CEC Exhibit-26

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
OAKLAND BRANCH

MARY-ELIZA SCHMIDT, an individual; AUSTIN WALKER, an individual; SHERYL RENEE DAVIDSON, an individual; and BRUCE F. THOMAS, an individual;

Plaintiffs,

v.

MOSS LANDING POWER COMPANY, LLC, a Delaware limited liability company; MOSS LANDING ENERGY STORAGE 3, LLC, a Delaware limited liability company; VISTRA CORP., a Delaware corporation; DYNEGY OPERATING COMPANY, a Texas corporation; VISTRA CORPORATE SERVICES COMPANY, a Texas corporation; LG ENERGY SOLUTION, LTD., a South Korean company; L.G. ENERGY GROUP, LLC, a California limited liability company; LG ENERGY SOLUTION ARIZONA, INC., a Delaware stock corporation; LG ENERGY SOLUTION MICHIGAN, INC., a Delaware corporation; LG ENERGY SOLUTION VERTECH, INC., a Delaware corporation; PACIFIC GAS AND ELECTRIC COMPANY, a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CV109594

COMPLAINT FOR DAMAGES

1. **Strict Liability for Ultrahazardous Activities**
2. **Strict Product Liability**
3. **Inverse Condemnation**
4. **Negligence**
5. **Private Nuisance**
6. **Trespass to Real Property and Chattel**
7. **Civil Battery**

DEMAND FOR JURY TRIAL

COME NOW PLAINTIFFS, MARY-ELIZA SCHMIDT, an individual; AUSTIN WALKER, an individual; SHERYL RENEE DAVIDSON, an individual; and BRUCE F. THOMAS, an individual ("Plaintiffs"), by and through undersigned counsel, and submit this Complaint against Defendants MOSS LANDING POWER COMPANY, LLC, a Delaware limited liability company; MOSS LANDING ENERGY STORAGE 3, LLC, a Delaware limited liability company; VISTRA CORP., a Delaware corporation; DYNEGY OPERATING COMPANY, a Texas corporation; VISTRA CORPORATE SERVICES COMPANY, a Texas corporation; LG ENERGY SOLUTIONS, LTD., a South Korean Company; L.G. ENERGY GROUP, LLC, a California limited liability company; LG ENERGY SOLUTION ARIZONA, INC., a Delaware stock corporation; LG ENERGY SOLUTION MICHIGAN, INC., a Delaware corporation; LG ENERGY SOLUTION VERTECH, INC., a Delaware Corporation; PACIFIC GAS AND ELECTRIC COMPANY, a California corporation and DOES 1 through 50, inclusive, and each of them ("Defendants"), and allege as follows:

I. INTRODUCTION

1. On or about January 16, 2025, thermal runaway occurred within an energy battery system resulting in a devastating fire at the Moss Landing Power Plant site located at 7301 State Highway 1, Moss Landing, Monterey County, California 95039 (the "Vistra Fire"). Thermal runaway, a catastrophic process that can result in smoke, fire and explosions, cannot typically be stopped by firefighting techniques used to deprive a fire of oxygen. Here the Vistra Fire will be called a "fire," but it was in fact both a fire and a thermal runaway.

2. The Vistra Fire ignited within the 300-megawatt ("MW") "Phase I" portion of the Vistra Moss Landing Battery Energy Storage System ("BESS") Facility owned and operated by the Defendants (hereinafter "Moss Landing BESS" or the "Moss 300 BESS Building." The Vistra Fire originated in the Moss 300 BESS Building, a contained and roofed building that housed an outdated and dangerous lithium-ion battery storage system. The fire spread rapidly and resulted in toxic emissions that jeopardized the health and safety of thousands of residents and businesses in the surrounding area.

3. The Moss Landing BESS used lithium nickel manganese cobalt oxide ("NMC") batteries that are more prone to thermal instability than newer alternatives like lithium-ion phosphate ("LFP") batteries. Because they are safer, most energy storage projects around the world have been transitioning to LFP batteries. NMC batteries undergo thermal runaway at a lower temperature and release more energy from decomposition, while LFP batteries can withstand higher temperatures than NMC batteries before beginning the thermal runaway process. That made the Defendants' use of a contained and roofed building to store NMC batteries much more dangerous.

4. After the Vistra Fire, Vistra employees reported that the fire suppression system at the Moss Landing BESS failed to work. Plaintiffs are informed and believe that the Moss Landing BESS had an outdated water-based heat suppression system, that is not effective in stopping thermal runaway or extinguishing lithium-ion fires. Plaintiffs are also informed and believe that the Moss Landing BESS contained too many lithium-ion batteries into one enclosed space and failed to use modular battery containers with proper controls and safety equipment.

5. By contrast, in September 2022, a fire broke out at the neighboring Tesla project, which used safer and less volatile LFP batteries that were stored outside (as 99% of all lithium-ion batteries are stored for safety reasons) and were in modular battery container (which the Defendants did not use at the Moss Landing BESS). That fire was quickly extinguished.

6. The Vistra Fire, which affected 50,000 to 100,000 people in the area, led to the declaration of a local state of emergency and required the evacuation of approximately 1,500 residents, closure of schools, major roads, and significant disruptions to daily life, commerce and agricultural operations. A plume of toxic smoke and particulate matter emanating from the fire spread across Monterey County and beyond, depositing ash, soot and other substances containing heavy metals, on the surrounding communities, farms and public and natural spaces. Subsequent sampling revealed unusually high levels of toxic metals in soils a mile from the fire at levels 100 to 1,0000 times higher than normal.

7. The Defendants knew or should have known, when designing, maintaining, and otherwise operating the Moss Landing BESS that large thermal runaways, fires, and explosions at

similar storage sites were a significant problem worldwide. Catastrophic fires and thermal runaways at BESS facilities have caused death, injury, and property damage. For instance, in 2018 similar energy storage systems in Korea received global attention due to the number of fires, which resulted in a five-month investigation, and lead to a country-wide suspended deployment of new energy storage systems. Additionally, the Moss Landing BESS suffered two previous fires, one in 2021 and one in 2022. Defendant VISTRA's own investigation of those fires highlighted the deficiencies of the fire suppression system at the Moss Landing BESS, yet no changes were made.

8. Plaintiffs are residents of communities surrounding the Moss Landing BESS who were directly impacted by this catastrophe. Plaintiffs were exposed to smoke, ash, particulate matter, and dangerous toxic chemicals, which led many to experience respiratory distress, eye and throat irritation, headaches and other health complications as set out here. Plaintiffs' property and property rights were also affected. Not only were the Plaintiffs unable to fully use and enjoy their properties, but some were also entirely displaced altogether due to the mandatory evacuations and dangerous conditions caused by the Vistra Fire. Plaintiffs' real and personal properties were covered by soot, ash, and toxic chemicals, including heavy metals, from the fire. Plaintiffs suffered, and will continue to suffer economic losses, including loss of income due to business closures, expenses associated with forced evacuations, as well as future environmental mitigation and remediation costs. They sue to recover compensatory damages for these harms.

II. PARTIES

9. At all relevant times hereto, Plaintiffs are individuals and other legal entities who were/are homeowners, renters, residents, occupants, and had property and/or owned businesses in Monterey County in areas impacted by the Moss Landing BESS fire.

10. Plaintiffs have all suffered damages, losses, and harm from the Defendants' tortious actions and inactions.

11. Plaintiffs have elected to join their individual lawsuits in a single action under rules of permissive joinder. Plaintiffs do not seek class certification or relief on any class-wide, collective, or other group basis, but seek the damages and other remedies identified herein on an individual basis according to proof at trial.

12. Defendant MOSS LANDING POWER COMPANY, LLC ("MOSS LANDING POWER CO LLC"), is a limited liability company organized and existing under Delaware law, with a principal address at 6555 Sierra Drive, Irving, TX 75039, and is registered to do business as a foreign limited liability company in California. On information and belief, MOSS LANDING POWER CO LLC had and continues to have a facility located at 7301 State Highway 1, Moss Landing, Monterey County, California 95039, the location of "the fire." MOSS LANDING POWER CO LLC is a wholly owned subsidiary of Defendant VISTRA CORP., and operates the Moss Landing Power Plant, including the Moss Landing BESS on behalf of Defendant VISTRA CORP.

13. Defendant MOSS LANDING ENERGY STORAGE 3, LLC, ("MOSS LANDING ENERGY STORAGE 3 LLC") is a limited liability company incorporated and existing under Delaware law with a principal address at 6555 Sierra Drive, Irving, TX 75039, and is registered to do business as a foreign limited liability company in California.

14. Defendant VISTRA CORP. is a publicly traded stock corporation incorporated and existing under Delaware law, with a principal address at 6555 Sierra Drive, Irving, TX 75039. VISTRA CORP. is the owner of the Moss Landing Power Plant, including the Moss Landing BESS facility.

