BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

CASE NO. 24-5200
RANCHO VIEJO SOLAR, LLC CONDITIONAL USE PERMIT (CUP)
RANCHO VIEJO LIMITED PARTNERSHIP, RANCHO VIEJO SOLAR, LLC, AES CLEAN ENERGY DEVELOPMENT, LLC, APPLICANTS

LEGAL AUTHORITY AND TESTIMONY ON DENIAL OF DUE PROCESS

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The following testimony is filed in support of the Appeal filed by Ashley C. Schannauer, a party with standing in the proceedings below, of the Santa Fe County Planning Commission's March 20, 2025 Order approving the Conditional Use Permit (CUP) Application for the Rancho Viejo Solar Project.

I. DUE PROCESS REQUIREMENTS IN ADMINISTRATIVE PROCEEDINGS

The hearings for the Rancho Viejo Solar Project Conditional Use Permit held to date before the Hearing Officer and, more so, before the Planning Commission have been conducted in a manner that is not consistent with the Due Process requirements of the U.S. and New Mexico Constitutions.

The New Mexico Supreme Court has determined that parties in administrative proceedings before administrative agencies and local governments have the right to procedural due process:

> {7} At a minimum, a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case. In addition, our system of justice requires that the appearance of complete fairness be present. The inquiry is not whether the Board members are actually biased or prejudiced, but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him.
>
> {8} These principles apply to administrative proceedings as well as to trials. When government agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. The rigidity of the requirement that the trier be impartial and unconcerned in the result applies more strictly to an administrative adjudication where many of the customary safeguards affiliated with court proceedings have, in the interest of expedition and a supposed administrative efficiency, been relaxed.

Reid v. N.M. Bd. of Exam'rs, 1979-NMSC-005, paras. 7-8, 92 N.M. 414, 589 P.2d 198 (citations omitted).

> {34} Therefore, in addition to the right to individual notice, interested parties in a quasi-judicial zoning matter "are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is impartial in the matter -- i.e., having had no pre-hearing or ex parte contacts concerning the question at issue -- and to a record made and adequate findings executed."

Albuquerque Commons Partnership v. City Council of Albuquerque, 2008-NMSC-025, ¶ 34, 144 N.M. 99, 184 P.3d 411 (citation omitted).

> Quasi-judicial zoning matters are not politics-as-usual as far as the municipal governing body is concerned. In such proceedings, the council does not sit as a mini-legislature, as it functions in most matters, but instead must act like a judicial body bound by "ethical standards comparable to those that govern a court in performing the same function."

Id., para. 33., quoting *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1994-NMCA-139, para. 40, 119 JM. 29, 888 P.2d 475 (citation omitted).

II. DUE PROCESS VIOLATIONS -- COMMINGLED ROLES OF COUNTY STAFF AS ADVOCATES AND ADVISORS/DECISION-MAKERS

A. Court decisions: Commingled roles violate due process

County Staff has acted as an advocate, advisor and decision-maker in regard to AES's application for a Conditional Use Permit (CUP). Those roles go beyond and conflict with its duties under Santa Fe County's Sustainable Land Development Code (SLDC), and they have violated the opponents' due process rights.

In *Kerr McGee Nuclear Corp. v. New Mexico Environmental Improvement Board*, 1981-NMCA-044, 97 N.M. 88, 637 P.2d 38, the New Mexico Court of Appeals found that the structure of New Mexico's environmental regulatory agency, in which the agency's staff both advocated for a proposed rule in an Environmental Improvement Board hearing and provided legal advice to the Board deprived opponents of a fair and impartial hearing.

The Environmental Improvement Board (Board or EIB) is an independent state agency whose authority includes the approval of regulations under the New Mexico Radiation Protection Act. As of 1981, applicable statutes provided that the Board would receive staff support from the Environmental Improvement Division (EID) of the New Mexico Health and Environment Department. In *Kerr McGee,* the Division prepared proposed radiation regulations, and its staff and attorney made presentations before the Board supporting the proposed regulations. A group of companies subject to the proposed regulations appealed the Board's approval of the regulations to the Court of Appeals. The Court held that Staff's role in the Board's proceeding gave it an elevated status over the companies and denied the companies "a fair and impartial hearing":

> {5} EIB is an independent state agency, free of any interposition of EID and EIA.[1] Opposing parties are EID and the Companies. Nevertheless, § 9-7-13, N.M.S.A. 1978 provides that:

[1] Although confusing, at the time of the *Kerr-McGee* decision, the Environmental Improvement Act defined the Environmental Improvement Agency (EIA) as the Environmental Improvement Division (EID) of the Health and Environment Department. So, the EIA and the EID were the same entity. "§ 74-1-3. Definitions. As used in the Environmental Improvement Act . . . "A. 'agency' or 'environmental improvement agency' means the environmental improvement division of the health and environment department."

> The environmental improvement board shall receive staff support from the environmental improvement division of the health and environment department . . . .

{6} "Staff support" should not include lawyers from EID. If it does, EIB and the Companies are opposing parties. During the hearing, EIB sought guidance from the lawyers of EID. If EIB favors the lawyers of EID, EIB, EID and EIA constitute a structural administrative agency that can make, adopt, publish and enforce regulations as arbitrarily and capriciously as it desires. This procedure appears to have been undertaken with reference to Section 3-300(L). In *Addis v. Santa Fe County v. Valuation Protests Bd*., 91 N.M. 165, 169, 571 P.2d 822 (Ct. App. 1977), this court said:

> If the VPB [Valuation Protests Board] is to function as an independent quasi-judicial body, at a minimum it must obtain its legal guidance from someone other than the staff attorneys of the PTD [Property Tax Department]. [Citation omitted.] [Emphasis by court.]

{7} Whenever parliamentary rules are involved in a public hearing EIB should not seek the advice of, nor seek to be represented by attorneys of EID. When this occurred, EIB became an opposing party instead of an independent quasi-judicial body.[2]

Based on these facts, the Court of Appeals held that "the Companies did not receive a fair and impartial hearing":

> {48} . . . [A]t the public hearing EID and the Companies were the primary "interested persons." The Director of EID, whose staff prepared the regulations, set himself up as an "interested person," one who could not in any way be affected by the regulations. EID presented to EIB, in support of the regulations it drafted for EIB, all of the data, views and arguments allowed "interested persons," including the examination of witnesses. From the opening of the public hearing to its close, EIB looked to EID for legal guidance, in effect, giving the appearance of a client-attorney relationship with the Companies as adversaries.
>
> . . .
>
> {51} EID and the Companies should stand equally before EIB at a public hearing in one way: that neither of them shall perform any services for EIB, either voluntarily or by request.
>
> {52} Administrative bodies and officers cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character, or which requires the exercise of judgment.

[2] *Kerr McGee*, 1981-NMCA-044, paras. 5-7. 97 N.M. at 91, 637 P.2d at 41.

> {53} The proper adoption of radiation regulations falls within this category. EIB had a duty to have the regulations prepared by a staff of its own. It had no right to delegate this authority to one who was an "interested person" at a public hearing.
>
> {54} The promulgation of regulations 3-300(L) and 3-300(J) is declared to be void.[3]

Subsequent to the *Kerr-McGee* decision in 1981, the Department of Health and Environment was eventually split into separate departments -- a Health Department and an Environment Department. And the authority of the Environment Department with respect to the Environmental Improvement Board was narrowed in light of the decision in *Kerr-McGee*. The authorizing statute for the Environment Department now makes clear that the Department stands on equal footing with other parties in Environmental Improvement Board proceedings:

> **74-1-6. Department; powers.**
> The department shall have power to:
> . . .
> H. on the same basis as any other person, recommend and propose regulations for promulgation by the board;
>
> I. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the board or any other administrative agency with responsibility in the areas of environmental management or consumer protection, but shall not be given any special status over any other party;

NMSA 1978, 74-1-6 (H), (I) (emphasis added).

The *Kerr-McGee* decision cited the Court of Appeals' decision in *Addis v. Santa Fe County v. Valuation Protests Bd*., which held that Santa Fe County's Valuation Protests Board (VPB) had not acted as an independent quasi-judicial body. One of the members of the Board was appointed by the State's Property Tax Department (PTD). The Property Tax Department was responsible to pay the expenses of the other two Board members and all the expenses incurred in protest hearings. The statute inferred that a protest hearing is not to be held unless the Department's appointee is available. The Property Tax Department was "in a position to control the position taken by the assessor in connection with the protest" and a staff attorney from the Property Tax Department appeared as the attorney for the Board at the protest hearing and represented the Board during the appeal hearing before the Court of Appeals.

> In addition to being in a position to control the position taken by the assessor in connection with the protest, the record shows the PTD is involved with the so-called "independent" board that is to decide the protest. How can the VPB be acting independently when one member of the board and legal advice to the board comes from the PTD?

[3] *Kerr McGee,* 1981-NMCA-044, paras. 48-54. 97 N.M. at 96-97, 637 P.2d at 46-47 (citations omitted).

> . . .
>
> Our conclusions are:
> . . .
> C. If the VPB is to function as an independent quasi-judicial body, at a minimum it must obtain its legal guidance from someone other than the staff attorneys of the PTD.

Addis v. Santa Fe County Valuation Protests Board, 91 N.M. 165, 169, 571 P.2d 822 (Ct. App. 1977).

Similarly, the Nebraska Supreme Court recently held that the prosecution before a Natural Resources District (NRD) Board of landowners for the alleged violation of an NRD rule by the same attorneys who then participated in the Board's decision violated the landowners' rights to due process:

> Because the NRD's attorneys were acting as prosecutors, attempting to prove at the hearing that the landowners had committed the alleged violations, there was too high a probability of actual bias for it to be constitutionally tolerable to permit those same attorneys to be included in the decision-making process of the Board to determine if those violations had been proved. Under such circumstances, the NRD no longer enjoyed the presumption of honesty and integrity. The partisan nature of an advocacy role at the hearing is incompatible with the neutrality constitutionally required of an adjudicator.
>
> . . .
>
> When the facts and circumstances of administrative proceedings show an improper combination of functions such that there exists a risk of bias on the part of the decisionmaker that is too high to be constitutionally tolerable, this amounts to "structural error" requiring reversal. The Supreme Court has held that the right to an impartial adjudicator is "'so basic to a fair trial that [its] infraction can never be treated as harmless error.'" Therefore, the district court properly reversed the Board's decision after finding the NRD and its attorneys violated the landowners' due process right to a neutral decisionmaker.

Uhrich & Brown Limited Partnership v. Middle Republican Natural Resources District, 315 Neb. 596, paras. 32-34, 998 N.W.2d 41, 56-57 (2023) (footnotes and citations omitted).

