communications and ensure that all communications between parties and the Hearing Officer are known by and distributed to the parties. My request was not granted, but the County Staff's actions here demonstrate the need for such a list in this case.

**County Staff lacked the authority to block the distribution
of the October 16 Order on my Motion to Intervene**

19. County Staff lacked any legal authority under the Sustainable Land Development Code (SLDC) to block the distribution of the October 16 Order granting my Motion to Intervene. County Staff improperly interfered with and exercised the legal authority reserved to the Hearing Officer.

20. Section 4.7.2 of the Sustainable Land Development Code (SLDC) provides that Hearing Officers shall conduct the quasi-judicial hearings required for Conditional Use Permit proceedings. In Section 3.5.5 of the SLDC, all powers necessary to conduct quasi-judicial hearings are granted to the Hearing Officer, not to County Staff.

21. The SLDC does not assign County Staff a procedural or adjudicatory role in the conduct of a quasi-judicial proceeding. County Staff has no authority to block the issuance of an Order properly executed by a Hearing Examiner. Staff's role is limited. Section 4.7.2 assigns County Staff the role of presenting evidence:

1. The Administrator, or other County staff member designated by the Administrator, shall present a description of the proposed development, the relevant sections of the SGMP, area, district or community plans, the SLDC, and state and federal law that apply to the application, and describe the legal or factual issues to be determined. The Administrator or County consultant or staff member shall have the opportunity to present a recommendation and respond to questions from the Board, Planning Commission or Hearing Officer concerning any statements or evidence, after the owner/applicant has had the opportunity to reply,

22. Staff's *ex parte* insertion of itself into the adjudicatory role of the Hearing Officer on the Motion to Intervene is inconsistent with the authority granted to it in the SLDC. The Hearing Officer's apparent concession to County Staff's insertion into the process represented an improper delegation of the Hearing Officer's adjudicatory role. The New Mexico Court of Appeals has held that an agency's simultaneous participation in a proceeding as an advocate and a delegatee of certain of a decision-maker's powers violates parties' rights to a fair hearing. *Kerr-McGee Nuclear Corp. v. New Mexico Env'tl. Imp. Bd.*, 1981-NMCA-044, paras 46-54.

Conclusion

23. Given the proper execution of the October 16 Order on Motion to Intervene, the lack of County Staff's authority to block it and the absence of revocation in the Hearing Officer's November 18, 2024 Order, the October 16 Order remains valid and in effect.

24. The County Staff has no adjudicatory powers. And County Staff expressed no objection to my Motion to Intervene when it was filed on September 21. It certainly has no power to block the distribution of the October 16 Order granting the motion. The November 19 Order on Requests for Standing did not address my September 21 Motion to Intervene or the

October 16 Order granting that Motion. But if the November 19 Order is intended to revoke the October 16 grant of intervention, it would be arbitrary and capricious and an abuse of discretion. The revocation cannot properly be the result of the County Staff's exercise of a power it does not have through a series of prohibited *ex parte* communications.

WHEREFORE, I respectfully request that the Hearing Officer grant the following relief:

1. Provide the *ex parte* communication disclosure promptly as required by Section 30.25(B) of the SLDC.
2. Confirm that the October 16, 2024 Order on Motion to Intervene is in effect.
3. Direct County Staff to disclose, within five days, the entirety of the *ex parte* communications between County Staff and the Hearing Officer from October 16 to date regarding the October 16, 2024 Order on my Motion to Intervene. The disclosure should identify the dates and individuals present during the communications.
4. Direct County Staff to submit, within five days, any legal authority it believes supported Staff's actions inserting itself into the Hearing Officer's adjudication of a Motion to Intervene.
5. Provide parties the opportunity to respond, pursuant to Section 30.25(B), to the disclosures required above, within five days of the filings.
6. Reschedule the December 4, 2024 hearing until after the above issues are resolved.
7. Establish a service list to ensure that all parties are informed of and provided with communications with the Hearing Officer.

Date: November 20, 2024

Respectfully submitted,
/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER
12 Mariano Road

Santa Fe, NM 87508
Schannauer21@outlook.com
(505) 920-0326

Attached Exhibits:

Exhibit 1 October 16, 2024 Order on Motion to Intervene.
Exhibit 2 October 16, 2024 email Hearing Officer Hebert to Dominic Sisneros.
Exhibit 3 October 16, 2024 email Sisneros to Hearing Officer Hebert with copies to Alexandra Ladd, Jordan Yutzy, Jeffrey Young, and Roger Prucino.
Exhibit 4 October 28, 2024 email Hearing Officer Hebert to Jordan Yutzy, Dominic Sisneros and Roger Prucino.
Exhibit 5 November 19, 2024 email Sisneros to Schannauer.
Exhibit 6 November 18, 2024 Order on Requests for Standing.

SELF AFFIRMATION

I, Ashley C. Schannauer, upon penalty of perjury under the laws of the State of New Mexico, affirm and state that the foregoing Motion Requesting Order Addressing *Ex Parte* Communications and County Staff's Blocking of the Hearing Officer's October 16, 2024 Order On Motion to Intervene is true and correct based on my personal knowledge and belief.

DATED November 20, 2024.

/s/ Ashley C. Schannauer

ASHLEY C. SCHANNAUER

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion Requesting Order Addressing *Ex Parte* Communications and County Staff's Blocking of the Hearing Officer's October 16, 2024 Order On Motion to Intervene to the following by email on this date:

Hearing Officer Marilyn Hebert	lynhebert@q.com
County Attorney Jeffrey S. Young	jyoung@santafecountynm.gov
Roger Prucino, Esquire	rprucino@santafecountynm.gov
Dominic Sisneros, Case Manager	djsisneros@santafecountynm.gov
Luke Pierpont, Esquire	Luke@EgolfLaw.com
Brian Egolf, Esquire	Brian@EgolfLaw.com
Selma Eikelenboom	s.eikelenboom@ifscolorado.com
Lee Zlotoff	zlotoff@earthlink.net
Dennis Kurtz	dennisdkurtz@gmail.com
Camilla Brom	br.camilla@yahoo.com
Glenn Schiffbauer	glennschiffbauer@gmail.com

Date: November 20, 2024

/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER
12 Mariano Road
Santa Fe, NM 87508
Schannauer21@outlook.com
(505) 920-0326

EXHIBIT 1

**HEARING OFFICER MEETING
CASE NO. 24-5200
RANCHO VIEJO SOLAR LLC
AES CLEAN ENERGY DEVELOPMENT LLC, APPLICANTS
CONDITIONAL USE PERMIT**

ORDER ON MOTION TO INTERVENE

THIS MATTER came before the Sustainable Land Development Code (“SLDC”) Hearing Officer on the Motion for Leave to Intervene (“Motion”) by Ashley C. Schannauer (“Movant”) on September 21, 2024.

There has been no response to the Motion on behalf of the Applicants or the Santa Fe County. However, the Movant states in the Motion that the County Attorney’s response to the Motion was, in part, that the SLDC and the Rules of Order do not specifically reference the filing of this type of motion, but that the County Attorney defers to the Hearing Officer regarding the determination on the filing and the applicable procedures for the hearing. (Motion ¶ 20) The Movant states that counsel for the Applicants take no position on the Motion. *id.*

After due consideration, the Hearing Officer determines that the Motion should be granted for the following reasons:

1. The procedural rules for a conditional use permit (“CUP”), Chapter 4.9.6, do not provide for intervention in the hearing. Compare this to the procedural rules for beneficial use and value determination hearings, Chapter 4.9.8.5, which explicitly provide for intervenors in the hearing and include in that category those who own land within 500 feet of the subject property.
2. Additionally, the general procedural rules for quasi-judicial public hearings of Chapter 4.7.2 regarding questioning witnesses, provide, in part: “... the Hearing Officer ... may ,, require cross-examination by persons with standing in the proceeding to be conducted through questions submitted to ... the Hearing Officer, who will in turn direct questions to the witness.”
3. In support of Movant’s constitutional procedural due process argument establishing standing to intervene, Movant states that he resides in the Eldorado subdivision of Santa Fe County, which is approximately one mile east of the proposed CUP site. Movant states that the CUP site, if allowed, would consist of a 680-acre solar farm, a 3-acre complex of lithium-ion battery storage

facilities, a 1-acre collector substation, and a 2.3-mile transmission line. (Motion ¶ 5). The Motion states that the risk of fire at the site poses an unacceptable risk to him, his wife and other residents of Eldorado. (Motion ¶ 11)

4. Movant's status as a resident of the Eldorado community, a subdivision of 5,000 plus individuals, would not in itself confer standing to intervene. If even a small fraction of the Eldorado residents were granted intervention in the hearing based solely on being a member of the general public of Eldorado, the hearing would be very difficult to manage and lengthy.
5. Movant, however, is an attorney who has presided over and participated in many administrative adjudicatory hearings, some involving battery energy storage systems and utility facility siting. (Motion ¶15 & ¶17)
6. The process for the questioning of witnesses set forth in Chapter 4.7.2, whereby the hearing officer questions the witnesses with submitted questions, could be unnecessarily cumbersome and repetitive in a matter of this complexity and public interest.
7. Movant, while only representing his own interests, would likely pose many of the inquiries that would be submitted by other Eldorado residents making the process more efficient.
8. Movant's participation as an intervenor in this CUP application could be beneficial to the process.

For the foregoing reasons, the Motion for Leave to Intervene is hereby granted.

/s/ Marilyn S. Hebert_____

MARILYN S. HEBERT

Hearing Officer

Date: October 16, 2024

EXHIBIT 2

From: Marilyn Hebert <lynhebert@q.com>
Sent: Wednesday, October 16, 2024 9:17 AM
To: djsisneros@santafecountynm.gov
Subject: AES - Order on Motion for Leave to Intervene
Attachments: AESMtoIntgranted.docx

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good morning, Dominic

Attached please find the Order on the Motion for Leave to Intervene in the AES case. I will be dropping off the signed Order sometime today at your office.

After that, I will email the Order to the attorneys.

Thank you.

Marilyn

EXHIBIT 3

From: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Sent: Wednesday, October 16, 2024 10:38 AM
To: Marilyn Hebert
Cc: Alexandra Ladd; Jordan A. Yutzy; Jeff S. Young; Roger L. Prucino
Subject: RE: AES - Order on Motion for Leave to Intervene

Good Morning Hearing Officer Hebert,
We need to consult with our legal department prior to you sending this off to the attorneys. We have a meeting set up for Friday afternoon at 3pm. Let me know if you have any questions.
Thank you,

From: Marilyn Hebert <lynhebert@q.com>
Sent: Wednesday, October 16, 2024 9:17 AM
To: Dominic J. Sisneros <djsisneros@santafecountynm.gov>
Subject: AES - Order on Motion for Leave to Intervene

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good morning, Dominic

Attached please find the Order on the Motion for Leave to Intervene in the AES case. I will be dropping off the signed Order sometime today at your office.
After that, I will email the Order to the attorneys.
Thank you.

Marilyn

EXHIBIT 4

From: Marilyn Hebert <lynhebert@q.com>
Sent: Monday, October 28, 2024 11:02 AM
To: jyutzy@santafecountynm.gov; djsisneros@santafecountynm.gov;
rlprucino@santafecountynm.gov
Subject: Re: AES hearing - In-person meeting; motions to intervene

Warning:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good morning, All,

On October 16, 2024, I dropped off an Order on the Motion to Intervene of Ashley Schannuer, which he submitted on September 21, 2024. At that time, Jordan and Dominic requested that I not send out the order to the attorneys until they had an opportunity to consult with the County Attorney Office.