15. Defendant DYNEGY OPERATING COMPANY ("DYNEGY OPERATING CO"), is a corporation incorporated and existing under Texas Law and is a foreign company authorized to do business in California, with a principal address at 6555 Sierra Drive, Irving, TX 75039. DYNEGY OPERATING CO is a wholly owned subsidiary of Defendant VISTRA CORP. and is likely a managing entity of Defendant MOSS LANDING POWER CO LLC.

16. Defendant VISTRA CORPORATE SERVICES COMPANY ("VISTRA CORP. SERVICES CO") is a corporation incorporated and existing under Texas Law and is registered as a foreign corporation authorized to do business in California, with a principal address at 6555 Sierra Drive, Irving, TX 75039. VISTRA CORP. SERVICES CO is a wholly owned subsidiary of VITRA CORP. and is likely a managing entity of Defendant MOSS LANDING POWER CO LLC.

17. Defendants MOSS LANDING POWER CO LLC, MOSS LANDING ENERGY STORAGE 3 LLC; VISTRA CORP., DYNEGY OPERATING CO, and VISTRA CORPORATE SERVICES COMPANY are collectively referred to as "VISTRA DEFENDANTS." The VISTRA DEFENDANTS are a "public utility" under Public Utilities Code sections 216(a)(1), 216(c), and 218(a)(17).

18. Defendant LG ENERGY SOLUTION, LTD. is a battery company headquartered in Seoul, South Korea. Upon information and belief, LG Energy Solutions, Ltd. supplied and installed the lithium-ion batteries at Moss Landing BESS.[1]

19. Defendant L.G. ENERGY GROUP, LLC is a limited liability company incorporated and existing under California Law, with a principal address at 1510 Fashion Island Blvd., Suite 240, San Mateo, California 94404. Upon information and belief, L.G. ENERGY GROUP, LLC is a wholly owned subsidiary of Defendant L.G. ENERGY SOLUTION, LTD.

20. Defendant LG ENERGY SOLUTION ARIZONA, INC. is a stock corporation incorporated and existing under Delaware Law and registered as an out-of-state stock corporation authorized to do business in California, with a principal address at 2540 N. First Street, Stuie 400, San Jose, California 95131. Upon information and belief, LG ENERGY SOLUTION ARIZONA, INC. is a wholly owned subsidiary of Defendant LG ENERGY SOLUTION, LTD.

21. Defendant LG ENERGY SOLUTION MICHIGAN, INC. is a corporation incorporated and existing under Delaware Law and registered to do business in California, with a principal address at 1 LG Way, Holland, MI 49423. Upon information and belief, LG ENERGY SOLUTION MICHIGAN, INC. is a wholly owned subsidiary of Defendant LG ENERGY SOLUTION, LTD.

22. Defendant LG ENERGY SOLUTION VERTECH, INC. is a corporation incorporated and existing under Delaware Law and registered to do business in California, with a principal address at 155 Flanders Road, Westborough, MA 01581. Upon information and belief, LG ENERGY SOLUTION VERTECH, INC. is a wholly owned subsidiary of Defendant LG ENERGY SOLUTION, LTD.

[1] LG Energy Solution and Vistra Corp. Celebrate the Installation of the World's Largest Battery Energy Storage System at Moss Landing Media Day Event (last accessed Jan. 31, 2025).

23. LG ENERGY SOLUTIONS, LTD., L.G. ENERGY GROUP, LLC, LG ENERGY SOLUTION ARIZONA, INC., LG ENERGY SOLUTION MICHIGAN, INC., and LG ENERGY SOLUTION VERTECH, INC., are referred to collectively as "LG DEFENDANTS."

24. Defendant PACIFIC GAS AND ELECTRIC COMPANY ("PG&E") was, at all times relevant to this pleading, a California corporation authorized to do and doing business in California with its headquarters at 300 Lakeside Drive, Oakland, California. At all times relevant to this pleading, PG&E acted to provide a utility, including electrical services, to members of the public in California, including residents of Monterey County. PG&E is one of the largest combination natural gas and electric utilities in the United States.

25. Residents and businesses in Monterey County and other places pay PG&E to provide electricity through a utility infrastructure, including a network of electrical transmission and distribution lines. PG&E is a "public utility" under Public Utilities Code sections 216(a)(1) and 218(a).

26. On information and belief, VISTRA DEFENDANTS planned, built, operated, and continue to operate the Moss Landing BESS facility along and in concert with the PG&E and others. VISTRA DEFENDANTS' and PG&E's acts and omissions, as more particularly described below, resulted in the Vistra Fire that harmed the Plaintiffs.

27. At all times relevant to this pleading, VISTRA DEFENDANTS and PG&E acted to provide a utility, including electrical services, to members of the public in California, including residents of Monterey County. The VISTRA DEFENDANTS and PG&E used the lithium-ion batteries manufactured by the LG DEFENDANTS to store the electricity as part of an electrical distribution system serving Central, Coastal, and Northern California for the benefit of the public.

28. The Moss Landing BESS is connected to PG&E through an interconnection facility ("IF") on site. As agreed, PG&E was responsible for construction of the IF. Upon information and belief, PG&E also controls most of the Moss Landing BESS. For instance, PG&E is expressly authorized to: (1) control the type of equipment used at VISTRA'S Moss Landing facility; (2) review specifications for VISTRA's Moss Landing facility; (3) inspect VISTRA'S Moss Landing facility; (4) require installation of certain communications items at VISTRA'S Moss Landing

facility; (5) dictate operations at VISTRA'S Moss Landing facility; and (6) set VISTRA'S minimum insurance coverage at the Moss Landing facility. Also, PG&E and VISTRA have agreed to indemnify, defend, and hold the other Party harmless from acts such as those alleged in the Complaint. PG&E's agreement with VISTRA further requires creation of a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service.

29. Comments by PG&E also reflect its close partnership with VISTRA. For example, PG&E stated it was "ushering in a new era of electric system reliability and delivering a vision into the future for our customers with the commissioning of the Vistra Moss Landing energy storage facility," adding "[p]rojects like this require great partners, such as Vistra, and PG&E will continue to seek out and work with the best and brightest to provide breakthrough clean energy solutions for our customers."

30. LG DEFENDANTS (collectively "LG DEFENDANTS") is each a battery company and one of the largest battery manufacturers in the world. In 2021, their revenues were $27.2 Billion.

31. The LG DEFENDANTS have one plant in Michigan and one joint venture with General Motors. They are building a $5.5 billion stand-alone battery manufacturing complex in Arizona. The LG DEFENDANTS are registered to do business in California. Plaintiffs are informed and believe that the LG DEFENDANTS directly and purposefully conducted business with the other Defendants in California by selling, distributing, delivering, designing, and installing the lithium-ion batteries at issue here to the other Defendants and coordinating and planning with them.

32. Defendants are each jointly and severally liable to the Plaintiffs for the damages Plaintiffs sustained as a direct and proximate result of Defendants' conduct, as alleged in this Complaint. Plaintiffs are informed and believe and thereon allege that each of the Defendants were, at all pertinent times, the agents, servants, employees, officers, directors, joint venturers, and/or partners, parents, affiliates, subsidiaries, successor-in-interests, related entities, of each of the other Defendants, and are each liable for their own actions and inactions.

33. At all times relevant to this pleading, Defendants, individually and/or jointly, were

the agents, servants, employees, partners, aiders and abettors, co-conspirators, and/or joint venturers of each of the other Defendants; and were operating within the purpose and scope of said agency, service, employment, partnership, enterprise, conspiracy, and/or joint venture; and each of Defendants has ratified and approved the acts of each of the remaining Defendants. Each of Defendants aided and abetted, encouraged, and rendered substantial assistance to the other Defendants in breaching their obligations and duties to Plaintiffs, as alleged here. In acting to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoings alleged here, each of Defendants acted with an awareness of his/her/its primary wrongdoing and realized that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing or was willfully ignorant of those wrongdoings.

34. The names of other Defendants and/or their involvement in the events giving rise to the claims alleged herein are unknown to Plaintiffs. Plaintiffs, therefore, sue such Defendants by fictitious names, identified as DOES 1 through 50, inclusive. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of Defendants designated as DOES 1 through 50, inclusive, when their identities and/or involvement become known.

III. JURISDICTION, VENUE AND DIVISIONAL ASSIGNMENT

35. Venue is proper in Alameda County because the headquarters of PG&E is in Oakland, California, which is in Alameda County. Defendants also conduct business and owned and/or operated utility infrastructure in Alameda County. Plaintiffs are informed and believe, and thereon allege, that PG&E conducted business in Alameda County at the time it committed the negligent acts and omissions that give rise to this Complaint, and Alameda County is where the liability arises.

36. Code of Civil Procedure sections 395(a), 395.5, and 410.10 give this Court jurisdiction over this matter because Defendant PG&E is incorporated in California, has its headquarters in Oakland, California, resides in and does significant business in the County of Alameda, engages in most of its corporate activities in California, and maintains the majority of its corporate assets in California. In addition, the VISTRA DEFENDANTS reside in and do significant business in California, engage in significant corporate activities in California, and

maintain significant corporate assets in California . Finally, the LG DEFENDANTS are licensed to do business in California and do business in California. These facts render the exercise of jurisdiction over Defendants consistent with the traditional notions of fair play and substantial justice.