The Nebraska Court described the bias inherent in the psychological tendency of an advocate and its incompatibility with the provision of objective advice when the advocate is later called to also perform that role:

> The "realistic appraisal of psychological tendencies and human weakness" is different when the "same person on the same case" participates in adjudicatory

> functions after acting in a prosecutorial role. It has been said that exercising both prosecutorial and adjudicatory functions is "'inherently suspect.'" It is the general rule that a combination of prosecutorial and adjudicative functions in the same person is incompatible with due process, such as where the person prosecuting a case on behalf of a public body is also a member of the decision-making body or advisor to it on the same matter."
>
> Accordingly, administrative agency counsel who performs as an advocate in a given case is generally precluded from advising a decision-making body in the same case.
>
> An administrative prosecutor or advocate, "[b]y definition," is "partisan for a particular client or point of view." Generally, the role of prosecutor "is inconsistent with true objectivity, a constitutionally necessary characteristic of an adjudicator." The prosecutor or advocate in an administrative proceeding generally will have a "'will to win'- 'a psychological commitment to achieving a particular result because of involvement on the agency's team.'" And it may be "'difficult for anyone who has worked long and hard to prove a proposition . . . to make the kind of dramatic change in psychological perspective necessary to assess that proposition objectively . . . .'"
>
> Thus, we opined in *In re 2007 Appropriations of Niobrara River Waters* that "[w]hen advocacy and decision-making roles are combined, true objectivity, a constitutionally necessary characteristic of an adjudicator, is compromised."

Uhrich & Brown Limited Partnership v. Middle Republican Natural Resources District, 315 Neb. 596, paras. 22-25, 998 N.W.2d 41, 53-55 (2023) (footnotes and citations omitted).

Courts in Iowa, California and Pennsylvania have made similar decisions. See, e.g., *Botsko v. Davenport Civil Rights Comm'n*, 774 N.W.2d 841, 849 (Iowa S.Ct. 2009); *Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal.App.4th 81, 133 Cal.Rptr.2d 234 (2003); *Quintero v. City of Santa Ana*, 114 Cal.App.4th 810, 7 Cal.Rptr.3d 896 (2003); *Horn v. Township of Hilltown*, 461 Pa. 745, 337 A.2d 858 (1975).

Section 4.7.2.1 of the SLDC prescribes the role of County Staff in quasi-judicial proceedings on CUP applications. It requires Staff to present the following: a description of the proposed development; the relevant sections of the Sustainable Growth Management Plan, area, district or community plans, the SLDC, and state and federal law that apply to the application; and a description of the legal or factual issues to be determined. It also provides Staff with the "opportunity to present a recommendation and respond to questions from the Board, Planning Commission or Hearing Officer concerning any statements or evidence."[4] Section 4.7.2.1 does

[4] Section 4.7.2.1 provides as follows;

> 4.7.2.1 Conduct of Hearing. . . .
> 1. The Administrator, or other County staff member designated by the Administrator, shall present a description of the proposed development, the relevant sections of the SGMP,

(continued on next page)

not require Staff to present such a recommendation; but clearly after the Staff chose to make a recommendation here for the CUP application, they became advocates for the application.

Section C below describes County Staff's role as an advocate under the circumstances of the present case. Staff exercised the opportunity provided to it under Section 4.7.2.1 to become an advocate for AES's proposal and a party adverse to the interests of the opponents. Staff presented evidence favorable to AES, provided preferential enforcement of regulatory requirements, and omitted discussion of issues and evidence adverse to AES's positions.

Section D below describes County Staff's role in the decisions of the Planning Commission and Hearing Officer. In addition to its public role under the SLDC, County Staff engaged privately in the decision-making process of the Planning Commission and Hearing Officer and, at times, even issued decisions on its own. Staff's actions were beyond its authority under the SLDC.

The commingling of Staff's functions described in Sections C and D violated the opponents' rights to procedural due process.

B. Persistent question in this case: "What is Staff's role?"

Staff's actions during its review of AES's January 26, 2023 application (since withdrawn) and the current application of August 30, 2024 raised questions among opponents about the nature of Staff's role in the review of the Rancho Viejo Solar CUP application. From the beginning, Staff appeared to support the application, and questions were raised about the fairness with which it would consider the concerns of nearby residents who oppose the project. As the evidentiary hearings approached, questions were raised about its role in the hearings -- whether Staff was a party advocate, whether Staff was an assistant and/or advisor to the Hearing Officer and Planning Commission, or whether the Staff itself was taking on the role reserved for decision-makers such as the Hearing Officer and the Planning Commission.

At the prehearing conference on November 24, 2024 prior to the December 4 hearing, the Hearing Officer described Staff's role as a party presenting evidence on behalf of the public, not as an adversary party nor as advisory staff:

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

Following AES's January 2023 application for a CUP, the Board of County Commissioners also directed County Staff to create a webpage with information regarding conditional use permit applications for commercial renewable energy projects. Resolution 2023-093 (September 26, 2023).

> MR. SCHANNAUER: The role of County staff in this proceeding. I'm not clear about what that is. Are they considered parties? Is there [sic] recommendation considered evidence?
>
> HEARING OFFICER HEBERT: Their recommendation is considered evidence and I believe that they're working on behalf of the public. They are employees of the County. They're working on behalf of the public, and they happen to have expertise in land use development, and in that sense, they are a party that's going to be presenting their report, and that they also can make and have, during the course of the several years this has been pending, have been seeking information from the applicant. So it's not the traditional sense of an adversary party. It's a party on behalf of the public, I think is how we look at that and it differs – you're familiar with, of course, the Public Regulation Commission and its staff and they play a much more adversarial role. And that isn't the role that the Land Use Division staff plays in these proceedings. They're making sure that the application meets the requirement to come before and hear, or whether it's just so deficient that there's no point in wasting anyone's time.
> . . .
>
> HEARING OFFICER HEBERT: They don't work in an advisory capacity to me. I am here to hear the matter and to try to keep it on course, and then in my recommended order, which of course is not the final say of the County by any means, but in that I can either agree or disagree with how staff has interpreted whether this has met the CUP provisions or not.

Special SLDC Hearing Officer Meeting, Tr. 9 (11/14/2024).

The Director of the Growth Management Department, Alexandra Ladd, described Staff's role at the opening of the February 3 Planning Commission hearing:

> So I just really, really quickly wanted to go through the process because I think there's been a little confusion about who is making decisions here and what kind of work we're all doing. County staff's main role is to determine whether an application is complete and then whether it's compliant with the Sustainable Land Development Code requirements. The Hearing Officer will review the staff report and determine other facts that might apply to the case, will conduct a quasi-judicial proceeding, preside over a public hearing, and make a recommendation of approval or denial to the Planning Commission.

Planning Commission Hearing, Tr. 2-3 (2/3/2025).

County Staff's actions, before and during the hearing process, however, revealed the County Staff to be an advocating party in this case, presenting evidence favorable to AES and omitting discussion of issues and evidence adverse to AES's positions. These actions are outlined in the section below.

C. Staff's participation as an advocate

1. Staff's recommended approvals

Staff submitted Memoranda first to the Hearing Officer on December 4, 2024 and to the Planning Commission on January 29, 2025 recommending approval of the Rancho Viejo Solar Project CUP. The December 4 recommendation included 14 conditions. The January 29 recommendation included 19 conditions.

Staff also presented testimony in favor of the CUP application at the Hearing Officer's hearing on December 4, 2024 and at the Planning Commission on February 3, 2025, making the same recommendations. Staff presented the testimony of six witnesses at the December 4 hearing and seven witnesses at the February 3 hearing.

Staff stated their determination that the CUP application satisfied the criteria to approve a CUP, which include the criteria in Section 4.9.6.5 of the SLDC:

> "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."

Staff Memorandum, January 29, 2025, p. 21.

> "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-R) zoning district, subject to the following conditions."

Staff Memorandum, December 4, 2024, p. 21.

Staff's participation in the case, however, went beyond the recommendation it was authorized to make pursuant to Section 4.7.2.1. The following are examples that highlight the role Staff played as an advocate for the Rancho Viejo Solar CUP application.

2. Staff's report to the Planning Commission omitted discussion of issues critical of the CUP application raised by parties with standing and by the Hearing Officer

As noted above, one of Staff's primary responsibilities under Section 4.2.1.7 is to describe for the Hearing Officer and the Planning Commission the legal and factual issues to be determined. Staff's January 29, 2025 Memorandum to the Planning Commission reported on the materials submitted in the AES application and provided brief comments on them. But Staff failed to identify or discuss the issues presented by the parties with standing at the December 4, 2024 Hearing Examiner hearing and the findings in the Hearing Officer's December 23, 2024 Recommended Order.

Indeed, Staff's Memorandum does not even mention the fact that parties with standing participated in the December 4 hearing. Staff only mentions the public comment portion of the

hearing, stating that "6 individuals spoke in support for the case and 30 individuals spoke against the case." It then lists, without discussion, seven objections and concerns the public commenters raised.[5]

There is no mention of the presentations and related exhibits of the parties with standing – the San Marcos Association and the Clean Energy Coalition. Although I was not allowed to participate as a party with standing in that hearing (due to the *ex parte* inference of Staff discussed below), the Hearing Officer also granted me the opportunity for a 15-minute presentation and the admission of related exhibits. Staff's Memorandum also did not mention my testimony and exhibits.

Most important, Staff's Memorandum barely mentions even the Hearing Officer's Recommended Order. Staff's Memorandum merely states that the Hearing Officer "memorialized findings of fact and conclusions of law in a Recommended Order" and that the Hearing Officer's recommendation was "for denial of the Conditional Use Permit request."[6] Staff avoids discussion of any of the detailed findings of fact and conclusions of law that formed the basis for her recommendation.

Staff's failures violated the requirements placed on them by the SLDC and resulted in the omission of information adverse to the applicants' and County Staff's positions.

3. Avoidance of mention or consideration of AES accidents

County Staff joined AES in carefully avoiding any mention of AES facilities' history of fires and explosion. AES's environmental impact report (EIR) and the Draft Preliminary Hazard Mitigation Analysis (HMA) report submitted with the AES Application also avoided mention of fires and explosion at AES facilities:

-- April 19, 2019 explosion and fire in Surprise, Arizona
-- April 18-May 1, 2022 fire in Chandler, Arizona
-- September 25, 2024 fire in Escondido, California

These AES facilities were much smaller than the 48-MW battery facilities proposed here: 2 MW in Surprise, 10 MW in Chandler and 30 MW in Escondido.

An AES subsidiary, Fluence Energy, was also the original engineering contractor for the 300 MW battery energy storage facility (BESS) that experienced the large-scale fire in Moss Landing, California over several days in January 2025 shortly before the Planning Commission hearings in February. The Moss Landing fire subsequently re-ignited on February 18. Staff and AES avoided discussing this fire at the Planning Commission hearings.

What were the causes of the accidents? Were they caused by design defects? By manufacturing or installation defects? By operational errors? What were the impacts to

[5] Staff Memorandum to Planning Commission, January 29, 2025, p. 21 (Exhibit 1).
[6] Id.

firefighters and adjacent landowners? What mitigation measures were used at the facilities? And how effective were they?