As noted in the email of October 18, below, I was informed that a meeting would be scheduled, and I responded my availability on the 29th or 30th. No meeting has been scheduled.

I have since received a Motion to Set a Prehearing Conference from Mr. Schannuer and an additional Motion to Intervene from another Eldorado resident, which I forwarded to Dominic.

Is there an issue of releasing my order allowing Mr. Schannuer's motion to intervene? Please note that the motion stated that the County Attorney was informed of the motion and indicated that while the rules did not provide for intervention, the County Attorney deferred to the hearing officer.

I believe a meeting should be scheduled as soon as possible to discuss procedural matters such as these pending motions and the County's experience with the process of public questioning of witnesses by submittals through the BCC or a hearing officer. It is not clear to me how that process is to be accomplished, and I would appreciate knowing your experience with this.

I understand the hearing on the AES application is set for December 4, less than six weeks from today. Please advise.

On Fri, 18 Oct, 2024 at 1:21 PM, Dominic J. Sisneros <djsisneros@santafecountynm.gov> wrote:

To: lyn hebert

Good Afternoon Hearing Officer Hebert,

I would like to set up a meeting here at our office at your convenience with our new Director Alexandria Ladd, Jordan Yutzy our Manager, Roger Prucino Santa Fe County Attorney and myself. Could you let me know what days and times you could be available late next week or the following week.

Sincerely,

Dominic J. Sisneros

DOMINIC J. SISNEROS

Building and Development Supervisor
Growth Management Department
505-995-2725



EXHIBIT 5

Order on Requests for Standing

From Dominic J. Sisneros <djsisneros@santafecountynm.gov>

Date Tue 11/19/2024 10:08 AM

To Ashley Schannauer <schannauer21@outlook.com>

Cc Roger L. Prucino <rlprucino@santafecountynm.gov>

 1 attachment (550 KB)

Scan2024-11-18_085443.pdf;

Good Morning Mr. Schannauer,
Attached is the order with the decision made by Hearing Officer Hebert on your request for standing.
Sincerely,

Dominic J. Sisneros

DOMINIC J. SISNEROS

Building and Development Supervisor

Growth Management Department

505-995-2725



SANTA FE COUNTY

EXHIBIT 6

**HEARING OFFICER MEETING
CASE NO. 24-5200
RANCHO VIEJO SOLAR LLC
AES CLEAN ENERGY DEVELOPMENT LLC, APPLICANTS
CONDITIONAL USE PERMIT**

ORDER ON REQUESTS FOR STANDING

THIS MATTER came before the Sustainable Land Development Code (“SLDC”) Hearing Officer on November 14, 2024, on the request of the Santa Fe County Land Use Division (“Division”) for consideration of certain procedural matters in advance of the scheduled December 4, 2024 hearing in this case.

Prior to this hearing, the Division had set a November 11, 2024 deadline for submitting requests to participate as a party at the December 4, 2024 hearing. Six requests were received by the deadline: Ashley Schannauer; Dr. Selma Schieveld; Lee Zlotoff on behalf of the Clean Energy Coalition, a registered organization pursuant to SLDC § 2.2.3 of approximately 1,000 members, the majority of whom reside in Eldorado; Dennis Kurtz on behalf of the San Marcos Association, a registered organization of approximately 7,500 members who reside in the San Marcos area; Camilla Brom; and the Santa Fe Green Chamber of Commerce and 350.org., received as one request.

After due consideration, the Hearing Officer determines that the Clean Energy Coalition and the San Marcos Association are allowed to participate as parties including the opportunity to present argument and witnesses and to participate in cross examination. These two entities represent approximately 8,500 residents in the area adjacent to the Applicants’ proposed facility for which the CUP is sought.

Each party must submit its witness list, if any, with a brief description of the witness testimony and time required by November 27, 2024, to the Division.

Each party must submit its list of exhibits, if any, including any digital presentation, to the Division no later than November 27, 2024.


MARILYN S. HEBERT
Hearing Officer

Date: 18 November 2024

Exhibit 15

**February 4, 2025 email string between Nathaniel Crail
and Alexandra Ladd regarding Staff participation in
Executive Session**

From: Alexandra Ladd <aladd@santafecountynm.gov>
Sent: Tuesday, February 4, 2025 5:25 PM
To: Nathaniel Crail
Subject: Re: Planning Commission Executive Session

Hey Nate,

The applicant is giving their final statement. What's the easiest way for Roger to connect with you? If needed. We have no idea if the discussion will be 15 min or 3 hours.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Nathaniel Crail <ncrail@santafecountynm.gov>
Sent: Tuesday, February 4, 2025 2:42:56 PM
To: Alexandra Ladd <aladd@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: Re: Planning Commission Executive Session

Sounds good

From: Alexandra Ladd <aladd@santafecountynm.gov>
Sent: Tuesday, February 4, 2025 2:39 PM
To: Nathaniel Crail <ncrail@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: RE: Planning Commission Executive Session

Hi Nate,

Apparently, only Roger will be in the room with them. If they have a specific question for staff, he will get us. I will let him know that you are in the go position. Not sure when it will start. At least two hours of public testimony first ...

Thanks!

From: Nathaniel Crail <ncrail@santafecountynm.gov>
Sent: Tuesday, February 4, 2025 2:33 PM
To: Alexandra Ladd <aladd@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
Subject: Planning Commission Executive Session

I'm watching via WebEx, but do you want me in attendance for in-person for the executive session? I know it's after general public comment, but when do you think the Executive Session will begin?

thank you,
nate

nate crail

Senior Community Planner
Growth Management Dept.
505-986-2452

ncrail@santafecountynm.gov



SANTA FE COUNTY



Exhibit 16

**November 1, 2024 Notice of Special Meeting for
November 14, 2024 Prehearing Conference
with Hearing Officer**

NOTICE OF SPECIAL MEETING

Preliminary Hearing to identify parties with standing and address other procedural issues regarding Case # 24-5200, Conditional Use Permit (CUP) application submitted by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC; AES Clean Energy Development, Applicants.

To Whom it may concern:

The Santa Fe County Growth Management Department (Land Use Division; hereafter the “Division”) requests that the Sustainable Land Development Code (SLDC) Hearing Officer conduct a public hearing for the purposes of i) identifying what parties will be granted the status of a party with standing; and ii) identifying what procedural guidelines the Hearing Officer will adopt (or consider adopting) for the December 4, 2024 special meeting on the merits of the conditional use permit application that is subject of this case.

The subject property lies within the Rural Fringe (RUR-F) zoning district. Appendix B, Use Matrix illustrates that a commercial solar energy production facility is a Conditional Use within RUR-F zoning. The site will take access via Hwy. 14 and is located at 4152 NM 14 within Section 17, Township 15 North, Range 9 East, SDA-2 (Commission District 5).

A special meeting will be held at the County Administrative Building, located at 102 Grant Avenue, in the Board of County Commission Chambers, on the 2nd Floor, on the 14th, day of November 2024, at 2 pm. (prior to the regularly scheduled meeting held at 3 pm) on a petition to the Santa Fe County Hearing Officer. Public attendance is allowed. The meeting agenda which will be posted on the County’s website (<https://www.santafecountynm.gov/>) one week before the meeting. In addition, people may watch the meeting at <https://www.youtube.com/channel/UCKGV2GEBC1Qv38Pn61083xg>

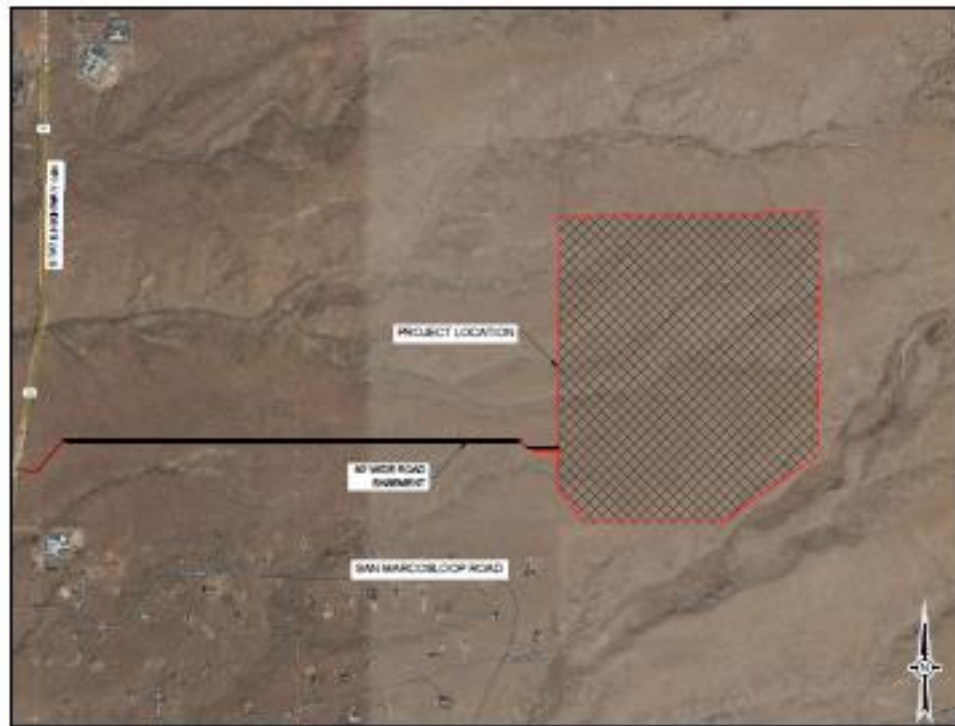
All parties wishing to participate as a party with standing are required to notify the Hearing Officer (via the Division) of their request no later than 10 am Monday November 11, 2024. All requests sent after 10 am MST will not be considered. Please forward all requests to the Division at djsisneros@santafecountynm.gov.

All interested parties that sent in a letter of request before 10 am Monday November 11, 2024 will be heard at the Special Meeting prior to the Hearing Officer making a decision on the matter.

All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P.O. Box 276, Santa Fe, New Mexico 87504-0276, or presented in person prior to the hearing.

Sincerely:

Encl: Vicinity Map



VICINITY MAP

N.T.S

Exhibit 17

**January 8, 2025 Notice of Special Meeting for
January 16, 2025 Prehearing Conference
with Planning Commission**

NOTICE OF SPECIAL MEETING

Preliminary Hearing to identify parties with standing and address other procedural issues regarding Case # 24-5200, Conditional Use Permit (CUP) application submitted by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC; AES Clean Energy Development, Applicants.

To Whom it may concern:

The Santa Fe County Growth Management Department (Land Use Division; hereafter the “Division”) requests that the Santa Fe County Planning Commission conduct a public hearing for the purposes of i) identifying what parties will be granted the status of a party with standing; and ii) identifying what procedural guidelines the Planning Commission will adopt (or consider adopting) for the February 3, 2025 special meeting on the merits of the conditional use permit application that is subject of this case.

The subject property lies within the Rural Fringe (RUR-F) zoning district. Appendix B, Use Matrix illustrates that a commercial solar energy production facility is a Conditional Use within RUR-F zoning. The site will take access via Hwy. 14 and is located at 211 Twilight Way within Section 17, Township 15 North, Range 9 East, SDA-2 (Commission District 5).