37. The Alameda County Superior Court is a court of general jurisdiction and has subject-matter jurisdiction over this unlimited civil case, as well as personal jurisdiction over each of the Defendants.

IV. FACTS APPLICABLE TO ALL COUNTS

A. Moss Landing Power Plant

38. The Moss Landing Power Plant, located in Moss Landing, California, was first designed as an electrical generation plant, and was once the largest power plants in California with a generation capacity of 2560 MW, before its two large supercritical steam units were retired in 2016. Originally commissioned in 1950, the plant has evolved over the decades and currently operates as a natural gas-fired power station with a capacity of 1,060 megawatts. In recent years, it has expanded to include two separate battery energy storage facilities: the Vistra Moss Landing BESS, and the Elkhorn Battery Facility which is owned by PG&E. Moss Landing Power Plant is the world's largest commercial electric battery energy storage site.

39. VISTRA ENERGY acquired the Moss Landing Power Plant in 2018 and operates both the power generating plant and the Vistra Moss Landing BESS.

40. The Moss Landing BESS has power lines and interconnections that allow power to flow to far-away regions. The plant is also connected to local loads and the San Jose region by transmission lines.

41. The Moss Landing BESS facility is co-located with the Moss Landing Power Plant, in Moss Landing's industrial area, northeast of the Highway 1 and Dolan Road intersection. Adjoining the property to the north is PG&E'S electric transmission operations and maintenance headquarters, and to the south is Dolan Road and the Moss Landing Business Park. Moss Landing Harbor lies west of the property on the other side of Highway 1.

42. The Moss Landing BESS facility is situated close to residential, commercial, agricultural and public properties. Residential neighborhoods, including Moss Landing and portions of Elkhorn Slough, where thousands of residents live, are located within a two-mile radius of the facility. The facility is also adjacent to businesses and agricultural operations.

43. The Elkhorn Slough Reserve, a protected wetland area of ecological significance, is located less than one mile from the facility. The Reserve is home to diverse wildlife and serves as a vital recreational and educational resource for the community and visitors.

44. Public institutions, such as the North Monterey County Unified School District campuses, are also situated within a short distance of the facility. The District serves more than 4,500 K-12 students, and covers a 70 square-mile area, including neighborhoods in Castroville, Prunedale, Moss Landing, Aromas and parts of Salinas, California.

45. The area surrounding the Moss Landing Facility includes critical transportation routes, including State Highway 1, which provides vital access to the region.

B. The Vistra Moss Landing BESS Facility

46. The Vistra Moss Landing BESS facility, located at 7301 State Highway 1, Moss Landing, Monterey County, California 95039, is a large-scale lithium-ion battery storage facility owned and operated by the VISTRA DEFENDANTS. Before the Vistra Fire, it had a capacity of 750/3,000 megawatt-hours ("MWh"), making it one of the largest energy storage sites in the world, and the largest one in California.

47. In 2018, VISTRA ENERGY announced plans for the energy storage system at the site of Moss Landing Power Plant, using the existing turbine building and existing interconnection from retired steam units 6 and 7, connecting to the 500 kV grid. VISTRA ENERGY expected the energy storage system to begin commercial operation by the end of 2020, pending receipt of approval from the California Public Utilities Commission (CPUC).

48. The Moss Landing BESS facility was built by the VISTRA DEFENDANTS and PG&E in three phases.

49. Phase I (involved in the Vistra Fire) has a capacity of 300 MW/1,200 MWh, meaning that the system can discharge up to 300 megawatts (MW) of power at its peak, and can

store 1,200 MWh of energy in total.

50. Construction of Phase I commenced in December 2019 and was completed in 2020. The Phase I project had three major components: a battery energy storage system; a power conversion system; and a substation. The substation would first receive energy from the electrical grid; next, the energy current was converted through the power conversion system; the energy was then stored within the battery energy storage until it was used during peak demand. When needed, stored energy was to be routed out from the batteries through the power conversion system and substation and into the electrical transmission grid.

51. Phase I's battery storage consisted of thousands of LG JH4 lithium-ion battery cells manufactured, provided, and designed by the LG DEFENDANTS, contained in battery racks in two stories of the preexisting, enclosed and roofed turbine building.

Figure 1: Indoor Battery Packs at Moss Landing BESS[2]

[2] News Release, Vistra Corp., August 19, 2021, https://investor.vistracorp.com/2021-08-19-Vistra-Completes-Expansion-of-Battery-Energy-Storage-System-at-its-Flagship-California-Facility#assets_43_196-3:10 (last accessed Feb. 4, 2025 at 9:35 am PST).

Figure 2: Backside of Indoor Battery Packs at Moss Landing BESS[3]

52. Phase I is dangerously unique as one of only 1% of lithium-ion storage facilities that are indoors. The remaining 99% of lithium-ion storage facilities are outdoors. Placing a lithium-ion storage facility indoors, like the Defendants did at Phase 1, is dangerous, a fact that the Defendants knew or should have known.

53. The LG DEFENDANTS designed, sold and provided the NMC lithium-ion batteries used to store electricity for the VISTRA DEFENDANTS and Defendant PG&E. The stored electricity would then be sold to utility customers in Monterrey County and beyond.

54. The NMC batteries used at the Moss Landing BESS Facility, as all Defendants knew or should have known, were far more dangerous and volatile than LFP batteries, particularly when contained in enclosed spaces like at Moss Landing Phase I.

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[3] News Release, Vistra Corp., August 19, 2021, https://investor.vistracorp.com/2021-08-19-Vistra-Completes-Expansion-of-Battery-Energy-Storage-System-at-its-Flagship-California-Facility#assets_43_196-3:10 (last accessed Feb. 4, 2025 at 9:35 am PST).

55. In fact, on September 4, 2021, nine months after coming fully online, Phase I suffered an overheating incident with multiple the LG batteries.

56. The Moss Landing BESS facility connected to the power grid and began operating on December 11, 2020, with a capacity of 300 MW/1200 MWh. Defendants announced that Phase I was operational on January 6, 2021.

57. In their announcement, Defendants described Phase I as follows:

> Housed inside the power plant's completely refurbished former turbine building and spanning the length of nearly three football fields, Phase I of the battery system can power approximately 225,000 homes during peak electricity pricing periods. The system is made up of more than 4,500 stacked battery racks or cabinets, each containing 22 individual battery modules, which capture excess electricity from the grid, largely during high solar-output hours, and can release the power when energy demand is at its highest and solar electricity is declining, usually early morning and late afternoon.[4]

58. At that time, the VISTRA DEFENDANTS also thanked Defendant PG&E for the "strong working relationship" backed by long-term resource adequacy contracts, which had been approved by CPUC.

59. By August 2021, the Defendants had completed Phase II of the Moss Landing BESS, which included a 100-megawatt expansion, bringing the facility's total capacity to 400 MW/1,600 MWh, making it the largest of its kind in the world.

60. On August 19, 2021, VISTRA DEFENDANTS, LG DEFENDANTS, and Defendant PG&E along with federal, state, and local elected officials and business leaders attended the opening of the Moss Landing BESS Phase II as guests and speakers for a ribbon-cutting ceremony, news conference, and site tours.

61. Construction of Phase III was completed in May of 2023, and with another 350 MW/1,400 MWh brought the Moss Landing BESS facility's total capacity to 750 MW/3,000 MWh. Phase III, unlike Phase I, was constructed outside.

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[4] News Release, Vistra Corp., January 6, 2021, https://investor.vistracorp.com/2021-01-06-Vistra-Brings-Worlds-Largest-Utility-Scale-Battery-Energy-Storage-System-Online (last accessed Feb. 4, 2025 at 9:38 a.m. PST).

C. Dangers of Utilizing NMC Lithium-Ion Batteries for Energy Storage.

62. The Moss Landing BESS facility stores power using a lithium-ion battery system, using NMC technology from LG Energy Solutions. A system utilizing NMC batteries is more dangerous than a system utilizing LFP batteries.

63. LFP batteries, unlike NMC batteries do not contain cobalt, making them less prone to overheating, and thus less likely to experience thermal runaway.

64. Lithium-ion BESSs have the potential to pose a new and emerging threat to public health and safety. Lithium batteries can overheat, creating thermal runaway, causing fire and explosions, releasing hazardous materials in the form of toxic plumes and toxic runoff due to fire suppression tactics. Lithium-ion batteries will overheat, catch on fire, and even explode when they are damaged, improperly used, charged, or stored.

65. Thermal runaway is one of the primary risks related to lithium-ion batteries. It is a phenomenon in which the lithium-ion cell enters an uncontrollable, self-heating state. In ideal conditions, the heat can dissipate from the cell. But in thermal runaway, the lithium-ion cell generates heat at a rate several times higher than the rate at which heat dissipates from the cell.

66. Thermal runaway is a self-accelerating reaction that can occur when the battery is overcharged, short-circuited, or physically damaged. Thermal runaway is the primary failure mechanism for lithium-ion batteries. When oxygen mixes with the toxic flammable gases, the battery cell may ignite, causing surrounding cells to do the same, leading to catastrophic conditions.