Staff did not attempt to answer these questions. Staff's formal recommendations to the Planning Commission and Hearing Officer did not mention AES's accidents. And County Staff refused to research them.

In a September 17, 2023 email, County resident Selma Eikelenboom-Schieveld asked Santa Fe County Fire Marshal Jaome Blay whether he had a copy of any investigative reports regarding AES's April 2022 fire – similar to the report that was published for the April 2019 explosion and fire. The next day Mr. Blay responded, saying he is not aware of any such report. He also declined her request to obtain a copy, citing "an effort to remain neutral":

> In an effort for our fire department to remain neutral, I am declining your request to contact them on your behalf.
>
> Please rest assure [*sic*] that our fire department is continually researching the application of fire safety codes and standards for the installation of these type of facilities.

Ms. Eikelenboom-Schieveld responded:

> I would think safety is not a prerogative of one of the parties involved. Safety involves us all.
>
> I wonder how you can research the application of codes and standards if you do not include what caused them to fail in the past.
>
> Knowledge that might be find [*sic*] in incidents reports like the one in the Chandler fire which you are not aware of.
>
> Can you blame me for being able to rest assured?[7]

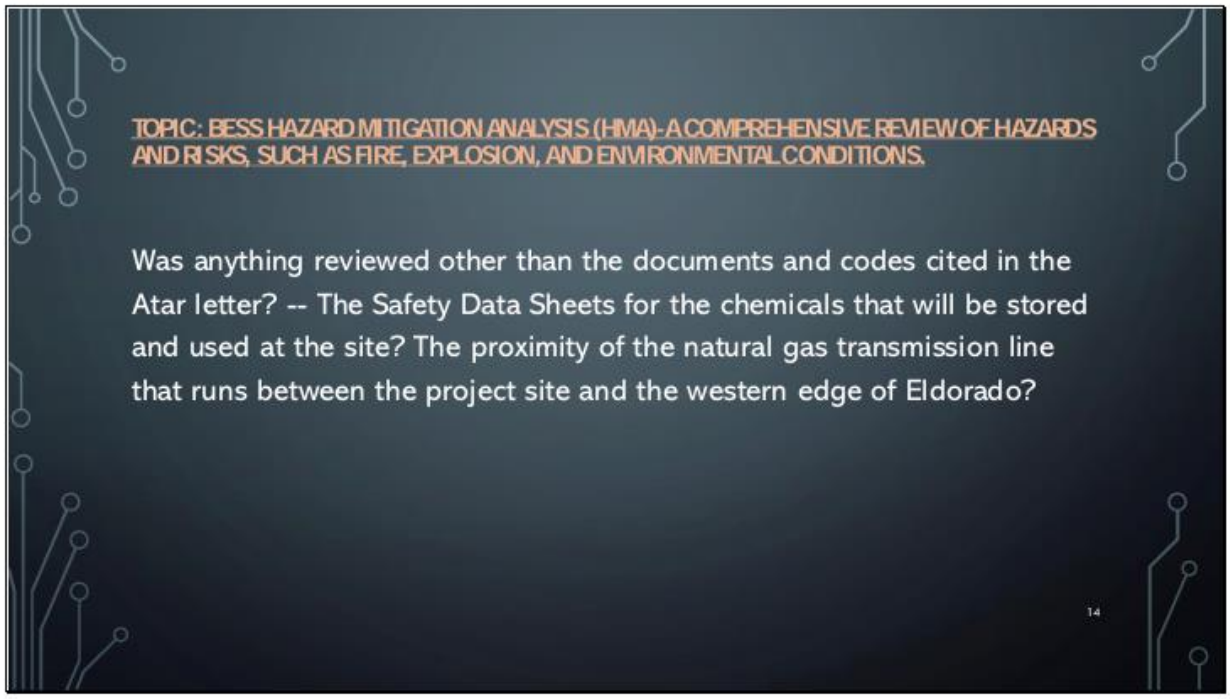
The County Staff even went so far as to edit a question I submitted for the November 6 virtual meeting conducted by the County on AES's Hazard Mitigation Analysis to avoid discussing AES's history of thermal runaway incidents. I asked whether Fire Marshal Blay and the County's battery consultant reviewed and considered AES's history of accidents (and two additional issues). This is the question I submitted:

> **Scope of the review by Atar and the Fire Marshal:**
> -- Was anything reviewed other than the documents and codes cited in the Atar letter?
> -- Did Fire Marshal Blay or Atar review and consider any of the following?
> - **<u>AES's history of prior BESS accidents</u>**?

[7] Email string September 17-18, 2023 between Selma Eikelenboom and Fire Marshal Jaome Blay (Exhibit 2) (emphasis added).

> - The Safety Data Sheets for the chemicals that will be stored and used at the site? If so, please identify the chemicals for which the Safety Data Sheets reviewed and considered and provide copies.
> - The proximity of the natural gas transmission line that runs between the project site and the western edge of Eldorado? (Emphasis added)

The PowerPoint slide presented by Fire Marshal Blay removed the part of the question about "AES's history of prior BESS accidents":



Fire Marshal Blay's answer, of course, did not address the issue of AES's history of accidents. He addressed only the other issues and said that even those were not considered in his and Atar's reviews:

> All items reviewed by Atar Fire are outlined in the review letter. The documents were then compared against the applicable codes and standards. NFPA 855 does not require review of SDS.

Virtual public meeting, Public Q&A re. Hazard Mitigation Assessment and Emergency Response Plan, November 6, 2024 Slide 14.

4. Preferential treatment of the AES application: Non-enforcement against AES of Ordinance 2023-09 and Annex G of the 2023 edition of NFPA 855

On December 13, 2023, after I notified the County Commissioners that they had recently adopted (in August 2023) the outdated 2020 edition of NFPA 855,[8] the Commissioners adopted

[8] See November 1, 2024 letter from Schannauer to the Board of County Commissioners.

the 2023 edition of NFPA 855 in Ordinance No. 2023-09. The 2023 edition, including Annex G, was issued for the specific purpose of addressing the number of fires related to battery energy storage systems that have occurred since the issuance of the 2020 edition.

The National Fire Protection Association's 2023 edition of NFPA 855 did not make Annex G mandatory, but Annex G does state that its purpose "is to help stakeholders, designers, and authorities having jurisdiction (AHJs) understand and implement minimum safety requirements through a permitting and inspection process to ensure efficiency, transparency, and safety in their local communities."[9]

> G.1.1 Scope. This annex presents information for designers, users, and enforcers planning, approving or encountering installations of LIB-based ESS. This annex focuses on hazard identification and assessment, firefighting, fire protection, and fire and gas detection. It represents information on LIB properties and characteristics, guidance on implementing minimum safety requirements, maintenance and operation of fire protection systems, and other information that can be used to promote safety of LIB installations.[10]

County Staff equivocated on whether to enforce Annex G and eventually applied it to a competing CUP application for a competing BESS project but not to the AES project.

One of the mandatory sections (Section 4.4) of even the 2020 edition of NFPA 855 requires project developers to prepare a Hazard Mitigation Analysis, but it does not describe how to perform such an analysis. Annex G in the 2023 edition recommends a process. Annex G provides that developers should identify stakeholders with an interest in the scope and applicability of the fire protection design early in the process. The purpose is to establish goals and objectives and evaluate whether the requirements of NFPA 855 are adequate to meet those goals and objectives. Annex G states that the criteria for acceptability of the level of fire and explosion protection should consider the perspective of the various stakeholders.[11]

Annex G states that each facility has its own special conditions that impact the nature of the installation, and it describes the project-specific issues that each Hazard Mitigation Analysis should address:

> G.3.3.2 Project-Specific Inputs. . The project-specific inputs utilized in the HMA process include, but are not limited to, the following:
>
> (1) Energy capacity and power
>
> (2) Personnel/life presence levels as follows:
>
> (a) Unattended/remote
>
> (b) Manned but unoccupied
>
> (c) Unoccupied but in populated area
>
> (d) Occupied space
>
> (e) Ambulatory space

[9] NFPA 855 (2023), Annex G, Section G.1.2.1.
[10] NFPA 855 (2023), Annex G, G.1.1. (Emphasis added.)
[11] NFPA 855 (2023), Annex G, Sections G.3.2.2, 3.4.1.

(3) Energy types and volatility
(4) Plant layout and geographic (i.e., remote) location
(5) Equipment availability/redundancy
(6) Availability of water supply
(7) Capability of emergency responders
(8) Storage configuration (e.g., short term and long term)
(9) Historical loss information/lessons learned/fire reports
(10) Additional environmental considerations[12]

On April 28, 2024, I sent a letter to County Fire Marshal Jaome Blay and then-County Growth Management Director Penny Ellis-Green describing the importance and relevance of Annex G in the County's review of Conditional Use Permit applications for Commercial Solar Production Facilities such as the Rancho Viejo Solar Project.[13]

On April 29, Fire Marshal Blay responded, confirming that the County would apply and enforce Annex G in its totality in the County's review of an applicant's HMA and that the review would be done **before** a CUP is granted:

> The fire department shall enforce, amongst other enforceable codes and standards, the 2023 edition of NFPA 855, and shall, in collaboration with a BESS expert consultant, review and reference Annex G in its totality to ensure the CUP application meets the minimum requirements for mitigating the hazards associated with ESS and the storage of lithium metal or lithium-ion batteries.
> . . .
> The fire department is awaiting the hiring of a BESS expert consultant to review the HMA that will be submitted by the applicant **before** a CUP is granted.[14]

The letter closes with the following confirmation:

> **Annex G shall be considered in its entirety for all BESS installations within Santa Fe County**.[15]

In response to a subsequent June 2 letter from me to Fire Marshal Blay, County Growth Management Director Ellis-Green, AES's Joshua Mayer and the County's third-party battery consultant, Nick Bartlett, AES agreed on June 7 to start the stakeholder process under Annex G for the development of AES's Hazard Mitigation Analysis.

Fire Marshal Blay and Jordan Yutzy took initial steps to implement a stakeholder process, but their proposals were not approved by higher levels of County management. IPRA

[12] NFPA 855 (2023), Annex G, Section G3.3.2.
[13] April 28, 2024 letter, Schannauer to Fire Marshal Blay and Growth Management Department Director, Penny Ellis-Green.
[14] April 29, 2024 letter, Blay to Schannauer, p. 1 (emphasis in original).
[15] Id., at p. 3.

responses appear to indicate that their proposals were rejected at an August 7, 2024 meeting with the County Manager.[16]

Fire Marshal Blay later said at a virtual public meeting that Annex G "provides best practices for Fire Departments nationwide" and that "these best practices provided by the NFPA are not mandatory, these are useful guidelines to follow."[17]

Nevertheless, Fire Marshal Blay is requiring compliance with certain other selected sections of Annex G. Fire Marshal Blay is requiring AES to comply with Atar Fire's October 9, 2024 recommendations regarding Sections G.1.4.2.1.1 and G.1.4.2.1.2 on Hazard Communication, Section G.7.6.2 on Electrical Disconnects and Section G.10.2.1 on Testing, Inspection and Maintenance. He is not requiring that AES comply with Section G.3 related to Hazard Mitigation Analyses.