A special meeting will be held at the County Administrative Building, located at 102 Grant Avenue, in the Board of County Commission Chambers, on the 2nd Floor, on the 16th, day of January 2025, at 3:30pm on a petition to the Santa Fe County Planning Commission. Public attendance is allowed. The meeting agenda which will be posted on the County’s website (<https://www.santafecountynm.gov/>) one week before the meeting. In addition, people may watch the meeting at <https://www.youtube.com/channel/UCKGV2GEB1Qv38Pn61083xg>

All parties wishing to participate as a party with standing are required to notify the Planning Commission (via the Division) of their request no later than 10 am Monday January 13, 2025. All requests sent after 10 am MST will not be considered. Please forward all requests to the Division at djsisneros@santafecountynm.gov.

All interested parties that sent in a letter of request before 10 am Monday January 13, 2025 will be heard at the Special Meeting prior to the Planning Commission making a decision on the matter.

All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P.O. Box 276, Santa Fe, New Mexico 87504-0276, or presented in person prior to the hearing.

Sincerely:

Encl: Vicinity Map



VICINITY MAP

N.T.S

Exhibit 18

**January 24, 2025 Order on Staff request for
consideration of procedural matters in advance of
February 3, 2025 hearing**

Justin S. Greene
Commissioner, District 1

Lisa Cacari Stone
Commissioner, District 2

Camilla Bustamante
Commissioner, District 3



Adam Fulton Johnson
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

MEMORANDUM

Date: January 24, 2025

To: Parties of Standing

From: Dominic J. Sisneros, Building and Development Services Supervisor

Via: Alexandra Ladd, Growth Management Director
Jordan A. Yutzy, Building and Development Services Land Use Administrator

Subject: **February 3, 2025, Santa Fe County Planning Commission Meeting**
Parties of Standing for Case # 24-5200 Rancho Viejo Solar, LLC Conditional Use Permit (CUP)

THIS MATTER came before the Santa Fe County Planning Commission on January 16, 2025, on the request from the Santa Fe County Land Use Division (“Division”) for consideration of certain procedural matters in advance of the scheduled February 3, 2025 hearing in this case.

Prior to this hearing, the Division had set a January 13, 2025 deadline for submitting requests to participate as a party at the February 3, 2025 hearing. 8 requests were received by the deadline: 350 Santa Fe, Inc., The Clean Energy Coalition for Santa Fe County, The Global Warming Express, New Mexico for Responsible Renewable Energy, The San Marcos Association, Santa Fe Green Chamber of Commerce, Ashley C. Schannauer, and Sierra Club Rio Grande Chapter.

After deliberation, the Santa Fe County Planning Commission determined that all 8 requestors are allowed to participate as parties including the opportunity to present arguments and witnesses and to participate in cross examination.

Each party must submit its witness list, if any, with a brief description of witness testimony by 12:00pm on Monday January 27, 2025, to the Division.

Each party must submit its list of exhibits, if any, including any digital presentation, to the Division no later than 12:00pm on Monday January 27, 2025.

Exhibit 19

**January 27, 2025 Order on Staff request for
consideration of procedural matters in advance of
February 3, 2025 hearing**

Justin S. Greene
Commissioner, District 1

Lisa Cacari Stone
Commissioner, District 2

Camilla Bustamante
Commissioner, District 3



Adam Fulton Johnson
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

MEMORANDUM

Date: January 27, 2025

To: Parties of Standing

From: Dominic J. Sisneros, Building and Development Services Supervisor

Via: Alexandra Ladd, Growth Management Director
Jordan A. Yutzy, Building and Development Services Land Use Administrator

Subject: **February 3, 2025, Santa Fe County Planning Commission Meeting**
Parties of Standing for Case # 24-5200 Rancho Viejo Solar, LLC Conditional Use Permit (CUP)

THIS MATTER came before the Santa Fe County Planning Commission on January 16, 2025, on the request from the Santa Fe County Land Use Division (“Division”) for consideration of certain procedural matters in advance of the scheduled February 3, 2025 hearing in this case.

Prior to this hearing, the Division had set a January 13, 2025 deadline for submitting requests to participate as a party at the February 3, 2025 hearing. 8 requests were received by the deadline: 350 Santa Fe, Inc., The Clean Energy Coalition for Santa Fe County, The Global Warming Express, New Mexico for Responsible Renewable Energy, The San Marcos Association, Santa Fe Green Chamber of Commerce, Ashley C. Schannauer, and Sierra Club Rio Grande Chapter.

After deliberation, the Santa Fe County Planning Commission determined that all 8 requestors are allowed to participate as parties including the opportunity to present arguments and witnesses and to participate in cross examination.

All parties of standing will have 30 minutes for their presentations and witness testimony.

As per SLDC Ordinance 2016-09 **Chapter 4, Section 4.7.2., Subsection 4.7.2.1 Conduct of Hearing.** All cross-examination questions are to be submitted to the chair of the Planning Commission, who will in turn direct questions to the witness. Cross examination questions are to be submitted to the Division by 9:00am Monday February 3, 2025. Additional written cross-examination questions may be submitted to the Planning Commission via the Division during the hearing. All written cross-examination questions must be clear and legible.

Exhibit 20

November 8, 2024 Motion to Compel Discovery Responses and Supporting Brief

BEFORE THE SUSTAINABLE LAND DEVELOPMENT CODE
HEARING OFFICER OF SANTA FE COUNTY

IN THE MATTER OF THE AUGUST 30, 2024)	
APPLICATION OF RANCHO VIEJO)	
SOLAR, LLC AND AES CLEAN ENERGY)	Case No. 24-5200
DEVELOPMENT, LLC FOR A)	
CONDITIONAL USE PERMIT FOR THE)	
RANCHO VIEJO SOLAR PROJECT)	
_____)	

MOTION TO COMPEL DISCOVERY RESPONSES FROM APPLICANTS

This Motion respectfully requests the Hearing Officer to issue an order compelling the Applicants in the above proceeding to provide responses to the attached Discovery Requests to Applicants dated October 18, 2024. In support of this Motion, I state as follows:

1. On October 18, 2024, I sent the attached Discovery Requests to the Applicants.
2. On October 21, 2024, counsel for the Applicants responded with the following

email:

After thorough review of the Santa Fe County hearing procedures, I find no right to discovery in County land use hearings. Our client is committed to providing all information necessary for the County to evaluate its application consistent with the Sustainable Land Development Code but will not be responding to your discovery requests.

3. On October 24, 2024, I sent an email, pursuant to Rule 1-037(A) NMRA, to make a good faith effort to resolve the issue with counsel for the Applicants prior to filing a motion to compel discovery. The email discussed the authority of the Hearing Officer to order discovery in a quasi-judicial proceeding even in the absence of a rule explicitly providing for it.

4. On October 31, 2024, counsel for the Applicants sent an email in which he set forth the Applicants' legal analysis on why discovery should not be allowed in an administrative proceeding. Counsel for the Applicants did not submit a formal pleading.

5. On November 4, 2024, I sent an email to Applicants' counsel offering to narrow the list of discovery requests from 35 requests to 11 requests. I said I continue to believe that the discovery requests are appropriate (i.e., that they seek relevant and probative evidence) and that they would be permitted in a normal civil proceeding. Responses would also shorten the time required for the hearing. But, in the interest of arriving at a good faith resolution of this issue and assuming there will be sufficient opportunity for the cross-examination of witnesses, I asked whether he would agree to respond to the narrower list of the original requests that are not readily answerable in cross-examination.

6. On November 7, 2024, counsel for the Applicants responded.

It is clear that there is no general right to discovery in a land use hearing under the Santa Fe County rules and I am not convinced that due process requires discovery in this case. My clients will not be responding to your requests without any legal requirement to do so.

7. The email string of October 18 through November 7 between myself and counsel for the Applicants is attached as an Exhibit.

8. After reviewing the Applicants' November 7 email, I have further reduced the number of requests I'm seeking to compel to ten, eliminating Discovery Request 1-23.

9. An analysis of the legal right to discovery in administrative proceedings is included in the Brief filed today in support of this Motion. The particularized reasons why the discovery requests at issue here should be ordered are discussed below.

**The health, safety and general welfare of the area
and the potential hazard for fire, panic, or other danger**

10. Section 4.9.6.5 of the Santa Fe County Sustainable Land Development Code (SLDC) states that a hearing on an application for a Conditional Use Permit is subject to a quasi-judicial hearing to determine whether the applicant has satisfied seven criteria:

4.9.6.5 Approval Criteria. CUPs 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. (Emphasis added.)

11. Section 3.5.5 of the SLDC authorizes the Hearing Officer to exercise all powers necessary to conduct quasi-judicial hearings.

12. Section 4.7.2.1 of the SLDC and Section V.B of the County's Rules of Order (which are incorporated by Section 4.7.2.1) provide for "parties with standing" to present testimony and conduct cross-examination of witnesses. The legal analysis in the attached brief shows that discovery can be appropriate in administrative agency hearings to enable parties to prepare the testimony and cross-examination prescribed in the agency's procedural rules – even where discovery is not explicitly authorized in the rules. The power is inherent in the authority to conduct the quasi-judicial hearing. Whether discovery should be allowed depends upon a case-by-case analysis of the relevance and probative value of the information sought and the difficulty in obtaining the information through cross-examination. The discussion below provides a more detailed explanation of the relevance and probative value of each of the discovery requests.

13. Discovery in this case will also help provide for a complete record of the complex, factual issue of whether the project will be detrimental to the health, safety and general

welfare of the area and create a potential hazard for fire, panic, or other danger. It would also reduce cross-examination time and provide for a shorter, more efficient hearing.

14. I have made a good faith effort to resolve the issue with opposing counsel prior to filing a motion to compel discovery.

Discovery Requests 1-4 and 1-6:

1-4. Please provide copies of all lease and other agreements among AES, Rancho Viejo Solar, LLC, Warren Thompson, Rancho Viejo Limited Partnership and/or their affiliates pertaining to the proposed Rancho Viejo Solar Project.

1-6. Please provide a copy of the membership agreement among the members of Rancho Viejo Solar, LLC.

Relevance and probative value:

The “Conditional Use Permit Application Report for the Rancho Viejo Solar Project” states that the Report was prepared to support Rancho Viejo Solar, LLC’s Conditional Use Permit (CUP) application to Santa Fe County for compliance with Santa Fe County’s Sustainable Land Development Code (SLDC) and that Rancho Viejo Solar, LLC is proposing to build the Rancho Viejo Solar Project. The Environmental Impact Report similarly refers to Rancho Viejo Solar, LLC. However, AES Corporation or AES Clean Energy are commonly referred to as applicants. The Development Permit Application also names the Rancho Viejo Limited Partnership, of which Warren Thompson appears to be a general partner.

The discovery requests seek to identify the actual applicant(s) so that their ability to construct and operate the project can be examined and verified. Whether Rancho Viejo Solar, LLC is a corporate shell or whether it has the resources to safely construct and operate the project is relevant and probative of the risks it poses to the adjacent properties and their residents. This information is solely within the control of the applicants, and it is unlikely that any witness the applicants present at the hearing will be able to provide the requested documents through cross-examination.

Discovery Request 1-7:

1-7. Please provide a complete, **unredacted** copy of the Hazard Mitigation Analysis submitted with the Conditional Use Permit application for the Rancho Viejo Solar Project, including all exhibits and appendices.

Relevance and probative value:

Large portions of the Hazard Mitigation Analysis submitted with the August 30 Application are redacted as “Confidential Trade Secrets.” The Hazard Mitigation Analysis, however, is one of the key documents that the Applicants refer to in support of

their claim that the project will not be detrimental to the health, safety and general welfare of the area and will not create a potential hazard for fire, panic, or other danger as required by the SLDC's CUP criteria.