67. If the pressure within the cell reaches a critical point, the cell can rupture, releasing flammable gases and in some examples, projectiles at high speeds. These gases can combine with oxygen in the air and form an explosive mixture.

68. Lithium-ion battery fires generate intense heat and considerable amounts of gas and smoke. The gas released from BESSs is highly flammable and toxic. The type of gas released depends on the battery chemistry involved but typically includes gases such as hydrogen fluoride ("HF"), phosphoryl fluoride ("POF_3"), carbon monoxide ("CO"), carbon dioxide ("CO_2"),

hydrogen ("H_2"), methane ("CH_4"), ethylene ("C_2H_4"), ethylene oxide ("C_2H_4O"), and other hydrocarbons.

69. Massive quantities of water over an extended period is the only established means of preventing continuous thermal runaway in a lithium-ion battery. This can result in hazardous runoff.

70. Lithium-ion battery-related fires generate unique and highly toxic emissions compared to other types of fires. The release of toxic gases, such as HF and CO, is one of the most critical concerns in lithium-ion battery related fires. HF is especially dangerous, with an immediate dangerous to life or health (IDLH) concentration of 0.025 g/m (30 parts per million [ppm]) and a lethal 10-minute toxicity level (AEGL-3) of 0.0139 g/m (170 ppm). Acute exposure to HF can lead to severe respiratory damage, burns, and systemic toxicity. Other gases, including CO and HCN, have been detected in concentrations exceeding occupational safety thresholds, emphasizing the health risks.

71. Particulate matter (PM) released during lithium-ion battery-related fires contains harmful metals such as cobalt, aluminum, copper, lithium, manganese, nickel, and zinc. These metals can contaminate the surrounding environment, including soil and water. Ambient PM is linked to respiratory and cardiovascular diseases, and its inhalation represents a significant health risk. In addition, the release of polycyclic aromatic hydrocarbons (PAHs) poses long-term health concerns due to their carcinogenic nature.

72. Fires at facilities like the Moss Landing BESS raise concerns about potential environmental contamination. Toxic substances such as HF, CO, smoke, and fine PM can affect air quality and pose significant risks to nearby residents. Wet and dry deposition of the gases, chemicals, and heavy metals in these plumes, can infiltrate soil and water bodies, leading to further environmental degradations. Contaminants from the fire are persistent and pose long-term risks to ecosystems and public health.

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D. The Vistra Fire and Its Immediate Impacts

73. On January 16, 2025, at or around 3:00 p.m., the Vistra Fire broke out at the 300-MW Phase I portion of the Moss Landing BESS facility. By 5:35 p.m., flames were reported on the roof of the facility. The fire burned through the night and flared up again the next day.

Figure 3 – Moss Landing Lithium Battery Facility Fire[5]

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[5] Credit: CBS News Bay Area

Figure 4 – Moss Landing Lithium Battery Facility Fire[6]

74. Despite the presence of a built-in heat suppression system, the system failed to prevent thermal runaway in the battery system and the resulting fire spread uncontrollably.

75. The failure of the Moss Landing BESS's heat and fire suppression system significantly hindered efforts to contain the fire. Designed to prevent such catastrophic incidents, the system's malfunction, in conjunction with the facility design that placed thousands of batteries prone to thermal runaway close together in an enclosed space, allowed the fire to spread rapidly, causing extensive damage and releasing large quantities of smoke, ash and toxic emissions.

76. Firefighters faced significant challenges in addressing the blaze due to the unique hazards posed by lithium-ion battery fires. Lithium-ion batteries contain flammable electrolytes that, when overheated, can cause thermal runaway. Traditional firefighting methods, such as applying water or foam, were deemed ineffective because they can react with the chemicals in the batteries, producing toxic gases like HF or potentially causing explosions. Additionally, lithium-

[6] Credit: Monterey County

ion battery fires generate extreme heat and can reignite even after appearing extinguished, making them particularly difficult to control.

77. These conditions were exacerbated by the Defendants use of NMC batteries that are more volatile than newer alternatives LFP batteries as well as the batteries being stored in an enclosed structure as opposed to safer modular battery containers.

78. Responding firefighters did not engage the blaze directly due to the high risk of explosion and the toxicity of the emissions, opting instead to let the fire burn itself out over several days.

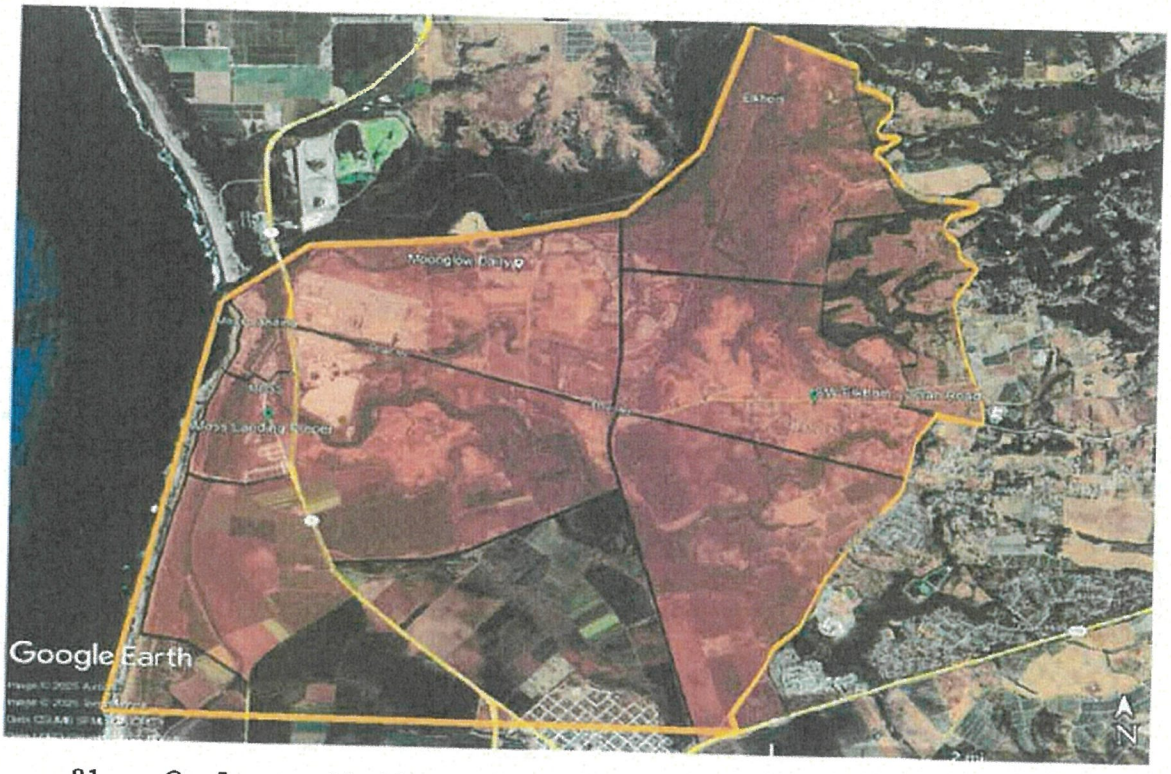
Figure 5 – Moss Landing Lithium Battery Facility Fire[7]

79. The Vistra Fire released significant amounts of smoke, PM, toxic gases, including HF, CO, and other hazardous compounds associated with lithium-ion battery combustion.

80. The fire and the associated toxic chemical plume had a catastrophic effect on communities surrounding the facility, disrupting life and business.

[7] Credit: KPIX

Figure 6 – Moss Landing Two-Mile Evacuation Zone



81. On January 16, 2025, around 10:30 p.m., Monterey County authorities issued evacuation orders for approximately 1,200 to 1,500 residents in the Moss Landing and the Elkhorn Slough communities.

82. Residents were instructed to leave their homes immediately due to the toxic smoke emanating from the Moss Landing BESS. Additional evacuation orders were issued on January 17, 2025, at 8:00 a.m., expanding the evacuation zone to include areas within a two-mile radius of the Moss Landing BESS facility. These orders caused significant disruption to residents and businesses, forcing many to seek temporary shelter, arrange emergency accommodations, and incur unexpected expenses.

83. The North Monterey County Unified School District announced closures early on January 17, 2025, citing concerns over air quality and safety for students and staff.

84. The Elkhorn Slough Reserve was closed from January 17-21, 2025, due to the evacuation order and subsequent potential risks from the Vistra Fire.

85. On January 16, 2025, residents in surrounding counties, including Santa Cruz and San Benito, were advised to stay indoors, close windows and doors, and turn off ventilation systems to minimize exposure to hazardous air. This advisory was reiterated on January 17, 2025, as smoke and toxic emissions persisted.