However, in contrast with the Staff's treatment of the AES project regarding Annex G, Staff has explicitly included Annex G and the other updated requirements from the 2023 edition of NFPA 855 in the August 19, 2024 TAC letter issued to Linea Energy for a BESS project Linea is proposing in southern Santa Fe County. The Linea project was discussed at a TAC meeting held on August 1, 2024.[18]

Even if Annex G was not adopted as a mandatory requirement in Ordinance 2023-09, if it represents a "best practice for Fire Departments nationwide," why would the County require Linea Energy to follow the "best practice" but not require AES to do so? County Staff's requirement that Linea Energy comply -- but not AES -- is discriminatory, arbitrary and capricious, and is further evidence of the Staff's advocacy and bias in favor of the AES project.

5. Preferential treatment of the AES application: Fiscal Impact Assessments under Section 6.7.1 of the SLDC

The County Staff's August 19 TAC letter for the Linea Energy BESS project requires Linea Energy to perform a Fiscal Impact Assessment (FIA), but the County Staff has not required a FIA for the Rancho Viejo Solar Project. Section 6.7.1 of the SLDC describes a FIA as a study of the fiscal implications of development in the County. It states that a development will be permitted only after a determination of the adequacy and financial provision for public facilities and services, including but not limited to the costs the development will require of the County for functions such as law enforcement, fire and emergency response services. County Staff has not required AES to perform a FIA.

County Staff's January 29, 2025 report to the Planning Commission states simply that an FIA was not required for the AES project because "it was deemed unnecessary as changes in revenues and costs of local government jurisdictions will not occur."[19] In what way is the AES

[16] See internal Staff email string attached as Exhibit 3.
[17] Virtual public meeting, Public Q&A re. Hazard Mitigation Assessment and Emergency Response Plan, November 6, 2024, Slide 3.
[18] August 19, 2024 Santa Fe County Technical Advisory Committee letter for the Linea Energy Pentstemon and Globemallow Conditional Use Permit. (Emphasis added.).
[19] January 29, 2025 County Staff Memorandum to the Planning Commission, p. 5.

project different from the Linea Energy project that "changes in revenues and costs of local government institutions" will occur with the Linea Energy project but not the AES project without having performed an FIA?

6. Non-enforcement against AES of the pre-application meeting requirement with Technical Advisory Committee (TAC)

AES violated Section 4.4.2 of the SLDC by not seeking the pre-application Technical Advisory Committee (TAC) review of its August 2024 application.

Sections 4.4.3 and 4.4.4 of the SLDC require potential applicants for Conditional Use Permits to conduct a pre-application meeting with the County's Technical Advisory Committee (TAC) and a pre-application neighborhood meeting.

The purpose of a pre-application TAC review is to identify the issues a developer must address in its eventual application. The developer is required to discuss the application in enough detail so that a reasonable assessment can be made of its compliance with the SLDC. The meeting is supposed to include a discussion of requirements of the SLDC that are applicable to the application, the procedure to be followed, notice to be provided, schedule for review and hearing, the studies, reports and assessments to be undertaken, and other relevant subjects. After the meeting, County staff is required to provide the applicant with a written summary of the relevant issues to be covered by the applicant in its submittal materials.[20]

The *pre-application neighborhood meeting* is supposed to take place after the *pre-application TAC meeting* and prior to filing of the application. The purpose is to provide information to nearby property owners about the proposed project and to respond to their questions and concerns.[21]

AES conducted a *pre-application neighborhood meeting* for its August 30 Application on August 22, but it did not conduct the *pre-application TAC meeting*. Instead, AES submitted with its application the March 29, 2022 TAC letter prepared by the TAC based upon AES's November 4, 2021 pre-application TAC meeting for the January 2023 application.

November 2021	**Pre-Application Technical Advisory Committee meeting for AES BESS project as required by SLDC**
March 29, 2022	TAC letter issued for AES BESS project
January 26, 2023	AES files CUP application for Rancho Viejo Solar Project
December 13, 2023	**BCC approves Ordinance 2023-09 adopting 2023 edition of NFPA 855**
February 29, 2024	**County Staff finds January 2023 AES Rancho Viejo Solar Project application to be incomplete**

[20] SLDC, section 4.4.3.
[21] SLDC, section 4.4.4.

August 1, 2024	Linea Energy pre-application TAC meeting for Linea Energy CUP application
August 19, 2024	Linea Energy TAC letter requiring compliance with Annex G of NFPA 855
August 30, 2024	**AES files new CUP application for Rancho Viejo Solar project without pre-application review by Technical Advisory Committee**

AES's failure violates the filing requirement in Section 4.4.3 of the SLDC. The failure is significant because the TAC establishes the studies and analyses that are required to enable the County to determine whether an application satisfies the criteria in the SLDC for a Conditional Use Permit.

At the Hearing Officer's hearing on December 4, Mr. Yutzy said that Staff implemented a "rule" in July 2024 that a TAC review "now is only good for eight months, but at the time that this project went to TAC there was no deadline for TAC. They could have an unlimited amount of time to submit the project without having to go back."[22] On February 4, Mr. Sisneros added that "the use hadn't changed and the site layout hadn't really changed, we felt it not necessary for them to come back to a pre-application Technical Advisory meeting."[23]

The fact that there was no expiration date for the November 2021 TAC review is irrelevant. The November 2021 review was conducted for AES's January 2023 CUP application. SLDC Section 4.4.3 requires a pre-application TAC review for each application, and it should have been required for the August 2024 application.

Moreover, the fact that the Growth Management Department now considers that eight months is the maximum time in which a TAC review should be effective before a developer files its application is a compelling reason why a new TAC review should have been performed – since 34 months had transpired between the November 2021 pre-application TAC review and the August 2024 application.

Knowledge about the hazards of lithium-ion BESS installations has increased substantially since November 2021. The County's legal standards for the review of BESS projects have also been strengthened, with the BCC's 2023 adoption of the 2023 edition of NFPA 855 in Ordinance 2023-09. Those standards should have been applied to AES's August 30, 2024 application in a TAC review in the same way the TAC applied the standards to the Linea Energy project less than two weeks earlier on August 19, 2024.

The November 2021 TAC review and the following March 2022 TAC letter with requirements for AES's January 2023 CUP application did not provide AES with a vested right that could not be superseded by further County regulations.[24] Plus, even if it were argued that

[22] Hearing Officer hearing, Tr. 38-39 (12/4/2024).
[23] Planning Commission hearing, Tr. 9 (2/4/2025).
[24] See the discussion on the County's authority to adopt new regulatory provisions to protect public health and safety during a pending proceeding on a permit application at pages 30-31 in my November 27, 2024 testimony.

such a vested right existed, the right would only pertain to the January 2023 application, not to the new application filed in August 2024.

Finally, the "rule" mentioned by Mr. Yutzy did not amend the requirement in SLDC Section 4.4.3 for the pre-application TAC review. The "rule" was actually an internal policy that Mr. Yutzy provided for Growth Management Staff on a plan on how to process the three-year backlog of cases in light of an upcoming update of the SLDC.[25] The policy was not proposed as an amendment to the SLDC. It was not proposed to or adopted by the BCC, and it was never presented to the public.

7. Non-enforcement against AES of SLDC requirements for Environmental Impact Reports

My written testimony of November 27, 2024 and the PowerPoint presentation I gave at the February 3 Planning Commission hearing described three SLDC requirements that were violated in the AES application and overlooked by County Staff:

-- Section 6.3.1 failure to identify and discuss potentially significant environmental impacts, such as the history of fires and explosions at AES and other BESS facilities

-- Section 6.3.10.2 failure to adopt mitigation measures ***before*** the CUP is approved

-- Section 6.3.11 failure to identify and discuss safer battery technologies

These SLDC requirements are intended to provide an evidentiary basis to determine whether the CUP criteria in Section 4.9.6.5 are satisfied, i.e., whether the project will be "detrimental to the health, safety and general welfare of the area" and "create a potential hazard for fire, panic, or other danger."

The discussion in my written testimony and PowerPoint presentation are incorporated herein.

8. Failure to require adequate insurance and decommissioning bond

Staff deferred to AES on the issues of insurance and decommissioning. Staff has not required AES to provide liability insurance for the project and, while requiring a decommissioning bond, Staff appears to have left the amount of the bond to AES's discretion.

Staff proposed Condition 8 for the CUP, which states: "A decommissioning bond will be required prior to recordation of the CUP site development plan, and must be in place for the life of the project." But when asked at the Planning Commission hearing about the size of the decommissioning bond, Mr. Sisneros said: "That would be a better question probably for the applicant."[26]

[25] See Case Timelines and Expiration, Yutzy Memorandum to Building and Development Staff, July 2, 2024, attached as Exhibit 4.
[26] Planning Commission Hearing, Tr. 11 (2/3/2025).

When AES was asked about the issue, Mr. Mayer testified that the decommissioning bond would be $7.6 million.[27] AES submitted a Decommissioning Plan with its CUP application that estimated $8.9 million to fully remove all the system implements and restore the site with a $1.3 million salvage value. He said insurance will be "required by our financing parties," but he did not provide an amount.[28]

Staff's recommendations contrast sharply and negatively with the guidelines (discussed below) that San Diego County has recently adopted to ensure the recovery of costs from BESS developers. The estimated budget included in AES's Decommissioning Plan is based upon decommissioning after the termination of any power purchase agreement or the completion of the project's operational life cycle. It includes only $500,000 for removal of the batteries and their containers and $850,000 for site restoration -- amounts that are likely insufficient in the event the project is decommissioned as the result of a fire or explosion.