AES has redacted key information about the results of the fire testing AES's consultant conducted for the Hazard Mitigation Analysis. The fire testing was performed to provide "a basis for the evaluation of thermal runaway fire propagation and the effectiveness of the fire protection strategy in mitigating potential harmful conditions arising from a thermal runaway event."¹

AES redacted portions of the consultant's summary, including the composition of the gases that were released during the test. And it redacted the entire test report that had been attached to the Analysis. AES provided no support for its trade secret claim.

The complete document, however, is relevant and probative of the project's compliance with the criteria for a CUP – whether the project will be detrimental to the health, safety and general welfare of the area and create a potential hazard for fire, panic, or other danger.

A similar issue arose with the January 2023 application for the Rancho Viejo Solar Project. The 2023 issue involved two Fire Risk Assessments -- one prepared by an AES consultant and the other by AES. In both assessments, AES redacted large amounts of information about the project's risks of fires, explosions and releases of toxic gases that are central to the Conditional Use review here and of critical interest to the public. The assessments redacted information about the chance of accidents and their consequences, including fires, explosions and the expected composition of toxic gases to be released.

In that case, however, AES originally filed unredacted information with the County, and, after a resident filed an IPRA request for the unredacted information, the County and AES collaborated to allow AES to replace its original unredacted filing with the redacted filing. AES claimed that the redacted information constituted trade secrets and sued the County in District Court to prevent the IPRA disclosure. The County did not contest AES's claim, and the District Court entered a preliminary injunction preventing the disclosure. A citizens group, Coalition for Clean Energy, thereafter intervened in the case challenging the trade secret claim, and AES withdrew its trade secret claim agreeing to the County's release of the original unredacted copies.

Several lessons should have been learned from the 2023 controversy.

The first is that it is likely that AES's trade secret claim is overbroad. Indeed, AES promptly agreed to the release of the redacted data in the 2023 materials when challenged in court. And, in the current case, AES has not even attempted to submit a justification for its claim of trade secret status.

¹ Draft Preliminary Hazard Mitigation Analysis, p. 9.

The second lesson is that the required proof of the project's safety must be made available to the public -- even if the information qualifies as a trade secret. The public's interest in transparency is greater than whatever private interests lie in the value of the alleged trade secrets.

Finally, regardless of any information found to constitute a trade secret, the County has the authority to require the disclosure of the information under Section 6.3.1 of the SLDC. Section 6.3.1 of the SLDC states that "[n]o EIR or SRA prepared pursuant to this Chapter that is available for public examination shall require the disclosure of a trade secret, except where the preservation of any trade secret involves a significant threat to health and safety." The redacted information relates to the risks (i.e., fire, explosion, toxic gas) to which the public would be exposed if the Conditional Use Permit is granted. The redacted information should be disclosed to the public.

The document is solely within the control of the applicants, and it is unlikely that any witness the applicants present at the hearing will be able to produce the document during cross-examination.

Discovery Requests 1-8 through 1-10:

1-8. Please provide copies of reports prepared by or for AES that investigate and report on the causes and impacts of the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.

1-9. Please provide a list of claims (and amounts) **submitted** to Arizona Public Service Company (APS), Salt River Project, AES or their insurers for reimbursement or compensation by third parties in response to the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.

1-10. Please provide a list of claims (and amounts) **paid** by Arizona Public Service Company (APS), Salt River Project, AES or their insurers for reimbursement or compensation by third parties in response to the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.

Relevance and probative value:

The historical record of the applicant is an important factor in evaluating whether the project will be detrimental to the health, safety and general welfare of the area and create a potential hazard for fire, panic, or other danger.

The August 30 application, however, is completely silent on AES's record of accidents, including the 2019 explosion and 2022 fire at AES facilities in Surprise and Chandler Arizona. The nature, causes and damages caused by the Arizona accidents are relevant as evidence of the hazards here.

In public forums, AES representatives have minimized the risk that fires at lithium-ion battery storage systems will escape a facility's perimeter. News reports, however, describe personal

injuries to firefighters, business closings and impacts on neighboring residents. The dollar amount of the financial claims and compensation related to AES's accidents is relevant and probative of the potential harms to its neighboring businesses and residents in Santa Fe County.

The information is solely within the control of the applicants, and it is unlikely that any witness the applicants present at the hearing will be able to answer the above questions in detail through cross-examination.

Discovery Request 1-11:

1-11. Please provide Safety Data Sheets (or Material Safety Data Sheet) for the chemicals in the clean agent solution and in the lithium-ion battery units for the proposed Rancho Viejo Solar Project.

Relevance and probative value:

The Safety Data Sheets are federally required documents that describe the hazards associated with hazardous chemicals used and stored at facilities. Thus, the information is relevant and probative of whether the project will be detrimental to the health, safety and general welfare of the area and create a potential hazard for fire, panic, or other danger. The exact identities of the chemicals (and their chemical compounds) that will be used and stored at the proposed facility are solely within the control of the applicants, and it is unlikely that any witness the applicants present at the hearing will be able to produce the documents during cross-examination.

Discovery Request 1-17:

1-17. Reference the following statement on page 3 of the Hazard Mitigation Analysis submitted with the Rancho Viejo Solar Project application.

“2.3 LOCAL CLIMATE CONDITIONS

ASHREA data for the nearest airport at Albuquerque International shows a 1% extreme wind speed of 28.2 mph and 0.4% annual occurrence high temperature of 95.2° F.”

Explain the meaning of the following phrases:

“1% extreme wind speed of 28.2 mph”

and

“0.4% annual occurrence high temperature of 95.2° F.”

Relevance and probative value:

The information requested is included as site-specific data that AES's consultant considered in the Hazard Mitigation Analysis submitted with the August 30 Application.² The response will help indicate whether the data reflects actual conditions at the proposed site. The information is solely within the control of the applicants, and it is unlikely that any witness the applicants

² Draft Preliminary Hazard Mitigation Analysis, p. 3.

present at the hearing will be able to answer the above questions in detail through cross-examination.

Discovery Request 1-26:

1-26. Please provide the “Bespoke Fire and Deflagration” test results and updates referenced in Section 4.2, page 9, of the Draft Preliminary HMA Report.

Relevance and probative value:

Section 4.2 of AES’s Hazard Mitigation Analysis states that “Bespoke” fire and deflagration testing was conducted for the project:

Test results are being processed and updates will be provided in the final version of the HMA report. The results will be evaluated and compared to local ambient conditions.³

The term “bespoke” suggests that the testing incorporates some degree of project- and site-specific conditions. The results are relevant and probative for the same reasons as the fire testing results requested in Discovery Request 1-7.

Discovery Request 1-33:

1-33. Provide a copy of the contract with Terracon for the April 16, 2024 Geotechnical Engineering Report that is attached to the Environmental Impact Report as Appendix D and the contract for the preliminary geotechnical engineering report, dated December 21, 2022, that is referenced in the April 16, 2024 report.

Relevance and probative value:

The contracts sought in the Discovery Request are relevant and probative to show a tangled relationship between the applicants and Terracon Consultants, a consulting engineering company that was hired by both Santa Fe County and AES for work related to the January 2023 and August 2024 Conditional Use Permit applications. Terracon appears to have had a conflict of interest in the work that it has been simultaneously contracted to perform for the County and the applicants. The relationship taints the reliability of the information submitted in the application at issue here, and calls into question AES’s knowledge of the apparent conflict of interest.

In accordance with Santa Fe County Resolution 2023-093, Santa Fe County hired Terracon in May 2023 to prepare an *independent*, third-party, technical review of the Environmental Impact Report submitted with the January 2023 application for the Rancho Viejo Solar Project and to provide expert testimony in the CUP proceedings on the application. Terracon submitted a Draft report to the County on July 10, 2023. Terracon does not appear to have provided the expert

³ Draft Preliminary Hazard Mitigation Analysis, p. 9.

testimony under the May 2023 contract, but it is not clear whether or when the contract has been terminated.

Prior to the May 2023 contract with the County, Terracon performed for AES a preliminary geotechnical engineering report, dated December 21, 2022, for the January 2023 application. Then, in June 2023, while Terracon was performing its work for the County as a presumed independent reviewer and expert witness under the May 2023 contract, Terracon submitted a June 6, 2023 proposal to AES for additional geotechnical work.

On July 10, a Terracon report, which was prepared for the County, suggested the need for a geotechnical study:

Has a geotechnical investigation and report been completed for the project?

While a brief statement describing the geologic conditions in the analysis area is provided, no geotechnical investigation or report has been completed for the Project. It is noted in the EIR that geotechnical investigations will be conducted to determine subsurface conditions, soil properties, and thermal and electric resistivity prior to construction, as the design process evolves.⁴

AES thereafter hired Terracon to prepare the April 16, 2024 geotechnical study that is included in the Environmental Impact Report for the August 2024 Conditional Use Permit Application. The Applicants also included in the Application an 11-page table that lists each of the comments in Terracon's July 10, 2023 report on the January 2023 Application and provides the Applicants' responses to each comment.

The contracts requested in the Discovery Request are relevant to and probative of the conflicted relationships among Terracon, Santa Fe County and AES. They will show the dates each contract was executed and the amounts. The results may show where Terracon's primary loyalty lay and the extent and direction in which Terracon's work is tainted. They may also show the extent of AES's knowledge of the conflicts. The contracts will not be available on cross-examination.

⁴ Draft Technical Review of Environmental Impact Report for Rancho Viejo Solar Project, Terracon Consultants, July 10, 2023, p. 4.

WHEREFORE, for the foregoing reasons, I respectfully request that the Hearing Officer issue an order granting the above Motion and requiring the Applicants to promptly answer the attached Discovery Requests to Applicants and for such other and further relief as the Hearing Officer deems just and proper.

Date: November 8, 2024

Respectfully submitted,
/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER

12 Mariano Road
Santa Fe, NM 87508
Schannauer21@outlook.com
(505) 920-0326

Attached Exhibits:

Discovery Requests to Applicants, October 18, 2024
Email string October 18 – November 7, 2024

SELF AFFIRMATION

I, Ashley C. Schannauer, upon penalty of perjury under the laws of the State of New Mexico, affirm and state that the foregoing Motion for Leave to Intervene is true and correct based on my personal knowledge and belief.

DATED November 8, 2024.

/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to Compel Discovery

Responses from Applicants to the following by email on this date:

Hearing Officer Marilyn Hebert
County Attorney Jeffrey S. Young
Roger Prucino, Esquire
Dominic Sisneros, Case Manager
Luke Pierpont, Esquire
Brian Egolf, Esquire
Selma Eikelenboom

lynhebert@q.com
jyoung@santafecountynm.gov
rprucino@santafecountynm.gov
djsisneros@santafecountynm.gov
Luke@EgolfLaw.com
Brian@EgolfLaw.com
s.eikelenboom@ifscolorado.com

Date: November 8, 2024

/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER
12 Mariano Road
Santa Fe, NM 87508
Schannauer21@outlook.com
(505) 920-0326

BEFORE THE SUSTAINABLE LAND DEVELOPMENT CODE
HEARING OFFICER OF SANTA FE COUNTY

IN THE MATTER OF THE AUGUST 30, 2024)	
APPLICATION OF RANCHO VIEJO)	
SOLAR, LLC AND AES CLEAN ENERGY)	Case No. 24-5200
DEVELOPMENT, LLC FOR A)	
CONDITIONAL USE PERMIT FOR THE)	
RANCHO VIEJO SOLAR PROJECT)	
<hr style="width:50%; margin-left:0"/>	

TO: Luke Pierpont, Esq.
Brian Egolf, Esq.
123 W. San Francisco Street, Second Floor
Santa Fe, New Mexico 87501
(505) 986-9641
Luke@EgolfLaw.com
Brian@EgolfLaw.com
Counsel for Applicants

DISCOVERY REQUESTS TO APPLICANTS
SET ONE

Instructions and Definitions

INTRODUCTION.