86. Due to safety concerns from toxic smoke and limited visibility, at or around 5:52 p.m. on January 16, 2025, officials closed State Highway 1. The Highway was not reopened until January 19, 2025, at 5:00 p.m. These disruptions significantly impacted commuters and transport-dependent businesses, leading to delays, rerouting of freight traffic, and compounding economic losses for local enterprises. The closures also heightened logistical challenges for emergency services and residents attempting to access essential resources.

87. Residents of nearby communities, including the Plaintiffs, were exposed to smoke and toxic emissions. Many experienced respiratory distress, eye and skin irritation, headaches, nose bleeds, and other physical symptoms due to the exposure.

88. Defendants knew or should have known of the significant risks posed by the storage and operation of large-scale lithium-ion batteries, including the potential for thermal runaway, catastrophic fires and toxic emissions.

89. Defendants failed to implement adequate safety measures, fire prevention protocols, and emergency response plans to mitigate the known risks associated with lithium-ion battery storage, causing substantial damage to the Plaintiffs.

90. As of the time of filing of this Complaint, local and state environmental agencies are still assessing the immediate and the long-term impacts of the Vistra Fire.

E. Deposition of Heavy Metals Caused by the Vistra Fire

91. Research scientists at San José State University's Moss Landing Marine Laboratories (MLML) have detected unusually high concentrations of heavy-metal nanoparticles in marsh soils at Elkhorn Slough Reserve following the recent fire at the nearby Vistra Power Plant's lithium-ion battery storage facility.[8]

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[8] San Jose State University, Media Advisory. January 27, 2025

92. The media advisory stated that "[a]s part of a decade-long monitoring program of the Elkhorn Slough estuary … field surveys, conducted within a radius of approximately two miles from the power plant, measured a dramatic increase in marsh soil surface concentration (hundreds to thousand-fold) of the three heavy metals Nickel, Manganese and Cobalt. These nanoparticles are used in cathode materials for lithium-ion batteries, … "NMC" … , clearly connecting the occurrence of the heavy metals to airborne cathode material from the Vistra battery fire. These heavy metals will chemically transform as they move through the environments and potentially through the food web, affecting local aquatic and terrestrial ecosystems."[9]

93. Monterey County issued an update related to soil screening stating that "[p]reliminary soil screening of specific sites near the Moss Landing Vistra Power Plant Fire area was conducted by the California Department of Toxic Substances Control (DTSC) on January 24, 2025, in consultation with County of Monterey officials. DTSC personnel used an X-Ray Fluorescence Spectrometer (XRF) instrument to screen surface soils for heavy metals, specifically cobalt, nickel, copper, and manganese.[10] XRF Scans showed elevated levels of Cobalt, Nickel, Copper, and Manganese at all locations except XRF Site 3 where only Nickel and Copper and XRF 5 where Nickel was not detected."[11]

94. The County's preliminary XRF scans for Cobalt exceeded United States Environmental Protection Agency (EPA) carcinogenic target risk from inhalation screening levels for residential soil at XRF Sites 7 and 8; and XRF Sites 1, 2, 4, and 5 exceeded EPA noncarcinogenic target hazard index screening level for children in residential soil.[12,13]

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[9] *Id.*

[10] Moss Landing Fire Update: Soil Screening Data Summary County of Monterey Health Department, Environmental Health Bureau January 31, 2025. Moss Landing Fire Update: Soil Screening Data Summary County of Monterey Health Department, Environmental Health Bureau January 31, 2025 | County of Monterey, CA (last accessed Feb. 3, 2025).

[11] DTSC has not thoroughly analyzed or validated these results, which should not be interpreted as final or conclusive.

[12] Moss Landing Fire Update, *supra* note 7.

[13] Note: parts per million (ppm) = milligrams per kilogram (mg/kg).

95. Preliminary XRF scans for Nickel and Copper exceeded EPA carcinogenic target risk from inhalation screening levels for residential soil at XRF Site 8.[14]

96. Preliminary XRF scans for Manganese exceeded EPA noncarcinogenic target hazard index screening level for children in residential soil at XRF Site 8.[15]

97. Independent wipe testing of Plaintiff Schmidt's boat which was docked in slip B137 in Moss Landing Harbor, (upon which her family including minor children reside), showed elevated levels Aluminum, Cobalt, Copper, Lead, Lithium, Manganese, and Nickel.[16]

98. The levels of Cobalt in the wipe samples collected from Plaintiff Schmidt's boat are of significant concern, with a range of 68 to 580 µg/wipe reported from samples collected on January 29, 2025, twelve days after the Vistra Fire was contained.

99. Independent soil testing of Plaintiff Davidson's property located at 9150 Holly Hill Drive, Salinas, California, approximately 7.5-miles east of the Vistra Fire, showed elevated levels Aluminum, Copper, Lead, Lithium, Manganese, and Nickel.[17] Soil samples were collected on January 29, 2025, twelve days after the Vistra Fire was contained.

100. Independent wipe testing of Plaintiff Davidson's property showed elevated levels Aluminum, Cobalt, Copper, Lead, Lithium, Manganese, and Nickel.[18] Wipe samples were collected on January 29, 2025, twelve days after the Vistra Fire was contained.

101. The levels of Cobalt in the wipe samples collected from Plaintiff Davidson's property are of significant concern, with a range of 13 to 260 µg/wipe reported.

F. Damages to Plaintiffs Caused by Defendants' Acts and Omissions

102. Defendants' tortious conduct has caused the Plaintiffs to suffer harm, injuries, and damages including, but not limited to, those identified below.

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[14] Moss Landing Fire Update, *supra* note 7.
[15] Moss Landing Fire Update, *supra* note 7.
[16] LA Testing Analytical Report, Moss Landing – Moss Landing Habor Slip B137 "Lady Munroe." January 31, 2025.
[17] LA Testing Analytical Report, Moss Landing – Moss Landing – 9150 Holly Hill Dr, Salinas. January 31, 2025.
[18] LA Testing Analytical Report, Moss Landing – Moss Landing – 9150 Holly Hill Dr, Salinas. January 31, 2025.

103. The fire resulted in the release of massive plumes of smoke, ash and toxic chemicals into the surrounding communities. Those exposed to these emissions have suffered, and continue to suffer from inconvenience, annoyance, and personal discomfort. That inconvenience, personal discomfort, and annoyance is including, but not limited to, nasal and eye irritation, difficulty breathing, headaches, nosebleeds, sore/scratchy throat, lung congestion, fatigue, runny nose/nasal drip, burning lungs, dizziness, shortness of breath, unexplained discharge of blood, sores, metal taste, inability to focus, unusual smells, lung irritation, and skin irritation. Many have sought medical help for their symptoms. Those with respiratory disorders have seen these conditions exacerbated.

104. In addition, Plaintiffs' mental health has been adversely impacted because by the injury to the peaceful enjoyment of the property that they occupied, and Plaintiffs have suffered fear, severe emotional distress, anxiety, and mental anguish.

105. Due to the fire, approximately 1,500 residents of Monterey County were abruptly ordered to evacuate from their homes. Some Plaintiffs were among these evacuees. Many have had to leave their homes for considerable periods of time. In addition to suffering the trauma and inconvenience associated with a sudden evacuation from their homes, Plaintiffs have incurred evacuation and alternative living expenses as well as cleanup costs.

106. With schools closing on January 17, 2025, parents were forced to take time off from work to care for their children, losing wages and/or having to use their vacation and sick time.

107. Plaintiffs that work in the areas affected by the fire and the chemical plume have been unable to work or derive income during the event and its aftermath.

108. Soot, ash, debris, PM, heavy metals and other substances from the fire deposited on real and personal property of the Plaintiffs, and have caused staining, damage to paint and exterior surfaces, soil, and contamination of HVAC systems, necessitating costly repairs, cleaning and remediation of the properties.

109. Plaintiffs have suffered and continue to suffer from heavy metal deposition from the fire onto their property.

110. Gardens, agricultural fields, and outdoor amenities were similarly impacted. Due to the hazardous nature of the chemicals associated with lithium-ion battery fires, soil testing will be required to assess and mitigate contamination. Those Plaintiffs with groundwater wells will require long-term groundwater testing and monitoring as the heavy metals that were deposited on structures, foliage, vehicles, etc. from the Vistra Fire can be redeposited via washing and precipitation to soil and can migrate through the soil causing groundwater contamination.

V. CLAIMS ALLEGED

A. Count I: Strict Liability for Ultrahazardous Activities (Against All Defendants)

111. Plaintiffs adopt and incorporate Paragraphs 1-110 as if fully set forth here.

112. The operation of a large-scale lithium-ion battery storage facility involves ultrahazardous activities that pose significant risks to public health and safety.

113. Operation of a large-scale lithium-ion battery storage facility, especially one utilizing NMC batteries which are more prone to catch fire, creates a high degree of risk to the surrounding community. As shown by the January 16, 2025, fire and chemical plume, even a small incident at the facility had the potential to result in widespread harm, including the release of toxic chemicals that endangered the health of thousands of residents in Moss Landing and other surrounding areas.

114. The harm caused by the lithium-ion battery fire includes severe health effects, property damage, and prolonged disruption to the lives and livelihoods of those affected.