9. Failure to inform Planning Commission of December 10, 2024 San Diego County Guidelines for BESS facilities

"IMPORTANT-Additional guidance from San Diego County for Santa Fe County"

That was the subject line for an email that Fire Marshal Blay forwarded to County Staff on December 10, 2024 after receiving from the County's third-party battery consultant a set of Interim Fire Protection Guidelines for BESS Facilities that were adopted by the San Diego County Fire Protection District on that same date. Fire Marshal Blay's email thanked Atar Fire "for sharing this critical document with us (Land Use and Fire). As other jurisdictions are proactively preparing themselves to permit BESS installations by adapting and adopting new codes and standards, it behooves us to follow their lead for obvious reasons."[29]

Contrary to the narrow codes-based review conducted by AES and Atar Fire (on behalf of County Staff), the San Diego County guidelines recognize that the NFPA standards and Underwriters Laboratory guidelines do not fully account for the hazards of BESS installations:

> While NFPA standards and Underwriters Laboratory (UL) guidelines provide some safety measures, they do not fully account for the specific hazards of lithium-ion batteries. As a result, local authorities must consider additional safety protocols, including plume modeling for toxic gas dispersion and expanded setbacks from property lines to ensure safe firefighting operations and minimize exposure to toxic fumes.[30]

[27] Id., Tr. 46 (2/3/2025).
[28] Id., Tr. 46 (Feb. 3, 2025).
[29] December 10, 2024 email string between Fire Marshal Blay and Atar Fire (Exhibit 5).
[30] Interim Fire Protection Guidelines for BESS Facilities, San Diego County Fire Protection District, December 10, 2024, p. 5 (Exhibit 6).

The guidelines require developers to submit a Hazard Mitigation Analysis and conduct plume modeling to predict how toxic off-gassing might disperse in a worst-case scenario and help determine appropriate evacuation and safety distances from sensitive receptors, such as residential areas, care facilities (hospitals, nursing homes, etc.), and educational institutions.[31]

The guidelines also include the following:

-- Hazard Mitigation Analyses must address additional failure modes, including the failure of multiple safety systems at the same time -- beyond the failure modes addressed in NFPA 855 and the UL9540 certification process.[32]

-- Cost recovery to ensure that the financial burden of emergency response services, such as personnel, equipment, logistics, and other resources, is reimbursed by BESS facility owners or responsible parties.[33]

-- Root cause analysis for fires in BESS facilities with costs borne by BESS facilities owners or responsible parties.[34]

However, Staff's January 29 report to the Planning Commission simply included, without any explanation or context, a new Condition 16:

> 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.

Staff did not mention the San Diego County guidelines which appear to have prompted Condition 16. And it did not recommend additional conditions to adopt any of the other guidelines. Indeed, the emails and guidelines discussed above were obtained in response to an IPRA request.

Perhaps most important, the timing of the smoke and plume study will be too late. The CUP can be issued only after the BCC considers evidence, such as the smoke and plume model results, to determine that the project will not be detrimental to the health, safety and general welfare of the area and will not create a potential hazard for fire, panic, or other danger. As required by the SLDC, that evidence must be submitted and reviewed ***before*** a CUP is issued. The Fire Marshal has no authority to determine whether the CUP criteria in Section 4.9.6.5 of the SLDC are satisfied and whether a CUP should be issued. That authority belongs initially to the Hearing Officer and Planning Commission and, ultimately, the Board of County Commissioners.

[31] Id., p. 9.
[32] Id.
[33] Id., p. 10.
[34] Id.

For the same reasons, the timing of the smoke and plume study will also violate the requirement in SLDC Section 6.3.10.2 that mitigation measures be determined before the BCC issues a permit.

10. "Red Flag" -- Failure to inform the Planning Commission of AES's application amendment for the project's water supply from the County and the related permit conditions proposed by the County's consultant

Staff's January 29, 2025 recommendation for the Planning Commission hearing identified no issues regarding the project's traffic impacts and water supplies. This stands in stark contrast to the "red flag" that Mr. Yutzy warned AES about on December 3, 2024.[35] Mr. Yutzy's "red flag" discussion (discovered through an IPRA request) related to the upcoming initial report (dated December 4, 2024) of the County's third-party reviewer of the Environmental Impact Report in AES's CUP application. The Glorieta Geosciences (GGI) report stated that the magnitude of the water hauling proposed by AES during the 12-month construction period required "much more in-depth analysis of traffic and air quality impacts resulting from the water truck traffic."[36]

Glorieta suggested the use of a County fire hydrant on NM Highway 14:

> During GGI's Project site investigation on November 15, 2024, a fire hydrant was identified at the intersection of the access road and NM Highway 14. If this hydrant is expected to be the sole source of water for Project construction, additional analysis of the impacts of water hauling will not be necessary, and this method should be clearly described in the EIR. It is GGI's opinion that utilizing the fire hydrant would have much less impact on the local environment than the magnitude of water hauling as currently proposed.[37]

Pursuant to subsequent discussions with Staff in January 2025, AES proposed a combination of water hauling and "piped" water from the County's fire hydrant:

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

[35] December 3, 2024 email, Yutzy to Gordon (AES), Mayer (AES), Gonzales (Staff) and Sisneros (Staff) re Rancho Viejo – Status Update (Exhibit 7).
[36] Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, Glorieta Geoscience, December 4, 2024, p. 2.
[37] Id.

> • During the months of April through September, when Ranchland Utility Company supplies much of its Class A reclaimed water for irrigation purposes, the majority of project construction water will be piped from the existing hydrant located at the intersection of the access road and State Road 14. This will limit the need for trucking water to the site from April through September. . . .
>
> • During the months of October through March, when Ranchland Utility Company has excess Class A reclaimed water available, the majority of project construction water will be trucked to the site. This will allow for the greater use of reclaimed water from October through March. During these months, water truck deliveries will be limited to two water trucks per hour. Remaining construction water will be piped from the existing hydrant located at the intersection of the access road and State Road 14. . . .[38]

AES's proposal conflicts with AES's CUP application and represents a significant amendment to the application, proposed without any public notice. Based upon AES's revised water and traffic plans, Glorieta Geosciences recommended a series of conditions to be included in the County's Conditional Use Permit:

> • The Applicant shall provide to the County a copy of an executed lease agreement with Univest-Rancho Viejo, LLC for the water rights required for this project including the applicable New Mexico Office of the State Engineer (OSE) permit and permit conditions.
>
> • The Applicant shall obtain a letter from the Santa Fe County Utilities Department stating that the Santa Fe County Water System has the capacity and capability of providing up to 150 acre-ft of water.
>
> • The Applicant shall obtain all required OSE permits under the New Mexico Water Rights Leasing Act.
>
> • If reclaimed water is piped directly to the project site, the Applicant shall provide to the County an approved New Mexico Environment Department (NMED) Ground Water Discharge Permit.[39]

But County Staff did not identify the traffic and water supply issues for the Planning Commission's attention, and it did not include Glorieta Geoscience's recommended conditions for the CUP. County Staff also did not make a witness for Glorieta available for the February 3-4 hearings.

But even more important, neither AES nor the County Staff has notified the public of AES's new water supply plan – a plan that conflicts with and amends AES's CUP application.

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[38] Response to the Third-Party Review of the Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, SWCA Environmental Consultants, January 2025 (Exhibit 8).

[39] Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, Glorieta Geoscience, January 29, 2025 Report, p. 3 (Exhibit 9).

AES's plan poses significant issues. The County does not normally allow private connections to public fire hydrants for non-fire use. County Ordinance 2018-04 states that "In order to assure proper operation of fire hydrants, no water shall be drawn through any fire hydrant for any other purpose than fire protection" except by special permit. But the rates listed apply only to "owners of private fire hydrants" and "individual customers who have a fire service line," neither of which would appear to apply to the applicant or to the fire hydrant in question.

AES's plan also relies on the County's water system in the summer months when residential demand is likely high. AES's water use could impact the residential demand at the County's new $4.3 million residential bulk water project. The project includes a 2.3-mile water line extension along NM14 from the Turquoise Trail Charter School to the Turquoise Trail Fire Station and a new residential bulk water station next to the fire station.

11. Staff's perceptions of itself as a "party" sided with the applicants

An April 26, 2025 email from Assistant County Attorney II Roger Prucino to a party with standing in the Planning Commission hearing, County resident Dr. Selma Eikelenboom, exemplifies Staff's perception of itself as a "party" in this proceeding and, implicitly, as an advocate for the applicants. Dr. Eikelenboom appears to have asked Mr. Prucino for permission to communicate with the third-party consultant that the County hired to review AES's Environmental Impact Report, Glorieta Geoscience. Mr. Prucino responded that it was not appropriate for Staff's experts to communicate privately "with other parties."

> As you know, Glorieta Geoscience was retained by Santa Fe County to conduct a review of an Environmental Impact Report prepared for the applicant in the Rancho Viejo Solar Project case. The results of that review are a part of the record in the proceeding before the Planning Commission. <u>The County does not want its experts engaging in informal discussions with other parties</u>. Putting aside the fact that no appeal has yet been filed, <u>it is not appropriate for certain parties to have the benefit of private communications, while other parties</u> – including the BCC if we are to assume that an appeal is forthcoming – <u>would not</u>.[40]

Prucino's use of the phrase "other parties" is revealing on two counts. First, it is typical in cases with adversarial parties using expert witnesses to limit other parties' access to those expert witnesses. Proceedings would generally allow for other parties to attempt to ask questions of the expert witnesses through the discovery process, but the discovery process has been prohibited in this case because the SLDC doesn't explicitly allow it. By stating that staff is limiting "other parties'" access to Staff's expert witnesses, Prucino is implicitly acknowledging that he is representing the County Staff as an adversarial party.

Second, Prucino's response provides another example of County Staff's preferential treatment of AES. IPRA responses indicate that County Staff has also required AES to go through County Staff to communicate with the County Staff's

[40] April 24, 2025 email from Roger Prucino to Selma Eikelenboom-Schieveld (emphasis added) (Exhibit 10).

experts, but County Staff has allowed discussions directly and indirectly between AES and the County's experts through communications submitted through the County Staff. Those communications and discussions were private and were discovered only through IPRA requests.[41]

However, Prucino's response to Dr. Eikelenboom indicates that he considers her to be in a class with "other parties" who, unlike AES, are prohibited from submitting her questions for expert witnesses through the Staff. Instead of suggesting that Dr. Eikelenboom submit her questions to Staff to be answered by Staff's experts prior to the filing of an appeal, Mr. Prucino said Dr. Eikelenboom should submit her questions to be asked at the hearing, and that even then she may not be able to get answers to her questions:

> We would prefer that you submit written questions to staff, which can then be addressed in the more formal setting of a hearing (again, assuming an appeal is eventually filed). While I cannot guarantee that any particular expert or witness will testify at a future hearing, staff will be sure to inform the Board of questions it receives.[42]

Thus, Prucino's response to Dr. Eikelenboom clearly shows that County Staff is limiting access to its expert witness, consistent with the typical practice of an adversarial party. Further, he's implicitly acknowledging (and communications in IPRA responses show) that the Staff is facilitating communication between the expert witness with one party (i.e., AES) but not with "other parties," a clear example of Staff's advocacy and preferential treatment of the applicant.

D. Staff as Decision-maker

County Staff's advocacy in support of the AES CUP created a bias that motivated and colored Staff's actions -- some of which were within Staff's authority and others that were not -- that denied due process to me and the other opponents of the AES CUP. This section discusses how Staff acted and influenced the Hearing Officer and Planning Commission to take actions that denied opponents' due process rights. In short, Staff cannot act as a party advocating substantive positions, as an advisor and as a decision-maker all in the same case.