These Discovery Requests ask you to answer the following Interrogatories and produce all documents which are responsive in any way to the Interrogatories or to the Requests for Production. If you have any questions about any of the Interrogatories or Requests for Production or Inspection, please contact the undersigned.

DEFINITIONS:

1. Unless more specifically noted, **“AES”**, refers to AES Corporation, AES Clean Energy Development LLC, Rancho Viejo Solar, LLC, Fluence Energy, Inc, and all their parent, subsidiary, affiliate and predecessor corporations and partnerships, departments and divisions, and includes, but is not limited to all attorneys, officers, consultants, agents, employees, directors, representatives, and officials of such entities.
2. **“And/or”** will be construed disjunctively or conjunctively as necessary so that the scope of these interrogatories is as broad as possible and includes any information which might be construed to be outside their scope.
3. **“Agreement”** means any contract, written or oral, or any non-contractual understanding.

4. **“Communication”** is to be construed broadly and includes, but is not limited to any oral statement, dialogue, telephone conversation, discussion or any conversation between or among persons by any means whatsoever.

5. To **“describe”** means to relate as completely as possible each and every act, omission, incident, event, condition, circumstance, or thing relating directly or indirectly to the subject of the description, including all pertinent dates.

6. The term **“document”** is to be construed broadly and liberally, includes **“correspondence,”** and means every recording or reproduction, including visual or auditory recordings or reproductions, of any information including, but not limited to letters, messages, notices, memoranda, photographs, drawings, telegrams, handwritten notes, books, periodicals, pamphlets, exhibits, pleadings, calendars, canceled checks, schedules, tax returns, telegrams, telexes, charts, maps, minutes, logs, graphs, financial statements, computer tapes, computer printouts, computer disks, and microfilm, and any other records of conversations, meetings, conferences or other communications as well as reproductions or copies of the documents if the original is not available so long as the copy is an identical duplicate of the original document.

7. **“Employee”** includes your employees, consultants or agents, including but not limited to independent and/or consulting firms retained by you, before and after the time this case was docketed by the Commission.

8. **“Explain”** means to make known in detail, to make clear the cause or reason of and account for each, act, omission, incident, event, condition, circumstance, decision and/or thing relating directly or indirectly to the subject of the explanation, including all pertinent dates.

9. **“Identification of a document”** means to state, with respect to each document as appropriate: (a) the date of the document, (b) the title of the document, (c) by whom and for whom the document was written or prepared, (d) to whom the document was addressed or delivered, (e) the general subject matter of the document, (f) the identity of the person having custody of the original of the document if a copy is provided and (g) if any document was once in your possession but is not now, the present location of the document and the name and address of the person who has possession of the original of the document.

10. **“Identification of a person”** means stating his full name, business address, telephone number, present position and prior connection or association with any party to the proceeding.

11. **“Person”** means every natural person, corporation, partnership, association, joint venture, cooperative, municipality, commission, governmental body, agency or other applicable entity.

12. **“Records”** includes the singular and the plural and means any regular, formal or informal, official or unofficial, memorandum, document or written preservation of any events, actions taken or rejected, decisions, and details relating to the subject matter of the interrogatory and your response. A reproduction or copy of the original will suffice only if the original is not

available and if the copy is an identical duplicate of the original. A statement of the substance of the record will suffice only if a copy of the original is not available. If you submit either a copy of the original or a statement of the substance of the record, please explain in detail why the original or a copy is not available.

13. Whenever appropriate in order to bring within the scope of each Interrogatory or Request for Production all responses which might otherwise be considered beyond the scope of the Interrogatory or Request for Production: (a) the singular form of a word should be interpreted as plural and the plural form of a word should be interpreted as singular, (b) the use of the verb in any tense will be construed as the use of the verb in any other appropriate tense, and (c) the masculine will be deemed to include the feminine and/or neuter and the feminine and/or neuter will be deemed to include the masculine.

INSTRUCTIONS:

1. Responses shall be served under oath within fifteen (15) days after service of these Discovery Requests.

2. Responses must be signed by the person upon whose personal knowledge responses are based or who helped in any way in formulating the response.

3. For each response, you must identify all persons, including and in addition to the person signing the response, upon whose personal knowledge the response is based or who helped in any way in formulating the response.

4. In making your responses, you must produce all relevant documents and data by attachment or by identifying the documents that relate to your answers. You must also clearly identify each Interrogatory to which the document relates.

5. Please provide an electronic copy of your interrogatory responses in Microsoft Word and responses to document requests in pdf format.

6. These Discovery Requests are continuing in nature, and in the event any information provided in an answer is changed or supplemented by future developments or other factors, you must file appropriate supplemental answers.

7. In answering these Discovery Requests you should furnish all information that is in your possession, custody or control including, but not limited to information from any files, records, or documents in the possession of your attorneys, consultants, staff, accountants, experts, employees, former employees, and other agents.

8. If after exercising due diligence you are unable to answer any Interrogatory or to produce any document requested, in whole or in part, you must explain your inability in detail and you must respond in part where possible.

9. If you object to any Discovery Request, you may serve written objections. An objection must identify the matter objected to and stating with particularity the reasons for the objections. An objection should include copies or complete restatements of the interrogatory or request objected to and a description of the facts and circumstances and the legal authority purported to justify the objection. The service of an objection will not excuse you from answering the remaining Interrogatories or responding to the remaining Requests for Production or any part thereof for which no objection is stated.

DISCOVERY REQUESTS

1-1. Please provide the correct and full legal name(s) of the Applicant(s) for the Conditional Use Permit at issue in this proceeding.

RESPONSE:

1-2. Please provide the most recent financial statements (income statement, balance sheet and statement of cash flows) for the Applicant(s).

RESPONSE:

1-3. Please provide an organizational chart that shows the relationship among AES Corporation, AES Clean Energy Development LLC, Rancho Viejo Solar, LLC., Warren Thompson, and Rancho Viejo Limited Partnership.

RESPONSE:

1-4. Please provide copies of all lease and other agreements among AES, Rancho Viejo Solar, LLC, Warren Thompson, Rancho Viejo Limited Partnership and/or their affiliates pertaining to the proposed Rancho Viejo Solar Project.

RESPONSE:

1-5. Please identify the manager, members and member interests of Rancho Viejo Solar, LLC.

RESPONSE:

1-6. Please provide a copy of the membership agreement among the members of Rancho Viejo Solar, LLC.

RESPONSE:

1-7. Please provide a complete, unredacted copy of the Hazard Mitigation Analysis submitted with the Conditional Use Permit application for the Rancho Viejo Solar Project, including all exhibits and appendices.

RESPONSE:

1-8. Please provide copies of reports prepared by or for AES that investigate and report on the causes and impacts of the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.

RESPONSE:

1-9. Please provide a list of claims (and amounts) submitted to Arizona Public Service Company (APS), Salt River Project, AES or their insurers for reimbursement or compensation by third parties in response to the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.

RESPONSE:

1-10. Please provide a list of claims (and amounts) paid by Arizona Public Service Company (APS), Salt River Project, AES or their insurers for reimbursement or compensation by third parties in response to the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.

RESPONSE:

1-11. Please provide Safety Data Sheets (or Material Safety Data Sheet) for the chemicals in the clean agent solution and the lithium-ion battery units for the proposed Rancho Viejo Solar Project.

RESPONSE:

1-12. Please provide a list of AES battery storage facilities, including locations, size (MWs), battery types and customers.

RESPONSE:

1-13. Please provide a list of thermal runaway accidents and related damage claims at the AES facilities identified in 1-12, including accident descriptions and dates.

RESPONSE:

1-14. Provide a list of the insurance coverages and surety bonds/financial guarantys (and the sources thereof) that AES is providing for the proposed Rancho Viejo Solar Project.

RESPONSE:

1-15. Provide a list of the proposals, including dates, that AES has made to Public Service Company of New Mexico (PNM) in response to Requests for Proposals to sell the energy from the proposed Rancho Viejo Solar Project.

RESPONSE:

1-16. Provide the reasons PNM has provided for not accepting each of the proposals in 1-15.
RESPONSE:

1-17. Reference the following statement on page 3 of the Hazard Mitigation Analysis submitted with the Rancho Viejo Solar Project application.

“2.3 LOCAL CLIMATE CONDITIONS
ASHREA data for the nearest airport at Albuquerque International shows a 1% extreme wind speed of 28.2 mph and 0.4% annual occurrence high temperature of 95.2° F.”

Explain the meaning of the following phrases:

“1% extreme wind speed of 28.2 mph”

and

“0.4% annual occurrence high temperature of 95.2° F.”

RESPONSE:

1-18. Reference Discovery Request 1-17. Explain why you used data from the Albuquerque International Airport instead of a data source closer to the proposed site of the Rancho Viejo Solar Project.

RESPONSE:

1-19. Have the Applicants requested and conducted a pre-application meeting with the Santa Fe County Technical Advisory Committee pursuant to Section 4.4.3 of the Sustainable Land Development Code prior to filing the August 30, 2024 Application for a Conditional Use Permit? If yes, please provide a copy. If no, please explain why you have not done so?

RESPONSE:

1-20. Describe the change in the Rancho Viejo Solar Project from the January 2023 Application to the August 30, 2024 application that causes the project to lie within the 100-year floodplain (as indicated in the “Development Permit Application” for the Rancho Viejo Solar Project.

RESPONSE:

1-21. Provide a copy of the “Floodplain Development Permit” referenced in the “Development Permit Application” for the Rancho Viejo Solar Project.

RESPONSE:

1-22. Please identify the “Shared Well” (including Well Permit #) and “Community Water System.” referenced in the “Development Permit Application” for the Rancho Viejo Solar Project.

RESPONSE:

1-23. Provide a copy of the agreements that provide for the use of the “Shared Well” and the “Community Water System” referenced in the “Development Permit Application” for the Rancho Viejo Solar Project.

RESPONSE:

1-24. Please describe the “Bespoke Fire and Deflagration Testing” that is referenced in Section 4.2 , page 9, of the Draft Preliminary HMA Report.

RESPONSE:

1-25. Please explain what is meant by the following sentence regarding the “Bespoke Fire and Deflagration Testing” that is referenced in Section 4.2 , page 9, of the Draft Preliminary HMA Report: “The results will be evaluated and compared to local ambient conditions.”

RESPONSE:

1-26. Please provide the “Bespoke Fire and Deflagration” test results and updates referenced in Section 4.2 , page 9, of the Draft Preliminary HMA Report.

RESPONSE:

1-27. List and describe the site-, equipment- and project-specific factors that were included in the Bespoke Fire and Deflagration Testing referenced in Section 4.2, page 9, of the Draft Preliminary HMA Report that were not included in the Draft Preliminary HMA Report itself.

RESPONSE:

1-28. Please describe the process, remaining steps and anticipated schedule to achieve UL 9540 certification for the battery energy storage system proposed at the Rancho Viejo Solar Project. Include a list of the testing results (including the Bespoke Fire and Deflagration Testing results) that will be transmitted to UL.

RESPONSE:

1-29. Please provide the job descriptions and required qualifications for the on-site personnel referenced in Section 2.1.3 of the Environmental Impact Report.

RESPONSE:

1-30. Please provide the regular times and days of the week when the on-site personnel referenced in Section 2.1.3 of the Environmental Impact Report will be on duty at the Rancho Viejo Solar Project site.