115. Despite safety protocols and fire suppression systems, risks associated with the operation of a large-scale lithium-ion battery storage facility cannot be fully eliminated through the exercise of reasonable care. The inherent risks of chemical reactions, especially in NMC batteries, including thermal runaway, remain present even with the implementation of safety measures.

116. Operation of a large-scale lithium-ion battery storage facility, that is enclosed and utilizes NMC batteries, near residential neighborhoods and businesses is not a common or

appropriate activity. The Moss Landing BESS facility was near a densely populated area, increasing the potential harm to the community in the event of an incident.

117. While BESS facilities may serve a commercial purpose, the extreme danger posed by these facilities, as demonstrated by the catastrophic event on January 16, 2025, far outweighs any value it may provide to the community. The resulting health hazards, evacuations, business closures, and environmental damage underscore the ultrahazardous nature of Defendants' operations.

118. Because the operation of a large-scale lithium-ion battery storage facility is an ultrahazardous activity, Defendants are strictly liable for any harm proximately resulting from these activities.

119. As a direct and proximate result of Defendants' engagement in ultrahazardous activities, Plaintiffs suffered injuries, damages and losses, including, but not limited to, those damages previously described.

120. Accordingly, Plaintiffs each seek damages to be determined, on an individual basis, according to proof at trial, including, but not limited to, compensatory damages for medical care, pain and suffering, emotional anguish, injury to real and personal property, remediation costs, loss of income, relocation and evacuation expenses, and substantial interference with their use and enjoyment of their properties.

B. Count II: Strict Product Liability

(Against All Defendants)

121. Plaintiffs adopt and incorporate Paragraphs 1-110 as if fully set forth here.

122. Plaintiffs are informed and believe that the lithium-ion batteries designed, manufactured, and sold by the LG Defendants in this case were defectively manufactured, leading to thermal runaway and resulting in the Moss Landing BESS facility fire on January 16, 2025.

123. Plaintiffs are informed and believe that the lithium-ion batteries designed and sold by LG Defendants in this case were defectively designed, leading to thermal runaway and resulting in the Vistra Fire on January 16, 2025.

124. Plaintiffs are informed and believe that the lithium-ion batteries designed and sold by the LG DEFENDANTS were distributed without adequate instructions or warnings of the potential for harm for thermal runaway, resulting in the Moss Landing BESS facility fire on January 16, 2025.

125. Plaintiffs are informed and believe that the lithium-ion batteries designed and sold by the LG DEFENDANTS were substantially the same at the time of the fire as when they left LG's possession. Furthermore, Plaintiffs are informed and believe that the lithium-ion batteries were used or misused in a way that was foreseeable—they were placed in battery racks at the Moss Landing BESS facility to store electricity reserves for use during peak hours, per the facility design. Plaintiffs further are informed and believe that the manufacture and design of the lithium-ion battery was a substantial factor in causing the initial fire and subsequent harm experienced by Plaintiffs.

126. Plaintiffs are informed and believe that VISTRA DEFENDANTS collaborated with LG DEFENDANTS in the manufacture and design of the batteries responsible for the Vistra Fire. VISTRA DEFENDANTS purchased 110,000 batteries from LG DEFENDANTS for the Moss Landing BESS facility, and were in the unique position to both benefit from the creation of the Moss Landing BESS facility AND to influence the manufacturing and design of the batteries for the facility.

127. Plaintiffs are informed and believe that VISTRA DEFENDANTS collaborated with LG DEFENDANTS and Defendant PG&E in the defective facility design of the Moss Landing BESS facility, which included stacking thousands of NMC lithium-ion batteries in racks in an enclosed space, leading to thermal runaway and the fire on January 16, 2025.

128. Plaintiffs are informed and believe that VISTRA DEFENDANTS failed to offer adequate warning to the general public regarding the dangers posed by a massive, enclosed NMC lithium-ion battery storage facility in a populated area.

129. Plaintiffs are informed and believe that Defendant PG&E collaborated with VISTRA and LG DEFENDANTS on the manufacture and design of the batteries responsible for the Vistra Fire, as well as the design and creation of the Moss Landing BESS facility.

130. Plaintiffs allege that Defendant PG&E failed to provide adequate warnings to the community regarding the risks of having a massive, enclosed NMC lithium-ion BESS facility in a populated area.

131. Defendant PG&E is the sole purchaser and distributor of the power stored at the Moss Landing BESS facility. As such, Defendant PG&E is in a unique position to financially benefit from the faulty LG batteries. PG&E was integral to the design and existence of the Moss Landing BESS battery storage facility, and had a substantial ability to influence the battery manufacturing and design and the facility design to ensure safety.

132. The risk of fire was reasonably foreseeable at an enclosed, massive battery storage facility. Lithium-ion batteries are well known to have issues with thermal runaway, resulting in ignition. In fact, the Moss Landing BESS facility has previously experienced at least two fires or "overheating" events since 2020.

133. Plaintiffs allege that they were injured by the defects in manufacturing and design when the batteries caught fire, spewing toxins and PM into the air, and that there were inadequate warnings regarding the risks of having a massive, enclosed BESS facility in a populated area.

134. It was reasonably foreseeable that in the event of a fire at the Moss Landing BESS facility, that residents in the surrounding area would be injured and their property would be damaged by toxins and particulate matter released from the fire. The risks of catastrophic fire did not outweigh the potential benefits.

135. Accordingly, Plaintiffs each seek damages to be determined, on an individual basis, according to proof at trial, including, but not limited to, compensatory damages for medical care, pain and suffering, emotional anguish, injury to real and personal property, remediation costs, loss of income, relocation and evacuation expenses, and substantial interference with their use and enjoyment of their properties.

C. Count III: Inverse Condemnation

(Against Vistra and PG&E Defendants Only)

136. Plaintiffs adopt and incorporate Paragraphs 1-110 as if fully set forth here.

137. On January 16, 2025, Plaintiffs were the owners of real property and personal

property in the area of the Moss Landing BESS facility.

138. Prior to and on January 16, 2025 the VISTRA DEFENDANTS and PG&E had each designed, constructed, installed, operated, controlled, used, and/or maintained the facilities, lines, wires, battery storage, and/or other electrical equipment within PG&E's and VISTRA's utility infrastructure, including the transmission and distribution lines in and around the location of Moss Landing, to provide electrical services to large swaths of the public.

139. Prior to and on January 16, 2025, Defendants knew that the battery storage and electrical equipment within PG&E's and VISTRA's electrical-utility infrastructure (as deliberately designed and constructed) could ignite a fire, go into thermal runaway, destroy property, and cause toxic chemicals to inundate the surrounding communities. Accordingly, VISTRA AND PG&E knew the risks and dangers of their electrical equipment and battery storage and the need for proper maintenance, upkeep, design, and battery choice.

140. These inherent risks were realized on January 16, 2025, when the Vistra Fire erupted, which resulted in the taking of Plaintiffs' real property and/or private property.

141. This taking was legally and substantially caused by Defendants' actions and inactions in designing, constructing, installing, operating, controlling, using, and/or maintaining the facilities, lines, wires, battery storage, and/or other electrical equipment within PG&E's and VISTRA's utility infrastructure.

142. Plaintiffs have not been adequately compensated, if at all, for this taking.

143. Plaintiffs also seek, under Code of Civil Procedure section 1036, to recover all reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, incurred because of this proceeding in the trial court and/or in any appellate proceeding in which Plaintiffs prevail on any issue.

D. Count IV: Negligence

(Against All Defendants)

144. Plaintiffs adopt and incorporate Paragraphs 1-110 as if fully stated here.

145. As operators large-scale lithium-ion battery storage facility, Defendants, who have superior knowledge of the dangers associated with lithium-ion battery fires, owed the Plaintiffs a

non-delegable duty to conduct their operations in a safe manner, including a duty to design, maintain and operate their Moss Landing BESS facility safely, in a manner that protected the public, including the Plaintiffs, from chemical exposure and environmental hazards.

146. Defendants' duties included but were not limited to a duty to ensure proper safety protocols, fire prevention measures, and storage and handling procedures to mitigate the risk of chemical reactions, explosions and harmful emissions of toxic substances.

147. Defendants knew or should have known that NMC batteries can overheat, creating thermal runaway, can cause fire and explosions, and can cause releases of hazardous materials in the form of toxic plumes.

148. Defendants knew or should have known that NMC batteries were prone to fires.

149. Defendants knew or should have known that storing NMC batteries in an enclosed structure was dangerous.

150. Defendants breached duties owed to the Plaintiffs by, among other things:

a. Failing to design, operate, maintain, and/or repair their Moss Landing BESS facility in such a way as to ensure its safe and proper operation;

b. Failing to monitor and mitigate risks associated with NMC lithium-ion battery storage;

c. Failing to implement adequate safety protocols to prevent overheating and fires;

d. Failing to maintain a functional fire suppression system;

e. Failing to ensure proper procedures or systems for timely identifying any malfunctions or limitations of the facility's fire suppression system;

f. Failing to ensure proper safety procedures in the event of a fire suppression system malfunction;

g. Failing to prevent runaway chemical reactions at their facility;

h. Failing to warn Plaintiffs and the public of the risks associated with the facility;

i. Igniting large volumes of chemicals in such a way that tens of thousands of people were likely to be exposed; and

j. Any other negligent acts and/or omissions which may be discovered and proven at the trial of this matter.