1. Advice through *ex parte* communications

The impropriety of *ex parte* communications is beyond dispute in judicial and administrative proceedings. When examining the impropriety and effect of *ex parte* communications in a case involving the 1980s strike of the Professional Air Traffic Controllers,

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[41] See, e.g., the following email communications between Staff and AES regarding Staff's third-party reviewers compiled into Exhibit 11:

-- December 10-16, 2024 email string: Staff and AES re Rancho Viejo - EIR Third Party Review Comments
-- January 3-10, 2025 email string: Staff and AES re Rancho Viejo Follow-up Items
-- January 17-February 22, 2024 email string: Staff and AES re Questions and Comments related to January 17 meeting with Glorieta Geoscience
-- January 31, 2025 email string: Staff and AES re Rancho Viejo Solar – Atar Fire Review

[42] April 24, 2025 email from Roger Prucino to Selma Eikelenboom-Schieveld (emphasis added) (Exhibit 10).

the U.S. Court of Appeals for the D.C. Circuit made it clear that *ex parte* communications are unacceptable in courts and administrative adjudications:

> In case any doubt still lingers, we take the opportunity to make one thing clear: It is simply unacceptable behavior for any person directly to attempt to influence the decision of a judicial officer in a pending case outside of the formal, public proceedings. This is true for the general public, for "interested persons," and for the formal parties to the case. This rule applies to administrative adjudications as well as to cases in Article III courts.

Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority, 685 F.2d 547, 570 (D.C. Cir. 1982) (footnotes omitted).

The following sections provide instances, discovered only through requests under the Inspection of Public Records Act (IPRA), of privately communicated facts, requests and arguments that constitute *ex parte* communications under generally accepted legal principles and rules. Whether the examples discovered and discussed below represent the entirety of the communications between Staff and the ultimate decision-makers is not known. What is known, however, is that New Mexico courts have stated that parties to administrative proceedings are entitled to an impartial hearing process that is free of "ex parte contacts" and is adjudicated by a tribunal bound by "ethical standards comparable to those that govern a court in performing the same function." *Albuquerque Commons Partnership v. City Council of Albuquerque*, 2008-NMSC-025, ¶ 33-34, 144 N.M. 99, 184 P.3d 411.

As noted above, Section 4.7.2.1 of the SLDC authorizes County Staff to present a recommendation and respond to questions from the Board, Planning Commission or Hearing Officer concerning any statements or evidence. According to Director Ladd, County staff's main role is to determine whether an application is complete and then whether it's compliant with the Sustainable Land Development Code requirements.

Subsequent to the Staff's recommendations, the decision-makers (i.e., the Hearing Officer, Planning Commission or Board of County Commissioners) review the staff report and other evidence in a quasi-judicial proceeding and make their recommendations and approvals.

Under principles of due process, the evidence considered by the decision-makers must be presented in an evidentiary hearing conducted in public. Decision-makers in quasi-judicial proceedings are not allowed to consider and act upon facts and arguments presented to them outside the public hearing and outside of any opportunity for the parties participating in the public hearing to respond to those facts and arguments. This is the principle that prohibits *ex parte* communications.

The Santa Fe County Code of Conduct contains a rule prohibiting *ex parte* communications in a quasi-judicial proceeding, but the Code of Conduct, as promulgated by the County, does not include County Staff in the prohibitions because it does not include County Staff in the definition of a "party" to which the *ex parte* prohibition applies. Section 30.25(A) of

the Santa Fe County Code of Conduct prohibits *ex parte* communications involving Hearing Officers and Planning Commission members assigned to Conditional Use Proceedings:

> 30.25 Ex parte communications
> (A) An elected official or appointed official designated to hear an administrative adjudicatory matter pursuant to a county ordinance, including but not limited to the county's land development code, shall not initiate, permit or consider an ex parte communication.

Section 30.18 defines "*ex parte* communication" as communications with decision-makers by a "party" outside the presence of other "parties":

> A direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceeding. (Emphasis added).

The definition of the term "party" in Section 30.18, however, includes all the participants in a quasi-judicial proceeding except County Staff:

> *Party*. A person who has submitted to the county an application seeking affirmative relief; a person who has filed a formal complaint or protest; a person who is the subject of a formal complaint or investigation; and a member of the general public who participates in a pending adjudication.

In this case, however, County Staff has acted as a party. Staff members and their consultants presented sworn testimony in publicly-conducted evidentiary hearings before the Hearing Officer and Planning Commission. But Staff has also conducted unsworn, private communications with quasi-judicial decision-makers that would be considered prohibited *ex parte* communications under commonly accepted principles and under the Code of Conduct's definition if County Staff were not excluded from the definition.

Nevertheless, even if not a prohibited *ex parte* communication *per se* under the Code of Conduct, County Staff's actions go beyond the authority granted under the SLDC. Section 4.7.2.1 of the SLDC authorizes County Staff to present recommendations and respond to questions, but it authorizes those actions in a public quasi-judicial hearing. There is no reason to suggest that the SLDC authorizes County Staff to do so privately outside the quasi-judicial proceeding. There is also no reason to indicate that the recommendation and response to questions be conducted without an opportunity for other parties to respond.[43]

Parties in quasi-judicial proceedings have the right to respond to evidence and arguments presented by other parties. Indeed, the SLDC and Section V.B.3 of the Board's Rules of Order

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

> (B) An elected official or appointed official who receives or who makes or causes to be made a communication prohibited by the county's code of conduct shall disclose the communication to all parties and give other parties an opportunity to respond.

give parties the right to cross-examine County Staff, which is obviously not possible in regard to facts and arguments presented to decision-makers in private. Yet other parties in the AES CUP hearings were deprived of their rights to respond to Staff's private communications with decision-makers (outlined below), and in fact only learned of those communications through IPRA requests.

a. Staff *ex parte* blocking of Hearing Officer Order

On September 21, 2024, I filed a Motion to Intervene in the Hearing Officer proceedings for the AES CUP application. No party, including the County Attorney's Office, objected. On November 19, after the Hearing Officer held a November 14 prehearing conference, in part, to determine which, if any, groups and individuals would be allowed to intervene as parties with standing, County Staff distributed a November 18 Order on Requests for Standing which granted intervention status to two citizen groups but not to me.

On November 18, I received a response to an IPRA request that indicated that Hearing Officer Hebert had, in fact, issued an Order on Motion to Intervene on October 16 granting my September Motion to Intervene.[44] But County Staff, in an email dated later that day, had asked her not to distribute the Order. The Hearing Officer's Order referred to my background as an attorney "who has presided over and participated in many administrative adjudicatory hearings, some involving battery energy storage systems and utility facility siting" (para. 5). The Order stated that, while the Movant's issues might be similar to those of other Eldorado residents, the Movant's experience as an attorney could make "the process more efficient" (para. 7). The Order said that "Movant's participation as an intervenor in this CUP application could be beneficial to the process" (para. 8).

Hearing Officer Hebert sent the Order to Dominic Sisneros of the County Staff that same day (October 16) notifying Mr. Sisneros of the "signed Order" and indicating that she will email the Order to the attorneys:

> Good morning, Dominic
>
> Attached please find the Order on the Motion for Leave to Intervene in the AES case. I will be dropping off the signed Order sometime today at your office. After that, I will email the Order to the attorneys.
> Thank you.
>
> Marilyn[45]

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

> Good Morning Hearing Officer Hebert,

[44] Hearing Officer Order on Motion to Intervene, October 16, 2024 (Exhibit 12).
[45] October 16, 2024 email Hearing Officer Hebert to Dominic Sisneros.

> We need to consult with our legal department prior to you sending this off to the attorneys. We have a meeting set up for Friday afternoon at 3pm. Let me know if you have any questions.
> Thank you,[46]

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

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

> Good morning, All,
>
> On October 16, 2024, I dropped off an Order on the Motion to Intervene of Ashley Schannuer [*sic*], which he submitted on September 21, 2024. At that time, Jordan and Dominic requested that I not send out the order to the attorneys until they had an opportunity to consult with the County Attorney Office.
>
> As noted in the email of October 18, below, I was informed that a meeting would be scheduled, and I responded my availability on the 29th or 30th. No meeting has been scheduled.
>
> I have since received a Motion to Set a Prehearing Conference from Mr. Schannuer [*sic*] and an additional Motion to Intervene from another Eldorado resident, which I forwarded to Dominic.
>
> <u>Is there an issue of releasing my order allowing Mr. Schannuer's motion to intervene? Please note that the motion stated that the County Attorney was informed of the motion and indicated that while the rules did not provide for intervention, the County Attorney deferred to the hearing officer.</u>
>
> I believe a meeting should be scheduled as soon as possible to discuss procedural matters such as these pending motions and the County's experience with the process of public questioning of witnesses by submittals through the BCC or a hearing officer. It is not clear to me how that process is to be accomplished, and I would appreciate knowing your experience with this.
>
> I understand the hearing on the AES application is set for December 4, less than six weeks from today.
>
> <u>Please advise</u>.

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

The Hearing Officer's October 28 email was sent to Dominic Sisneros, Jordan Yutzy and Roger Prucino.[47]

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

As a result, I promptly filed on November 20 a Motion requesting, *inter alia*, that all *ex parte* communications on this issue be disclosed, that the October 16 Order granting my Motion to Intervene be confirmed as still in effect, that County Staff submit any legal authority it believes supported Staff's actions, and that parties be provided the opportunity to respond to Staff's filing.[48]

Neither County Staff nor the Hearing Officer responded to the Motion.