RESPONSE:

1-31. Provide the dates on which AES entered into (i) the contract with Terracon Consultants, Inc. (“Terracon”) for the April 16, 2024 Geotechnical Engineering Report that is attached to the Environmental Impact Report as Appendix D and (ii) the contract for the preliminary geotechnical engineering report, dated December 21, 2022, that is referenced in the April 16, 2024 report.

RESPONSE:

1-32. Provide the dollar amounts that AES paid to Terracon for the April 16, 2024 Geotechnical Engineering Report that is attached to the Environmental Impact Report as Appendix D and the contract for the preliminary geotechnical engineering report, dated December 21, 2022, that is referenced in the April 16, 2024 report.

RESPONSE:

1-33. Provide a copy of the contract with Terracon for the April 16, 2024 Geotechnical Engineering Report that is attached to the Environmental Impact Report as Appendix D and the contract for the preliminary geotechnical engineering report, dated December 21, 2022, that is referenced in the April 16, 2024 report.

RESPONSE:

1-34. Prior to the County entering into the contract with Terracon in May 2023 for an independent, third-party review of AES's January 2023 application for a conditional use permit, did AES or Terracon inform the County that Terracon had previously performed a preliminary geotechnical engineering report for AES for the Rancho Viejo Solar Project, dated December 21, 2022? If yes, provide the details on who informed whom at the County and when, including a copy of any written notifications?

RESPONSE:

RESPECTFULLY SUBMITTED,

/s/ Ashley C. Schannauer

Ashley C. Schannauer

12 Mariano Road

Santa Fe, New Mexico 87508

Schannauer21@outlook.com

(505) 920-0326

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Discovery Requests to

Applicants to the following by email on this date:

Luke Pierpont, Esquire
Brian Egolf, Esquire
County Attorney Jeffrey S. Young

Luke@EgolfLaw.com
Brian@EgolfLaw.com
jyoung@santafecountynm.gov

Date: October 18, 2024

/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER
12 Mariano Road
Santa Fe, NM 87508
Schannauer21@outlook.com
(505) 920-0326

RE: Discovery Requests to Applicants (Rancho Viejo Solar Project)

From Luke Pierpont <luke@egolflaw.com>

Date Thu 11/7/2024 5:19 PM

To Ashley Schannauer <schannauer21@outlook.com>; Brian Egolf <brian@egolflaw.com>

Cc Jeff S. Young <jyoung@santafecountynm.gov>; Selma Eikelenboom <s.eikelenboom@ifscolorado.com>;
rlprucino@santafecountynm.gov <rlprucino@santafecountynm.gov>

Good afternoon Mr. Schannauer,

I hope you are enjoying the snow. It is clear that there is no general right to discovery in a land use hearing under the Santa Fe County rules and I am not convinced that due process requires discovery in this case. My clients will not be responding to your requests without any legal requirement to do so.

Thank you,

Luke Pierpont

From: Ashley Schannauer <schannauer21@outlook.com>

Sent: Thursday, November 7, 2024 1:48 PM

To: Luke Pierpont <luke@egolflaw.com>; Brian Egolf <brian@egolflaw.com>

Cc: Jeff S. Young <jyoung@santafecountynm.gov>; Selma Eikelenboom <s.eikelenboom@ifscolorado.com>;
rlprucino@santafecountynm.gov

Subject: Re: Discovery Requests to Applicants (Rancho Viejo Solar Project)

Good afternoon Mr. Pierpont,

I hope you're doing okay on this snowy day. But I have not received a response to the email I sent to you on Monday regarding the discovery issues we've been discussing. I would appreciate it if you would address my email as soon as possible.

Thank you,

Ashley Schannauer

From: Ashley Schannauer <schannauer21@outlook.com>

Sent: Monday, November 4, 2024 9:55 AM

To: Luke Pierpont <luke@egolflaw.com>; Brian Egolf <brian@egolflaw.com>

Cc: Jeff S. Young <jyoung@santafecountynm.gov>; Selma Eikelenboom <s.eikelenboom@ifscolorado.com>;
rlprucino@santafecountynm.gov <rlprucino@santafecountynm.gov>

Subject: Re: Discovery Requests to Applicants (Rancho Viejo Solar Project)

Good morning Mr. Pierpont,

I continue to believe that the discovery requests are appropriate (i.e., that they seek relevant and probative evidence) and that they would be permitted in a normal civil proceeding. Responses would also shorten the time required for the hearing. But, in the interest of arriving at a good faith resolution of this issue and assuming there will be sufficient opportunity for the cross-examination of witnesses, I'm asking whether you would agree to respond to the following, narrower list of the original requests. They are requests that are not readily answerable in cross-examination:

Discovery requests 1-4, 1-6, 1-7 through 1-11, 1-17, 1-23, 1-26 and 1-33.

Thank you,

Ashley Schannauer

They are listed below for your convenience:

- 1-4.** Please provide copies of all lease and other agreements among AES, Rancho Viejo Solar, LLC, Warren Thompson, Rancho Viejo Limited Partnership and/or their affiliates pertaining to the proposed Rancho Viejo Solar Project.
- 1-6.** Please provide a copy of the membership agreement among the members of Rancho Viejo Solar, LLC.
- 1-7.** Please provide a complete, unredacted copy of the Hazard Mitigation Analysis submitted with the Conditional Use Permit application for the Rancho Viejo Solar Project, including all exhibits and appendices.
- 1-8.** Please provide copies of reports prepared by or for AES that investigate and report on the causes and impacts of the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.
- 1-9.** Please provide a list of claims (and amounts) submitted to Arizona Public Service Company (APS), Salt River Project, AES or their insurers for reimbursement or compensation by third parties in response to the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.
- 1-10.** Please provide a list of claims (and amounts) paid by Arizona Public Service Company (APS), Salt River Project, AES or their insurers for reimbursement or compensation by third parties in response to the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona.
- 1-11.** Please provide Safety Data Sheets (or Material Safety Data Sheet) for the chemicals in the clean agent solution and the lithium-ion battery units for the proposed Rancho Viejo Solar Project.
- 1-17.** Reference the following statement on page 3 of the Hazard Mitigation Analysis submitted with the Rancho Viejo Solar Project application.
- “2.3 LOCAL CLIMATE CONDITIONS
ASHREA data for the nearest airport at Albuquerque International shows a 1% extreme wind speed of 28.2 mph and 0.4% annual occurrence high temperature of 95.2° F.”
- Explain the meaning of the following phrases:
- “1% extreme wind speed of 28.2 mph”
- and
- “0.4% annual occurrence high temperature of 95.2° F.”
- 1-23.** Provide a copy of the agreements that provide for the use of the “Shared Well” and the “Community Water System” referenced in the “Development Permit Application” for the Rancho Viejo Solar Project.
- 1-26.** Please provide the “Bespoke Fire and Deflagration” test results and updates referenced in Section 4.2 , page 9, of the Draft Preliminary HMA Report.
- 1-33.** Provide a copy of the contract with Terracon for the April 16, 2024 Geotechnical Engineering Report that is attached to the Environmental Impact Report as Appendix D and the contract for the preliminary geotechnical engineering report, dated December 21, 2022, that is referenced in the April 16, 2024 report.
-

From: Luke Pierpont <luke@egolfaw.com>

Sent: Thursday, October 31, 2024 5:06 PM

To: Ashley Schannauer <schannauer21@outlook.com>; Brian Egolf <brian@egolfaw.com>

Cc: Jeff S. Young <jyoung@santafecountynm.gov>; Selma Eikelenboom <s.eikelenboom@ifscolorado.com>; rlprucino@santafecountynm.gov <rlprucino@santafecountynm.gov>

Subject: RE: Discovery Requests to Applicants (Rancho Viejo Solar Project)

Mr. Schannauer, thank you for your patience, I have had the opportunity to review with my client your request for a response to your discovery requests. Because the SLDC does not provide a right to discovery, the fact that discovery has not historically been allowed in land use hearings, and the existing New Mexico law regarding what due process requires in a land use hearing, my client respectfully declines.

There is no constitutional right to discovery in New Mexico administrative hearings, and discovery is only required where necessary to protect a party's due process rights. *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶31, 137 N.M. 161. It is established law in New Mexico, that the due process required in land use hearings is not analogous to judicial proceedings, and that an administrative body may adopt such procedures as are appropriate to the circumstances. New Mexico courts apply the *Matthews* test to determine if such procedures adequately protect liberty and property rights of parties to a land use hearing, whether the procedure employed presents a risk of erroneously depriving a party of such a right, while balancing the interests of the administrative body. *Archuleta* ¶ 32, see also *W. Bluff Neighborhood Ass'n*, 2002-NMCA-075, ¶ 46.

The threshold issue in a due process claim is the determination of whether the claimant has a protected property interest. See *Mills v. N.M. State Bd. of Psych.t Exam'rs*, 1997-NMSC-028, ¶ 15, 123 N.M. 421, 941 P.2d 502 ("The threshold question in evaluating a due process challenge is whether there is a deprivation of liberty or property."). Protected property interests are those to which an individual has a claim of entitlement. See *N.M. Dep't of Workforce Sols. v. Garduño*, 2016-NMSC-002, ¶ 12, 363 P.3d 1176. As described in your motion to intervene, your interest in intervention in this land use hearing is "in the public interest" and that you live approximately one mile from the proposed Rancho Viejo Solar project location.

Quasi-judicial hearings need not follow "the same evidentiary and procedural standards applicable to a court of law, [but] must adhere to fundamental principles of justice and procedural due process." *W. Bluff Neighborhood Ass'n*, 2002-NMCA-075, ¶ 46. In administrative proceedings due process is flexible in nature and may adhere to such requisite procedural protections as the particular situation demands. *State ex rel. Battershell v. City of Albuquerque*, 1989-NMCA-045, ¶ 17, 108 N.M. 658, 777 P.2d 386. Our Supreme Court has explained that "interested parties in a quasi-judicial zoning matter are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is impartial in the matter . . . and to a record made and adequate findings executed." *Albuquerque Commons P'ship v. City Council of Albuquerque*, 2008-NMSC-025, ¶ 34, 144 N.M. 99, 184 P.3d 411. "The issue is one of procedural fairness and predictability that is adaptable to local conditions and capabilities. The use of terms such as cross-examination, fair and impartial tribunal, and the like, need not be interpreted in the same sense as it might be in an attempt to reform the judicial process." *Id* ¶ 34.

Notably, no recorded New Mexico case holds that discovery is required to satisfy the due process rights of participants in a land use hearing. In fact, the *Archuleta* court declined to find a due process right to discovery even where the party seeking discovery was defending his employment status in an administrative hearing, a property right that the court properly weighed against the burden on the City in allowing such discovery.

It is clear that due process requires less in situations where the property interest that is being weighed is less immediate. Recently, our court of appeals found that lack of cross examination, strict time limits on public presentation, and the inability of the public to turn on their video screens or share documents in a land use hearing did not violate the public's due process rights as set forth in *Albuquerque Commons*

P'ship. See *Shook v. Governing Body of City of Santa Fe*, 2023-NMCA-086, ¶ 31 (“We agree with the City that over the course of the entire proceeding, including the Planning Commission hearings, Residents had a meaningful opportunity to be heard and that as a result, the procedures used by the Governing Body in these circumstances did not create a risk of erroneous deprivation of Respondents’ rights. See *Skowronski*, 2013-NMCA-034, ¶ 40, 298 P.3d 469 (concluding that the procedures used did not create a risk of erroneous deprivation of rights)”).