151. As the direct and proximate result of the Defendants' negligence, significant quantities of ash, soot, smoke and toxic chemicals were released into the surrounding communities and harmed the Plaintiffs.

152. The harm to the Plaintiffs was reasonably foreseeable.

153. Plaintiffs have suffered injuries, damages and losses, including, but not limited to, those damages previously described. Such harms were unique to each Plaintiff and different from damages suffered by other Plaintiffs.

154. Accordingly, Plaintiffs each seek damages to be determined, on an individual basis, according to proof at trial, including, but not limited to, compensatory damages for medical care, pain and suffering, emotional anguish, injury to real and personal property, loss of income and relocation and evacuation expenses.

E. Count V: Private Nuisance

(Against All Defendants)

155. Plaintiffs adopt and incorporate Paragraphs 1-110 as if fully stated here.

156. Plaintiffs are in lawful possession of their property.

157. Defendants owned, maintained, operated, and otherwise controlled the Moss Landing BESS facility.

158. Defendants' negligent, reckless, intentional and/or abnormally dangerous actions and inactions created conditions and/or permitted conditions to exist that were harmful to health, offensive to the senses, obstructed and/or entirely prevented free use of property, as to substantially interfere with the comfortable use and enjoyment of property by persons of ordinary sensibilities.

159. These conditions, including, but not limited to, soot, smoke, ash, debris, particulate matter, and other toxic chemicals materially and significantly interfered with Plaintiffs' right of use and quiet enjoyment of their property in a way unique to each Plaintiff.

160. Plaintiffs' enjoyment of life and property has been rendered materially uncomfortable and annoying. As the result of the fire Plaintiffs were subjected to noxious fumes,

toxic chemicals, and unsafe air quality, which rendered their homes and properties unfit for occupancy and use.

161. Those exposed to these emissions have suffered, and continue to suffer damages from inconvenience, annoyance, and personal discomfort. That inconvenience, personal discomfort, and annoyance is including, but not limited to, nasal and eye irritation, difficulty breathing, headaches, nosebleeds, sore/scratchy throat, lung congestion, fatigue, runny nose/nasal drip, burning lungs, dizziness, shortness of breath, unexplained discharge of blood, sores, metal taste, inability to focus, unusual smells, lung irritation, and skin irritation. Many have sought medical help for their symptoms. Those with respiratory disorders have seen these conditions exacerbated.

162. In addition, Plaintiffs' mental health has been adversely impacted because by the injury to the peaceful enjoyment of the property that they occupied, and Plaintiffs have suffered fear, severe emotional distress, anxiety, and mental anguish.

163. At no time did the Plaintiffs consent to the Defendants' actions and inactions in creating these conditions.

164. As a direct and proximate result of the Defendants' creation of the nuisance, Plaintiffs have suffered injuries, damages and losses. Such harms were unique to each Plaintiff and different from damages suffered by other Plaintiffs.

165. Accordingly, Plaintiffs each seek damages to be determined, on an individual basis, according to proof at trial, including, but not limited to compensatory damages for injury to property and interference with its use and enjoyment, and damages for physical discomfort, loss of peace of mind, unhappiness and annoyance caused by the nuisance.

F. Count VI: Trespass To Real Property and Chattel

(Against All Defendants)

166. Plaintiffs adopt and incorporate Paragraphs 1-110 as if fully set forth here.

167. Plaintiffs are in lawful possession of their properties.

168. As a result of the conduct and activities of the Defendants, contaminants from the fire have and continue to physically intrude onto and wrongfully enter Plaintiffs' properties,

thereby interfering with the Plaintiffs' possessory interests in their properties without Plaintiffs' permission.

169. The physical intrusion of the contaminants emitted by Defendants onto and into the Plaintiffs' properties has physically injured and damaged Plaintiffs' properties by contaminating the soil, fixtures, structures and other physical aspects of Plaintiffs' properties. Also, Defendants' trespass to Plaintiffs' personal property physically injured and damaged Plaintiffs' personal properties by contaminating the properties, fixtures, structures, and other physical aspects of Plaintiffs' personal properties This would not have occurred but for the actions of the Defendants.

170. The physical intrusion of the contaminants onto and into the properties owned by the Plaintiffs diminished the value of Plaintiffs' real properties.

171. The trespass caused Plaintiffs to suffer, and continue to suffer, from inconvenience, annoyance, and personal discomfort. That inconvenience, personal discomfort, and annoyance is including, but not limited to, nasal and eye irritation, difficulty breathing, headaches, nosebleeds, sore/scratchy throat, lung congestion, fatigue, runny nose/nasal drip, burning lungs, dizziness, shortness of breath, unexplained discharge of blood, sores, metal taste, inability to focus, unusual smells, lung irritation, and skin irritation. Many have sought medical help for their symptoms. Those with respiratory disorders have seen these conditions exacerbated.

172. In addition, Plaintiffs' mental health has been adversely impacted by the injury to the peaceful enjoyment of the property that they occupied, and Plaintiffs have suffered fear, severe emotional distress, anxiety, and mental anguish.

173. Defendants' trespass was the actual and proximate cause of the Plaintiffs' damages and losses including, but not limited to, diminution of the value and marketability of their properties and their property rights; the loss of use of their properties; the loss of use and enjoyment of their properties; and discomfort, inconvenience and annoyance. Defendants are thus liable for the compensatory damages to the Plaintiffs, to be determined on an individual basis, according to proof at trial.

///

G. Count VII: Civil Battery

(Against All Defendants)

174. Plaintiffs adopt and incorporate Paragraphs 1-110 as if fully set forth here.

175. The release of the harmful chemicals from the Moss Landing BESS fire caused exposure and therefore harmful and offensive contact with the Plaintiffs.

176. Defendants knew or should have known that the chemicals released from the lithium-ion battery fire were substantially certain to cause bodily contact, injury, damage, or harmful and offensive contact with the Plaintiffs.

177. Plaintiffs did not consent to the bodily contact, injury, damage, or harmful and offensive contact.

178. Defendants' conduct that caused the harmful and offensive contact was intentional, or at least grossly or culpably negligent conduct, or wanton and reckless conduct. Defendants' unauthorized contact has actually and reasonably offended a sense of personal dignity of the Plaintiffs.

179. As a direct and proximate result of Defendants' battery, Plaintiffs have suffered damages.

180. Defendants are thus liable for the compensatory damages to Plaintiffs, to be determined, according to individual proof at trial, as well as nominal and punitive damages.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

a. For compensatory damages in an amount to be proven at trial;

b. For punitive damages sufficient to deter future misconduct;

c. For an award of attorneys' fees and costs;

d. For pre- and post-judgment interest as allowed by law; and

e. For such other and further relief as this Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: February 4, 2025

SINGLETON SCHREIBER, LLP

By: /s/ Knut S. Johnson

Knut S. Johnson
Marianna Sarkisyan
Attorneys for Plaintiffs

CEC Exhibit-27

PNM

You Live in a High Fire Risk Area

Extreme weather conditions pose the threat of wildfires. To help prevent damaged power lines from contributing to wildfires, a Public Safety Power Shutoff (PSPS) may occur.

If extreme weather conditions pose the threat of a wildfire, it may force a Public Safety Power Shutoff (PSPS), which means that you will be without power until it can be safely restored.

Scan the QR code or visit **pnm.com/wildfire-safety** to learn more.

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CEC Exhibit-28

MEMORANDUM

Date: January 29, 2025

To: Santa Fe County Planning Commission

From: Dominic J. Sisneros Building and Development Services Supervisor

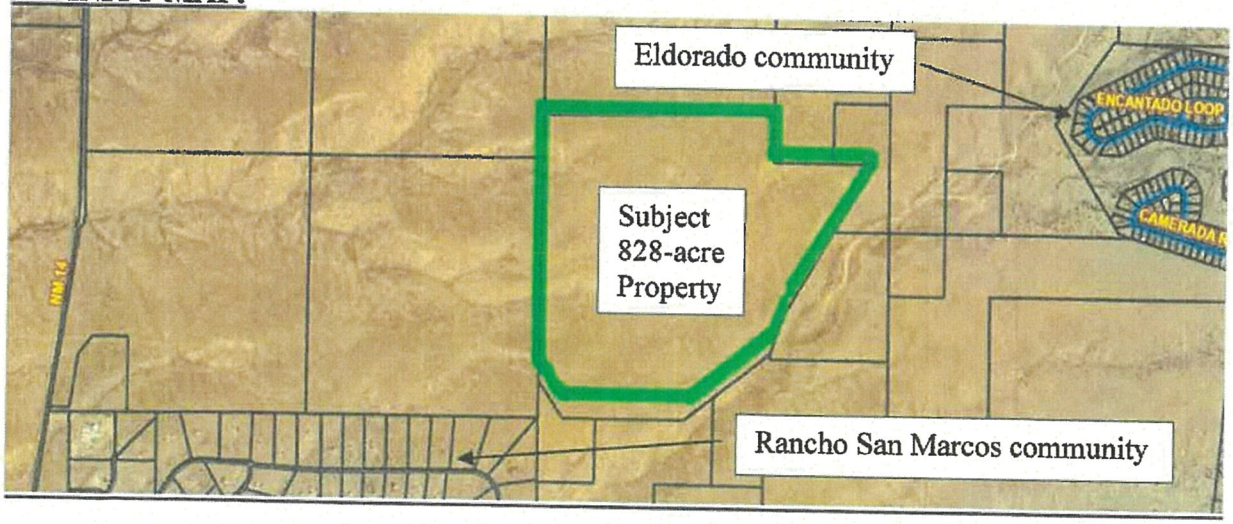
Via: Alexandra Ladd, Growth Management Director
Jordan A. Yutzy, Building and Development Services Land Use Administrator

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.