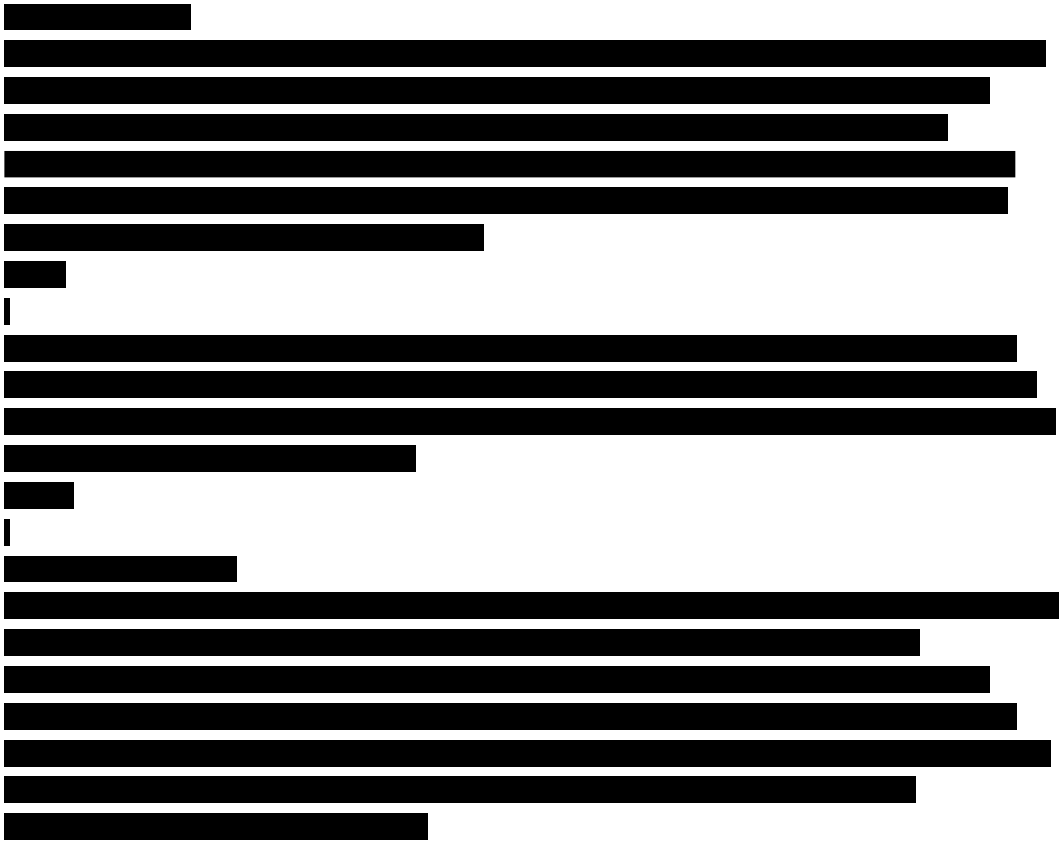
Staff's *ex parte* insertion of itself into the adjudicatory role of the Hearing Officer on the Motion to Intervene was beyond the authority granted to it in the SLDC. Staff's simultaneous participation in the proceeding as an advocate and a confidential *ex parte* advisor/decision-maker violated my right to a fair hearing. *Kerr-McGee Nuclear Corp. v. New Mexico Envtl. Imp. Bd.*, 1981-NMCA-044, paras 46-54.

b. *Ex Parte* Memorandum to Planning Commission

On January 31, 2025 -- three days before the February 3-4 hearing before the Planning Commission -- Assistant County Attorney II Roger Prucino distributed a Memorandum (subsequently obtained in response to an IPRA request) marked as a Confidential and Privileged Attorney-Client Communication. The Memorandum was addressed to Santa Fe County Planning Commission; Alexandra Ladd, Growth Management Director; Jordan Yutzy, Land Use Administrator; and Dominic Sisneros, Building and Development Supervisor. The Subject was "[redacted]"[49]

The Memorandum analyzed the evidence and argument presented by one of the parties with standing, i.e., the San Marcos Association (SMA), which opposed the CUP request. Mr. Prucino argued that "[redacted]" and "[redacted]" He recommended that "[redacted]":

[47] October 28, 2024 email Hearing Officer Hebert to Jordan Yutzy, Dominic Sisneros and Roger Prucino (emphasis added).
[48] The Motion also asked that the December 4 hearing date before the Hearing Officer be rescheduled until the *ex parte* issues were resolved, and that a service list be established to ensure that all parties are informed of and provided with communications between parties and the Hearing Officer. *See* Motion Requesting Order Addressing *Ex Parte* Communications and County Staff's Blocking of the Hearing Officer's October 16, 2024 Order on Motion to Intervene, November 20, 2024 (Exhibit 13).
[49] Exhibit 14.



The Memorandum is a prohibited *ex parte* communication under any legal principles except under the County's rules. As with the *ex parte* communications with the Hearing Officer, the existence of the communication with the Planning Commission came to light only through a response to an IPRA request received after the conclusion of the hearing. Neither SMA nor any other party with standing had an opportunity to respond to the Memorandum before (or after) the Planning Commission hearing.

And as is evident from the first sentence of the motion made by Commissioner Gonzales after the Commission came out of its closed session, the analysis and conclusion in Mr. Prucino's Memorandum was accepted by the Planning Commission members:

> COMMISSIONER GONZALES: Mr. Chair, I would like to make a motion on Case #24-5200. We think this case is properly before us as a CUP application because this is a commercial solar energy production facility. . . .[50]

c. Participation in Executive Session of Planning Commission

[50] Planning Commission Hearing, Tr. 59 (2/4/2025).

The written agenda for the Planning Commission hearings included an item for "Matters from the Attorney" immediately following the presentation of evidence from parties with standing and public comment:

> 3. Matters from the Attorney
> A. Executive Session. Board Deliberations in Administrative Adjudicatory Proceedings, Including Those on the Agenda Tonight for Public Hearing, as Allowed by Section 10-15-1(H)(3) NMSA 1978

Immediately after the close of the evidentiary hearings, Mr. Prucino advised the Commissioners that they were authorized to go into executive session for the purpose of entering into deliberations on the hearings they just closed, and the Commissioners then voted to do so.

Planning Commission Hearings, Tr. 57-58 (2/4/2025).

Although not made public at the time, emails obtained through an IPRA request indicate that Mr. Prucino then appears to have participated in the executive session and that a non-attorney from County Staff discussed with Director Ladd whether his participation was also needed:

> From: Nathaniel Crail<ncrail@santafecountynm.gov>
> Sent: Tuesday, February 4, 2025 2:33 PM
> To: Alexandra Ladd <aladd@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
> Subject: Planning Commission Executive Session
>
> I'm watching via WebEx, but do you want me in attendance for in-person for the executive session? I know it's after public comment, but when do you think the Executive Session will begin?
>
> thank you,
> nate
>
> nate crail
> Senior Community Planner
> Growth Management Dept.
> 505-986-2452
> ncrail@santafecountynm.gov
> ---
> From: Alexandra Ladd <aladd@santafecountynm.gov>
> Sent: Tuesday, February 4, 2025 2:39 PM
> To: Nathaniel Crail<ncrail@santafecountynm.gov>; Jordan A. Yutzy <jyutzy@santafecountynm.gov>
> Subject: RE: Planning Commission Executive Session
>
> Hi Nate,

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

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

Sounds good

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

Hey Nate,

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

Sent from my Verizon, Samsung Galaxy smartphone
Get Outlook for Android[51]

Mr. Prucino's participation in the Executive Session likely included prohibited *ex parte* communications. It is unknown whether Nathaniel Crail or any other Staff member participated in the Executive Session. Two further emails were withheld from the County's IPRA response based on their claim of attorney-client privilege.

As mentioned in section A above, the Nebraska Supreme Court recently held that the prosecution before a Natural Resources District (NRD) Board of landowners for the alleged violation of a District rule by the same attorneys who then participated in the Board's decision violated the landowners' rights to due process, saying, in part, "When the facts and circumstances of administrative proceedings show an improper combination of functions such that there exists a risk of bias on the part of the decisionmaker that is too high to be constitutionally tolerable, this amounts to 'structural error' requiring reversal." *Uhrich & Brown Limited Partnership v. Middle Republican Natural Resources District*, 315 Neb. 596, paras. 32-34, 998 N.W.2d 41, 56-57 (2023) (footnotes and citations omitted).

[51] See February 4 email string attached as Exhibit 15 (Emphasis added).

It is noteworthy, too, that the Iowa Supreme Court found that the participation of the Director of the Davenport Iowa Civil Rights Commission in both the evidentiary portion of a hearing and the executive session in which the agency decided the case violated a party's rights to due process:

> Where it is undisputed that the director of an agency sits at counsel table with a complainant, confers with that counsel at the close of the testimony of witnesses, and does not object when the hearing officer suggests that she, along with counsel for the complainant, bears the burden of proof, we conclude, as a matter of law, that the director was engaged in advocacy on behalf of the complainant. That advocacy is of a sufficient nature to preclude her later participation in the adjudicatory process in the case under the due process clauses of the state and federal constitutions. *Nightlife*, 133 Cal.Rptr.2d at 248. The combination of advocacy and adjudicative functions has the appearance of fundamental unfairness in the administrative process. Id. at 242-43. Further, because of the risk of injecting bias in the adjudicatory process, Botsko is not required to show actual prejudice. Id.
>
> The commission, nevertheless, argues that Morrell did not perform as an advocate in the adjudicative stage of the proceeding. The commission points out that Morrell did nothing more than answer questions of the commissioners in its closed sessions. Further, affidavits from various commission members state that they made their findings independently. These arguments and declarations, however, provide this court with little comfort. An advocate can accomplish much by simply answering questions. Indeed, that is what happens in every case where there are oral arguments before this court, where a skilled advocate will answer the court's questions in terms as objective as possible as a means of convincing the court to adopt a client's position. We cannot accept the contention that Morrell, after assisting Nabb as a second-chair advocate, may retreat into the closed sessions of the agency to "answer questions."

Botsko v. Davenport Civil Rights Comm'n, 774 N.W.2d 841, 853 (Iowa S.Ct. 2009)

d. Drafting of Planning Commission Order

After coming out of the executive session on February 4, Commissioner Gonzales made a simple motion to approve the CUP application, and the motion was approved by majority [6-1] roll call vote.[52]

Sections 4.3.2 and 4.4.13 of the SLDC, however, require that the Planning Commission also issue a written decision that includes findings of fact and conclusions of law to document the Commission's action. Further, Section 4.4.13 requires Staff to prepare the Commission's findings of fact and conclusions of law for the Commission to approve.

[52] Planning Commission Hearing, Tr. 59 (2/4/2025).

County Staff apparently prepared the findings and conclusions in a proposed Order that Staff presented for the Commission's consideration at its regularly scheduled meeting on March 20. The proposed Order indicated that it was "Approved as to form" by Roger Prucino. The Commission voted, without discussion, to approve the order.

It is not known whether the Planning Commission had any direct input into the language in the Order. The Chair simply stated that the members "got the final order in our packet. We were able to review that."[53]

The SLDC's requirement that Staff prepare proposed findings of fact and conclusions of law does not absolve the procedure from a due process violation. The County cannot grant itself a power that is inconsistent with due process. The use of the same lawyer to draft the proposed Order who also represented County Staff during Staff's evidentiary presentation and the rest of the proceedings presented a further example of commingled functions that violated the parties' rights to due process and the right to a fair hearing.