Based on the foregoing, there is no right to conduct discovery in a land use hearing absent a compelling liberty or property interest. Your stated interest in this land use hearing is analogous to that which the court considered in *Shook* and does not require enhanced procedural protections to protect against the erroneous deprivation of that interest. My client reiterates that it welcomes public participation in the hearing, but we maintain that the procedures that Santa Fe County has consistently used in its land use hearings provide all parties with ample opportunity to be heard and to present and rebut evidence before the SLDC Hearing Officer, as required by New Mexico law.

Luke Pierpont

From: Ashley Schannauer <schannauer21@outlook.com>

Sent: Thursday, October 24, 2024 11:01 AM

To: Luke Pierpont <luke@egolflaw.com>; Brian Egolf <brian@egolflaw.com>

Cc: Jeff S. Young <jyoung@santafecountynm.gov>; Selma Eikelenboom <s.eikelenboom@ifscolorado.com>

Subject: Re: Discovery Requests to Applicants (Rancho Viejo Solar Project)

Good morning Mr. Pierpont,

Thank you for providing your objection to my discovery requests. I’m writing to you now to make a good faith effort, pursuant to Rule NMRA 1-037(A), to resolve the issue prior to filing a motion to compel discovery (see below). Please let me know whether you will reconsider your objection and provide substantive responses to the discovery requests.

Respectfully,
Ashley Schannauer

What follows is a review of a selection of New Mexico court cases involving the right to discovery in administrative hearings, and a summary of the reasons that the need for discovery is vital in this case.

The lack of a procedural rule in the Santa Fe County Sustainable Land Development Code (SLDC) expressly providing for discovery is not dispositive of the Hearing Officer’s authority to order discovery. There are several New Mexico cases involving the right to discovery in administrative hearings in which the right to discovery is not provided for in the rules of the administrative body. The cases involve two lines of authority – (1) the reasonableness of discovery in order to provide for a fair hearing and (2) the constitutional due process right to discovery.

In terms of the reasonableness of discovery for a fair hearing, courts have said that, where an administrative body’s rules provide for testimony and cross-examination, as here, discovery may be necessary to obtain facts needed to prepare a party’s testimony. The opportunity for cross-examination may also not be sufficient for a fair trial, since the opposing party might not present the persons with knowledge of the relevant facts as witnesses. A party cannot cross-examine a person who is not present at trial.

The New Mexico Supreme Court, in particular, in *Archuleta v. Santa Fe Police Dept., ex rel. City of Santa Fe*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019 said that, in a case where the

procedural rules for Santa Fe's Grievance Review Board provided for the presentation of "relevant documents, witnesses or other evidence" to support the grievant's case, an order denying a request for discovery must be reasonable:

{20} The Santa Fe Municipal Code and the SFPD Rules and Regulations are silent on whether employees are entitled to discovery in an administrative disciplinary proceeding. Section 29-14-6 of the Police Officers Act simply provides that "any peace officer . . . under investigation for an administrative matter, . . . shall be permitted to produce any relevant documents, witnesses or other evidence to support his case." Therefore, in initially determining whether the denial of discovery was proper, we must determine whether the ruling was reasonable.

Archuleta, para. 20. (Footnote omitted.)

The Court went on to address the probative value of the information sought and its relevance but concluded, in that case, that neither was sufficient to have required the requested discovery.

Second, the Court stated in *Archuleta* that, although there is no general constitutional due process right to discovery in an administrative hearing, there may be such a right based upon the particular need for discovery in a specific case:

We agree with the City that there is no constitutional right to pre-trial discovery in administrative hearings. *Lopez v. United States*, 129 F. Supp. 2d 1284, 1289 (D.N.M. 2000), *aff'd mem.*, No. 01-2090 (10th Cir. Nov. 15, 2001); accord *Dente v. State Taxation and Revenue Dep't*, [1997-NMCA-099](#), ¶ 6, [124 N.M. 93](#), [946 P.2d 1104](#), overruled on other grounds by *State Taxation & Revenue Dep't v. Bargas*, [2000-NMCA-103](#), [129 N.M. 800](#), 14 P.3d 358. This general rule, however, is not dispositive. See *Dente*, [1997-NMCA-099](#), ¶ 8 ("[I]n some cases, due process might require that depositions be allowed in order to afford a party a meaningful opportunity to prepare."). Administrative hearings that affect a property or liberty interest must comply with due process. The Mathews test determines what process is due in a particular hearing. *Chavez*, [1998-NMSC-033](#), ¶ 13. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews*, 424 U.S. at 334 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)) (alteration omitted).

Archuleta, para. 31.

{32} "[C]onstitutional due process does not require an agency to afford a petitioner all elements of a traditional judicial proceeding." *Miller v. County of Santa Cruz*, 796 F. Supp. 1316, 1319 (N.D. Cal. 1992), *aff'd*, 39 F.3d 1030 (9th Cir. 1994). "In general, the right to due process in administrative proceedings contemplates only notice of the opposing party's claims and a reasonable opportunity to meet them." *Dente*, [1997-NMCA-099](#), ¶ 4 (emphasis added). The importance of the individual's and administrative body's interests, together with "the risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," dictates what additional process, if any, is due in an administrative proceeding. *Chavez*, [1998-NMSC-033](#), ¶ 14 (quoting *Mathews*, 424 U.S. at 335) (emphasis omitted).

Archuleta, para. 32.

Several Courts of Appeals decisions preceding the Supreme Court's decision in *Archuleta* also recognized the need for discovery in appropriate cases. The first was *In re Miller*, which held that there is a constitutional due process right to discovery in administrative proceedings:

To deny the taxpayer the right to take depositions denies him the right to a fair hearing. Such denial constitutes a denial of due process under the Fourteenth Amendment to the Constitution of the United States. *Kaiser Co. v. Industrial Accident Commission*, 109 Cal. App.2d 54, 240 P.2d 57 (Ct. App., 1st Dist. 1952). The Lincoln County Protests Board erred in denying Miller the right to discovery in preparation for his hearing.

In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182 (Ct. App. 1975), para. 24 (overruled on other grounds in *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, 346 P.3d 1164).

In a subsequent decision, the Court of Appeals decided not to follow the holding in *In re Miller* that there is a due process right to discovery in all administrative cases. It held, instead, that the right might exist in an appropriate case, such that the issue must be decided on a case-by-case basis:

{8} We note that in some cases, due process might require that depositions be allowed in order to afford a party a meaningful opportunity to prepare. Cf. *Silverman*, 549 F.2d at 33 (even though there is no constitutional right to pre-hearing discovery, the Due Process Clause does insure the fundamental fairness of a hearing in an individual case).

. . .

{11} . . . “We decline to follow *Miller*, however, in its apparent holding that depositions are constitutionally required even without a showing of particularized need.”

Dente v. State Taxation & Revenue Dep't, 1997-NMCA-099, paras. 8, 11, 124 N.M. 93, 946 P.2d 1104 (overruled on other grounds in *State Taxation & Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.). Para. 11.

These decisions establish that the right to discovery in administrative hearings may be granted by the hearing officer regardless of whether that right is expressly provided for in the administrative body's rules.

The need for discovery in this case:

In regard to the Rancho Viejo Solar Project, the criteria for the issuance of a conditional use permit include a determination of the extent of the project's fire, explosion and other risks. There are many facts involved in that determination. The facts are complicated and involve engineering, scientific and even financial facts and judgments. Many of the facts are within the sole possession and control of the applicants.

The SLDC and the County's Rules of Order provide for testimony and cross-examination, similar to the rules at issue in the *Archuleta* case. In this case, access to relevant facts within the possession and control of the applicants is necessary to prepare testimony required for a fair trial. The facts sought in the discovery requests are directly relevant to the criteria for the issuance of a conditional use permit, and the facts are within the sole possession and control of the applicants.

Cross-examination will also not be sufficient for a fair trial. Cross-examination depends upon the availability of a witness with knowledge of relevant facts. The representatives of the applicants who have knowledge of the relevant facts may not be presented as witnesses for the applicants, and thus they will not be available for cross-examination. Cross-examination is also not suitable for the production of documentary evidence. My discovery requests seek the production of documents that contain relevant facts.

Finally, the balancing of interests under the *Mathews* due process analysis favors reasonable discovery of the relevant facts sought in the discovery requests in this case. The need for the facts outweighs the burden on the County and the applicants.

From: Luke Pierpont <luke@egolflaw.com>
Sent: Monday, October 21, 2024 5:14 PM
To: Ashley Schannauer <schannauer21@outlook.com>; Brian Egolf <brian@egolflaw.com>
Cc: Jeff S. Young <jyoung@santafecountynm.gov>
Subject: RE: Discovery Requests to Applicants (Rancho Viejo Solar Project)

Good afternoon Mr. Schannauer,
After thorough review of the Santa Fe County hearing procedures, I find no right to discovery in County land use hearings. Our client is committed to providing all information necessary for the County to evaluate its application consistent with the Sustainable Land Development Code but will not be responding to your discovery requests.

Respectfully,
Luke Pierpont

From: Ashley Schannauer <schannauer21@outlook.com>
Sent: Friday, October 18, 2024 8:18 AM
To: Luke Pierpont <luke@egolflaw.com>; Brian Egolf <brian@egolflaw.com>
Cc: Jeff S. Young <jyoung@santafecountynm.gov>
Subject: Discovery Requests to Applicants (Rancho Viejo Solar Project)

Mr. Pierpont and Mr. Egolf,
I'm enclosing Discovery Requests to the Applicants in the Santa Fe County Conditional Use Proceeding for the Rancho Viejo Solar Project. I'm enclosing both a pdf and Word version for your convenience in responding.

Thank you,
Ashley Schannauer

BEFORE THE SUSTAINABLE LAND DEVELOPMENT CODE
HEARING OFFICER OF SANTA FE COUNTY

IN THE MATTER OF THE AUGUST 30, 2024)	
APPLICATION OF RANCHO VIEJO)	
SOLAR, LLC AND AES CLEAN ENERGY)	Case No. 24-5200
DEVELOPMENT, LLC FOR A)	
CONDITIONAL USE PERMIT FOR THE)	
RANCHO VIEJO SOLAR PROJECT)	
_____)	

BRIEF IN SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES
FROM APPLICANTS

The following brief is filed in support of the Motion to Compel Discovery Responses from Applicants. The brief discusses a selection of New Mexico court cases involving the right to discovery in administrative hearings, the arguments submitted by the applicants opposing the discovery requests and a summary of the particular reasons that the need for discovery is vital in this case.

1. Summary

Discovery may be ordered in quasi-judicial administrative proceedings in the absence of a rule explicitly authorizing it. The authority is inherent where the rules provide for testimony and cross-examination. Discovery may be necessary for a fair trial and even due process where discovery is needed to prepare testimony and cross-examination, where the information sought is relevant and probative, where the information is within the sole control of the opposing party, and where the information cannot readily be produced through cross-examination or other means.

Counsel for the applicants refuses to provide the requested discovery on the basis of the lack of a rule in the County's Sustainable Land Development Code (SLDC) explicitly

authorizing it and the lack of reported cases in which an agency's refusal to provide discovery was reversed.

The SLDC grants to the Hearing Officer all powers necessary to conduct quasi-judicial administrative hearings. The SLDC and the Rules of Order provide parties with the rights to submit testimony and conduct cross-examination. Discovery, in particular cases, can be ordered to enable parties to prepare testimony and cross-examination where the information sought is relevant and probative, where the information is within the sole control of the opposing party and where the information is not likely to be within the knowledge of witnesses presented for cross-examination.

The Motion filed with this Brief provides the particularized reasons why the discovery requests in this case should be granted.