Bohannan 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, Bohannan 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 Water[1]

	Property Location		
Development Type	**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.

Bohannan 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. Bohannan 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, Bohannan 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	Review Comment
County Fire Marshal/Atar Fire	Sent on 9-6-2024/Received 10-11-2024
Glorieta Geoscience, Inc	Sent on /Anticipated receipt on 12-2-2024
County Public Works	No review needed
County Utilities	No review needed
SHPO	Sent on 2-18-2023/Received 3-16-2023
NMDOT	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)

CEC Exhibit-29

MEMORANDUM

(CONFIDENTIAL AND PRIVILEGED ATTORNEY-CLIENT COMMUNICATION)

Date: **January 31, 2025**

To: **Santa Fe County Planning Commission; Alexandra Ladd, Growth Management Director; Jordan Yutzy, Land Use Administrator; Dominic Sisneros, Building & Development Supervisor**

From: **Roger L. Prucino, Assistant County Attorney II**

Via: **Walker Boyd, County Attorney**

Subject: **Planning Commission Meeting, February 3, 2025; Rancho Viejo Limited Partnership, et al.; Case No. 24-5200**

SUMMARY:
It is the opinion of the Santa Fe County Attorney's Office that the proposed AES Rancho Viejo solar energy project is properly treated as a "commercial solar energy production facility" and not as a "gas or electric power generation facility," as those phrases are used in the Sustainable Land Development Code (Ordinance No. 2016-09; hereafter "SLDC") Use Matrix (Appendix B), and as defined in Appendix A of the SLDC.

BACKGROUND:
Rancho Viejo Limited Partnership, Rancho Veijo Solar, LLC, and AES Clean Energy Development, LLC (jointly, the "Applicants") have applied for a conditional use permit ("CUP") to construct and operate a 684-acre solar energy production facility, including a battery energy storage system ("BESS") on an 828-acre parcel of vacant land. The parcel lies to the east of NM Highway 14, to the west of the Eldorado community, and is approximately two miles south of the Rancho Viejo community. The parcel is within the Rural Fringe zoning district (RUR-F).

Applicants made their submittal as a CUP application because the use described as "commercial solar energy production facility" is identified as a conditional use in the Rural Fringe zoning district. The term "commercial solar energy production facility" is defined in the SLDC as "a renewable energy production facility that uses sunlight to generate, and may store, energy for sale or profit." SLDC,

Appendix A. County staff determined that the application was properly submitted for approval as a condition use.

The San Marcos Association ("SMA" or the "Association") has standing in this proceeding. SMA opposes the application. SMA has taken the position that the proposed project is a "gas or electric power generation facility" for the purpose of applying the SLDC Use Matrix, and that the project is therefore prohibited within the RUR-F zoning district. As explained below, we believe the Association's analysis is flawed, and that the project for which Applicants seek approval is most accurately described as a commercial solar energy production facility. For that reason, we believe staff is properly bringing this case to the Planning Commission as a CUP application.

ANALYSIS:

Within the SLDC Use Matrix, under the heading of "Utilities," there are two separate uses, one titled "gas or electric power generation facility" and the other "commercial solar energy production facility." We can conclude, therefore, that when adopting the SLDC, the County Board of County Commissioners ("BCC") affirmatively elected to treat solar facilities differently than other types of energy production facilities. There is no record to explain why the BCC made that decision. They might have felt that solar facilities are not as visually disruptive; or that solar facilities don't present the same risks/hazards as similar facilities utilizing fossil fuels; or maybe they just wanted to promote the adoption and use of solar energy production facilities as a matter of public policy, as identified in Chapter 7 of the Sustainable Growth Management Plan ("SGMP").

Ultimately, the BCC's reasoning is not germane. They made the affirmative choice to distinguish between solar and other energy production facilities; they incorporated that distinction into the SLDC through App. B; and that distinction is binding on all parties tasked with interpreting and enforcing the SLDC.

It may well be that the solar facility at issue is both a gas or electric power generation facility and a commercial solar energy production facility. The latter category appears to be a subset of the former[1]. This is not a unique circumstance that should cause any concern. It is relatively common that a general rule is in place, but with exceptions or modifications for specific situations or circumstances. In those instances, the longstanding and universally-followed legal doctrine is that the more precise and more specific guideline controls. In fact, New Mexico's appellate courts have addressed this very issue.

In *State ex rel. Dept. of Human Services v. Manfre*, 1984-NMCA-135, our Court of Appeals stated: "It is the rule in New Mexico that specific statutes control over general statutes." Id. at ¶10. Similarly, in *Lopez v. Barreras*, 1966-NMSC-209, our Supreme Court stated: "A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject matter supersedes a general statute which does not refer to that subject although broad enough to cover it." Id. at ¶12.

So in this case, which involves a proposed solar energy production facility, staff properly applied the more specific standard in the Use Matrix for commercial solar energy production facilities, rather than

[1] See the Association's Exhibit 4 in its submittal package. Within the Land-Based Classification Standards of the American Planning Association (a system recognized by the SLDC, Gas or electric power generation facilities are assigned the code number 6400. A subcode – number 6460 – is assigned to solar and other forms of energy facility.

the more broad standard for gas or electric power generation facilities. It just makes sense, and it is the legally proper approach.

In an effort to avoid what we think is the obvious and correct conclusion, SMA argues that, because of its size, the proposed facility is not a "commercial solar energy production facility." The Association states that "[u]tility-scale facilities are prohibited in the Rural Fringe zoning district." That is a quote from its March 20, 2023 letter to the SLDC Hearing Officer (SMA Exhibit 8, Attachment 1). In fact, the SLDC does not address, or even mention, utility-scale facilities, and it certainly does not distinguish between utility-scale solar facilities and other commercial solar facilities. The SLDC definition of "commercial solar energy production facility" is quite broad: "a renewable energy production facility that uses sunlight to generate, and may store, energy for sale or profit." That definition makes no mention of the size of such facilities. If you are a renewable energy production facility; and if you utilize sunlight to generate energy; and you intend to sell or profit from the energy you are producing, you are a commercial solar energy production facility. And that definition very accurately applies the Applicant's proposed project. As stated above, a common-sense reading of the clear and unambiguous language of the SLDC leads to the unavoidable conclusion that the proposed project is, in fact, a commercial solar energy production facility

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Staff's position that Applicant's project is properly considered as a conditional use permit was supported by County Manager Shaffer's correspondence to Dennis Kurtz, President of the SMA, dated July 24, 2023 and Sept. 12, 2023. SMA Exhibit 8, Attachments 3 and 5.

The Association makes one more effort to avoid the conclusion that the proposed facility is a CSEPF by relying on notes incorporated into a worksheet used by staff in informal discussions with members of the San Marcos community back in 2019 and 2020. See page 7 of SMA's slide presentation. The Association's argument is that the County intended commercial solar energy production facilities to be "neighborhood-scale" facilities, even though the phrase "neighborhood-scale" – like the phrase utility-scale -- is not defined in the SLDC and appears exactly once throughout the entire Code (in reference to neighborhood-scale retail business; SLDC §8.9). Further, the phrase "Neighborhood-Scale renewable energy production facilities" appears in the "Notes" column of each and every use category on the page included in the slide presentation, including the use titled "Large scale wind facility." It is clear that the phrase "neighborhood-scale," in addition to being undefined and therefore meaningless within the SLDC, was not intended to be applied solely or specifically to commercial solar projects. SMA's reliance on a 5 or 6-year old informal worksheet (which has no binding effect whatsoever) in an effort to alter the clear and unambiguous language of the SLDC falls far short of a compelling argument, and staff believes this argument warrants no further consideration by the commission.

CONCLUSION:

The San Marcos Association has presented no legitimate basis for concluding that the proposed project – which is a solar energy production facility to be commercially operated – should not be treated as a commercial solar energy production facility for the purpose of applying the SLDC Use Matrix. It is our opinion that staff's determination in this regard is accurate, and that the Planning Commission can and should proceed with its consideration of the CUP application as presented by staff.