2. Authority for discovery in quasi-judicial administrative hearings when not explicitly authorized by the administrative agency's rules

The lack of a procedural rule in the Santa Fe County SLDC expressly providing for discovery is not dispositive of the Hearing Officer's authority to order discovery. There are several New Mexico cases involving the right to discovery in administrative hearings in which the right to discovery is not provided for in the rules of the administrative body. The cases involve two lines of authority: (1) the reasonableness of discovery in order to provide for a fair hearing and (2) the constitutional due process right to discovery.

a. Reasonableness of discovery for a fair hearing

In terms of the reasonableness of discovery for a fair hearing, courts have said that, where an administrative body's rules provide for testimony and cross-examination, as here, discovery may be necessary to obtain facts needed to prepare a party's testimony. The opportunity for cross-examination may also not be sufficient for a fair trial, since the opposing party might not

present the persons with knowledge of the relevant facts as witnesses. A party cannot cross-examine a person who is not present at trial.

The New Mexico Supreme Court, in particular, in *Archuleta v. Santa Fe Police Dept., ex rel. City of Santa Fe*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019 said that, in a case where the procedural rules for Santa Fe's Grievance Review Board provided for the presentation of "relevant documents, witnesses or other evidence" to support the grievant's case, an order denying a request for discovery must be reasonable:

{20} The Santa Fe Municipal Code and the SFPD Rules and Regulations are silent on whether employees are entitled to discovery in an administrative disciplinary proceeding. Section 29-14-6 of the Police Officers Act simply provides that "any peace officer . . . under investigation for an administrative matter, . . . shall be permitted to produce any relevant documents, witnesses or other evidence to support his case." Therefore, in initially determining whether the denial of discovery was proper, we must determine whether the ruling was reasonable.

Archuleta, para. 20. (Footnote omitted.)

The Court went on to address the probative value of the information sought and its relevance but concluded, in that case, that neither was sufficient to have required the requested discovery.

b. Discovery as a due process right

Second, the Court stated in *Archuleta* that, although there is no general constitutional due process right to discovery in an administrative hearing, there may be such a right based upon the particular need for discovery in a specific case:

We agree with the City that there is no constitutional right to pre-trial discovery in administrative hearings. *Lopez v. United States*, 129 F. Supp. 2d 1284, 1289 (D.N.M. 2000), *aff'd mem.*, No. 01-2090 (10th Cir. Nov. 15, 2001); accord *Dente v. State Taxation and Revenue Dep't*, [1997-NMCA-099](#), ¶ 6, [124 N.M. 93](#), [946 P.2d 1104](#), overruled on other grounds by *State Taxation & Revenue Dep't v. Bargas*, [2000-NMCA-103](#), [129 N.M. 800](#), 14 P.3d 358. This general rule, however, is not dispositive. See *Dente*, [1997-NMCA-099](#), ¶ 8 ("[I]n some cases,

due process might require that depositions be allowed in order to afford a party a meaningful opportunity to prepare."). Administrative hearings that affect a property or liberty interest must comply with due process. The Mathews test determines what process is due in a particular hearing. Chavez, [1998-NMSC-033](#), ¶ 13. "Due process is flexible and calls for such procedural protections as the particular situation demands." Mathews, 424 U.S. at 334 (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)) (alteration omitted).

Archuleta, para. 31.

{32} "[C]onstitutional due process does not require an agency to afford a petitioner all elements of a traditional judicial proceeding." *Miller v. County of Santa Cruz*, 796 F. Supp. 1316, 1319 (N.D. Cal. 1992), aff'd, 39 F.3d 1030 (9th Cir. 1994). "In general, the right to due process in administrative proceedings contemplates only notice of the opposing party's claims and a reasonable opportunity to meet them." *Dente*, [1997-NMCA-099](#), ¶ 4 (emphasis added). The importance of the individual's and administrative body's interests, together with "the risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," dictates what additional process, if any, is due in an administrative proceeding. Chavez, [1998-NMSC-033](#), ¶ 14 (quoting *Mathews*, 424 U.S. at 335) (emphasis omitted).

Archuleta, para. 32.

Several Courts of Appeals decisions preceding the Supreme Court's decision in *Archuleta* also recognized the need for discovery in appropriate cases. The first was *In re Miller*, which held that there is a constitutional due process right to discovery in administrative proceedings:

To deny the taxpayer the right to take depositions denies him the right to a fair hearing. Such denial constitutes a denial of due process under the Fourteenth Amendment to the Constitution of the United States. *Kaiser Co. v. Industrial Accident Commission*, 109 Cal. App.2d 54, 240 P.2d 57 (Ct. App., 1st Dist. 1952). The Lincoln County Protests Board erred in denying Miller the right to discovery in preparation for his hearing.

In re Miller, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182 (Ct. App. 1975), para. 24 (overruled on other grounds in *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, 346 P.3d 1164).

In a subsequent decision, the Court of Appeals decided not to follow the holding in *In re Miller* that there is a due process right to discovery in all administrative cases. It held, instead, that the right might exist in an appropriate case, such that the issue must be decided on a case-by-case basis:

{8} We note that in some cases, due process might require that depositions be allowed in order to afford a party a meaningful opportunity to prepare. Cf. *Silverman*, 549 F.2d at 33 (even though there is no constitutional right to pre-hearing discovery, the Due Process Clause does insure the fundamental fairness of a hearing in an individual case).

. . .

{11} . . . “We decline to follow *Miller*, however, in its apparent holding that depositions are constitutionally required even without a showing of particularized need.”

Dente v. State Taxation & Revenue Dep’t, 1997-NMCA-099, paras. 8, 11, 124 N.M. 93, 946 P.2d 1104 (overruled on other grounds in *State Taxation & Revenue Dep’t v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.). Para. 11.

3. The applicants’ arguments

Counsel for the applicants declines to provide the requested discovery on the basis of the lack of an SLDC rule explicitly authorizing it and the lack of reported cases in which an agency’s refusal to provide discovery was reversed. He discusses the same cases as are cited above, and relies on the fact that the courts cited held only that the discovery requested in those cases was not warranted.

He includes no analysis of the particularized reasons that discovery should be ordered in this case.

4. The need for discovery in this case

The decisions cited above establish that the right to discovery in administrative hearings may be granted by the hearing officer regardless of whether that right is expressly provided for in the administrative body's rules. Indeed, the authority is inherent from the grant of authority in Section 3.5.5 of the SLDC, which provides that Hearing Officers shall have all powers necessary to conduct quasi-judicial hearings.

In regard to the Rancho Viejo Solar Project, the criteria for the issuance of a conditional use permit include a determination of the extent of the project's fire, explosion and other risks. There are many facts involved in that determination. The facts are complicated and involve engineering, scientific and even financial facts and judgments. Many of the facts are within the sole possession and control of the applicants.

The SLDC and the County's Rules of Order provide for testimony and cross-examination, similar to the rules at issue in the *Archuleta* case. In this case, access to relevant facts within the possession and control of the applicants is necessary to prepare testimony required for a fair trial. The facts sought in the discovery requests are directly relevant to the criteria for the issuance of a conditional use permit, and the facts are within the sole possession and control of the applicants.

Cross-examination will also not be sufficient for a fair trial. Cross-examination depends upon the availability of a witness with knowledge of relevant facts. The representatives of the applicants who have knowledge of the relevant facts may not be presented as witnesses for the applicants, and thus they will not be available for cross-examination. Cross-examination is also not suitable for the production of documentary evidence. My discovery requests seek the production of documents that contain relevant facts.

Finally, the balancing of interests under the *Mathews* due process analysis favors reasonable discovery of the relevant facts sought in the discovery requests in this case. The need for the facts outweighs the burden on the County and the applicants.

5. Conclusion

The cases discussed above establish that SLDC Hearing Officer has the authority to order the applicants to respond to the discovery requests at issue here even in the absence of a rule in the SLDC and the Rules of Order explicitly granting that authority. The authority is inherent in the SLDC's grant to the Hearing Officer in Section 3.5.5 of the SLDC all powers necessary to conduct quasi-judicial hearings. The particularized need for discovery and its reasonableness in regard to each of the discovery requests at issue here are described in the body of the Motion to Compel filed with this Brief.

Date: November 8, 2024

Respectfully submitted,
/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER

12 Mariano Road
Santa Fe, NM 87508
Schannauer21@outlook.com
(505) 920-0326

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief in Support of Motion to Compel Discovery Responses from Applicants to the following by email on this date:

Hearing Officer Marilyn Hebert
County Attorney Jeffrey S. Young
Roger Prucino, Esquire
Dominic Sisneros, Case Manager
Luke Pierpont, Esquire
Brian Egolf, Esquire
Selma Eikelenboom

lynhebert@q.com
jyoung@santafecountynm.gov
rprucino@santafecountynm.gov
djsisneros@santafecountynm.gov
Luke@EgolfLaw.com
Brian@EgolfLaw.com
s.eikelenboom@ifscolorado.com

Date: November 8, 2024

/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER
12 Mariano Road
Santa Fe, NM 87508
Schannauer21@outlook.com
(505) 920-0326

Exhibit 21

**February 2, 2025 Cross-Examination questions
submitted by Schannauer**

Schannauer Questions for AES witnesses (grouped by topic):

1a. What are the dollar amounts of claims that have been made against AES, its subsidiaries and/or insurers for personal injury, property damage, business loss, costs of emergency response, or other damages related to the accidents in Surprise AZ, Chandler AZ, Escondido CA and Moss Landing CA?

1b. Has AES prepared any reports that investigate and identify the causes and impacts of the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler Arizona? If so, is AES willing to make the reports public?

1c. What are the dollar amounts of insurance and surety bonds that Rancho Viejo Solar LLC will be required to provide for the Rancho Viejo project?

1d. Will AES's subsidiary, Fluence Energy, be providing any services in regard to the design, construction, operation or maintenance of the proposed Rancho Viejo facility?

2a. The tests to achieve UL 9540 Certification for the Rancho Viejo project's complete battery system (i.e., cell, module, unit and installation) were performed in July 2023. Has Underwriters Laboratories issued the UL 9540 Certification for the complete system yet? If so, when? If not, why not?

2b. If the UL 9540 certification for the Rancho Viejo solar project has not been issued, what are the process, remaining steps and anticipated schedule to achieve the certification for the proposed battery system?

3a. The Site Development Plans filed with AES's CUP application show an approximately 13-acre area identified as an "Environmentally Sensitive Area" inside the Project's perimeter. It is located 100 feet from the 2.3 acres of the battery storage units. AES's Environmental Impact Report and the third-party review contracted for by the County do not contain any mention of the "Environmentally Sensitive Area." Please describe what the "Environmentally Sensitive Area" is and how the project's impacts on it will be mitigated.

3b. Please explain why the AES Environmental Impact Report does not address the "environmentally sensitive area" located within the perimeter of the project.

4. How many times (and when) has AES submitted proposals to sell energy to PNM from the proposed Rancho Viejo Solar Project in response to PNM Requests for Proposals to purchase new generation resources?

5a. Who are the members and manager of the limited liability company, Rancho Viejo Solar LLC, which the Environmental Impact Report identifies as the ultimate owner and operator of the facility proposed here?

5b. Does Rancho Viejo Solar LLC have any assets?

6. Describe the “Bespoke Fire and Deflagration Testing” that is referenced in Section 4.2 , page 9, of the Draft Preliminary HMA Report. Is AES willing to make the results public?

Schannauer Questions for County Staff:

1. Please describe the positions of the following people in Santa Fe County government:

-- Dominic Sisneros

-- Jordan Yutzy

-- Alexandra Ladd

-- Roger Prucino

2. Please describe the roles that each of these people perform for the Planning Commission in the Conditional Use process.

3. Whom do each of these people report to in their positions and roles?