2. County Staff's issuance of decisions, without legal authority

County Staff's authority in quasi-judicial proceedings is described in Section 4.7.2.1 of the SLDC. That authority has been discussed above. It does not include the authority to issue decisions on its own or on behalf of the Planning Commission or Hearing Officer. Nevertheless, the following are examples of County Staff's issuance of decisions in these proceedings.

a. November 14, 2024 Prehearing Conference

Shortly after the filing of my Motion to Intervene and Motion for Prehearing Conference, County Staff on November 1 issued the first of a series decisions/orders that highlighted the incompatibility of an advocate acting also as a decision-maker. Staff adopted an unusual practice of requesting that the Hearing Officer schedule a prehearing conference and then in the same document, without waiting for the Hearing Officer to act on the request, Staff actually scheduled the prehearing conference -- without the legal authority to make the decision. Staff, as a party, had the right to request such a meeting, but there was no apparent legal authority for County Staff to issue order approving its own request:

> **NOTICE OF SPECIAL MEETING**
> **Preliminary Hearing to identify parties with standing and address other procedural issues regarding Case # 24-5200, Conditional Use Permit (CUP) application submitted by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC; AES Clean Energy Development, Applicants.**
>
> To Whom it may concern:
>
> The Santa Fe County Growth Management Department (Land Use Division; hereafter the "Division") requests that the Sustainable Land Development Code (SLDC) Hearing Officer conduct a public hearing for the purposes of i)

[53] Planning Commission Meeting, Tr. 2-3 (3/20/2025).

identifying what parties will be granted the status of a party with standing; and ii) identifying what procedural guidelines the Hearing Officer will adopt (or consider adopting) for the December 4, 2024 special meeting on the merits of the conditional use permit application that is subject of this case.

. . .

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

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

All interested parties that sent in a letter of request before 10 am Monday November 11, 2024 will be heard at the Special Meeting prior to the Hearing Officer making a decision on the matter. All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P.O. Box 276, Santa Fe, New Mexico 87504-0276, or presented in person prior to the hearing.

Sincerely

[*unsigned*][54]

b. January 16, 2025 Prehearing Conference

County Staff used the same device on January 8, 2025, this time to schedule a January 16 prehearing conference for the Planning Commission. Again, Staff, as a party, had the right to request such a meeting, but there was no apparent legal authority for County Staff to issue an order approving its own request :

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

[54] Exhibit 16 (emphasis added).

To Whom it may concern:

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

. . .

A special meeting will be held at the County Administrative Building, located at 102 Grant Avenue, in the Board of County Commission Chambers, on the 2nd Floor, on the 16th, day of January 2025, at 3:30pm on a petition to the Santa Fe County Planning Commission. Public attendance is allowed. The meeting agenda which will be posted on the County's website (https://www.santafecountynm.gov/) one week before the meeting. In addition, people may watch the meeting at https://www.youtube.com/channel/UCKGV2GEBC1Qv38Pn61083xg

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

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

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

Sincerely:

[*unsigned*][55]

c. Order restricting the cross-examination rights of parties with standing

County Staff issued orders on January 24 and 27, 2025 following the January 16 prehearing conference of the Planning Commission purporting to announce the results of the January 16 conference. Both orders were issued by Mr. Sisneros in a format typical of the format and style of an administrative decision-maker.

[55] Exhibit 17 (emphasis added).

Apart from the issue of County Staff's lack of authority to issue such orders, the January 24 Order reflected what the Planning Commission decided at its January 16 prehearing conference. The January 24 order announced that eight parties were approved as parties with standing and were allowed to participate in cross-examination in accordance with the discussion and Planning Commission action taken at the January 16 meeting. It did, however, add procedural details on the filing of witness lists and exhibits:

> **THIS MATTER came before the Santa Fe County Planning Commission on January 16, 2025, on the request from the Santa Fe County Land Use Division ("Division") for consideration of certain procedural matters in advance of the scheduled February 3, 2025 hearing in this case.**
>
> Prior to this hearing, the Division had set a January 13, 2025 deadline for submitting requests to participate as a party at the February 3, 2025 hearing. 8 requests were received by the deadline: 350 Santa Fe, Inc., The Clean Energy Coalition for Santa Fe County, The Global Warming Express, New Mexico for Responsible Renewable Energy, The San Marcos Association, Santa Fe Green Chamber of Commerce, Ashley C. Schannauer, and Sierra Club Rio Grande Chapter.
>
> After deliberation, the Santa Fe County Planning Commission determined that all 8 requestors are allowed to participate as parties including the opportunity to present arguments and witnesses and to participate in cross examination.
>
> Each party must submit its witness list, if any, with a brief description of witness testimony by 12:00pm on Monday January 27, 2025, to the Division.
>
> Each party must submit its list of exhibits, if any, including any digital presentation, to the Division no later than 12:00pm on Monday January 27, 2025.[56]

The January 27 Order, however, without further action by the Planning Commission, required that cross-examination be conducted solely through questions submitted to the Planning Commission's Chairperson, The Planning Commission did not make that decision, and the County's Staff lacked the authority to do so:

> **THIS MATTER came before the Santa Fe County Planning Commission on January 16, 2025, on the request from the Santa Fe County Land Use Division ("Division") for consideration of certain procedural matters in advance of the scheduled February 3, 2025 hearing in this case.**
>
> Prior to this hearing, the Division had set a January 13, 2025 deadline for submitting requests to participate as a party at the February 3, 2025 hearing. 8 requests were received by the deadline: 350 Santa Fe, Inc., The Clean Energy

[56] Exhibit 18 (Emphasis added).

> Coalition for Santa Fe County, The Global Warming Express, New Mexico for Responsible Renewable Energy, The San Marcos Association, Santa Fe Green Chamber of Commerce, Ashley C. Schannauer, and Sierra Club Rio Grande Chapter.
>
> After deliberation, the Santa Fe County Planning Commission determined that all 8 requestors are allowed to participate as parties including the opportunity to present arguments and witnesses and to participate in cross examination.
>
> All parties of standing will have 30 minutes for their presentations and witness testimony. As per SLDC Ordinance 2016-09 Chapter 4, Section 4.7.2., Subsection 4.7.2.1 Conduct of Hearing. All cross-examination questions are to be submitted to the chair of the Planning Commission, who will in turn direct questions to the witness. Cross examination questions are to be submitted to the Division by 9:00am Monday February 3, 2025. Additional written cross-examination questions may be submitted to the Planning Commission via the Division during the hearing. All written cross-examination questions must be clear and legible.[57]

The SLDC appears to provide the option for a presiding official to require cross-examination questions to be conducted through questions submitted to the presiding official or to allow cross-examination directly by parties. Section 4.7.2.1 states, first, that: "The hearing shall be conducted in accordance with the procedures set forth in the Board's Rules of Order." Section V.B.3 of the Board's Rules of Order provides for cross-examination directly by parties with standing.

> 3. Cross Examination (if requested). A party to an administrative adjudicatory proceeding shall be afforded the opportunity to cross-examine any staff member who participates in the presentation of the staff report. The party seeking the cross-examination must notify the Chair that cross-examination is desired before the staff member is excused or such cross-examination shall be waived.

Section 4.7.2.1 then follows using the permissive term "may" when authorizing the presiding official to require cross-examination through the presiding official: "At any point, members of the Board, the Planning Commission or the Hearing Officer conducting the hearing ***may*** ask questions of the owner/applicant, staff, or public, or of any witness, or require cross-examination by persons with standing in the proceeding to be conducted through questions submitted to the chair of the Board, Planning Commission or to the Hearing Officer, who will in turn direct questions to the witness." (Emphasis added.) The word "may" modifies both the word "ask" and the word "require."

The issue of the appropriate cross-examination procedure had been addressed previously in the Hearing Officer's November 14 prehearing. After Hearing Officer Hebert initially raised the issue, Assistant County Attorney Prucino brought it up again, after which the Hearing Officer decided that parties would be allowed to conduct their own cross-examinations:

[57] Exhibit 19 (emphasis added).

ROGER PRUCINO: Hearing Officer Hebert, I wanted to clarify a comment you made just a moment ago regarding the cross examination. Do you anticipate at this time or have you not made a decision regarding whether cross examination questions will all go through you?

HEARING OFFICER HEBERT: If there are other parties to this, other than staff and the applicant, I think any other party would be entitled to cross examination of the individual and I think it would just be traditionally after that witness had testified while the testimony was still fresh in everyone's mind. I don't think that it would be as useful if the entire presentation by either the staff or the applicant is made and then there would be cross examination. So it would just be in the traditional manner of after the direct testimony there would be the cross examination by anyone who is admitted with standing.[58]

County Staff had no independent authority to decide how cross-examination would be conducted. In fact, the discussion at the January 16 prehearing conference anticipated that parties with standing would be asking their own cross-examination questions. The commissioners discussed how to factor that opportunity into the time that would be allotted for the parties' presentations:

MEMBER TRUJILLO: ". . . each member of standing gets 30 minutes for presentation and cross-examination unless the clock allows longer time .. ." [59]
. . .

MEMBER TRUJILLO: ". . . You do have to give the applicant the opportunity to cross-examine witnesses as well."[60]
. . .

MEMBER TRUJILLO: "I make the motion that the meeting take place February 3rd as planned under the current guidelines at time that the contract assigned; staff presentation, applicant for an hour, eight members of standing are granted 30 minutes for their total presentation with witnesses and cross-examination . . ."

CHAIR AABOE: "Okay, so rather than having a cross-examine period it's when a person of standing comes up, anyone else can cross-examine that person at that time right? . . .

MR. PRUCINO: "I believe the intent is probably to allow cross-examination after each party, each witness otherwise it becomes a little bit more convoluted. And, just as a matter of information, there was not a lot cross-examining taking place at the Hearing Officer hearing. . . ."[61]

[58] Hearing Officer Prehearing Conference, Tr. 7 (11/14/2024).
[59] Planning Commission Prehearing Conference, Tr. 35 (1/16/2025).
[60] Id.
[61] Id., Tr. 36-37.

County Staff lacked the authority to determine how cross-examination would be conducted. The significance of the County Staff's decision to restrict cross-examination by parties with standing on the parties' due process rights is discussed further in Section III below.

3. Vetting and recommended appointments of Planning Commission members

The BCC relies upon County Staff to do the legwork of soliciting and recommending citizen volunteers to serve on the County's Planning Commission. But the County's assignments for this legwork of the same Staff members who are presenting Staff's recommendations to the Planning Commission for the Rancho Viejo Solar CUP violated the due process rights of the opponents to the CUP.

The terms of four of the seven members of the Planning Commission were expiring at the end of 2024. These included Commissioners to be appointed to represent Districts 1, 3, 4 and 5. Under Section 3.3.3.2 of the SLDC, Commissioners whose terms are expiring continue to serve until their successors are appointed.

Instead of acting promptly at the end of 2024 or the beginning of 2025, County Staff made its recommendations to the BCC at the BCC's second regular meeting of 2025 on January 28, where the BCC approved Staff's recommendations. Staff's recommendations, in effect, selected the composition of the Planning Commission for the February 3 hearing, and it did so after the previous composition of the Planning Commission made decisions, with Staff's assistance, at the January 16 prehearing conference regarding the February 3 hearing.

The BCC, not County Staff, had the authority to decide who would be members of the Planning Commission. Responses to IPRA requests indicate that Staff's preparatory work played a large role in the selections:

Staff Vetting and Recommendations

December 20, 2024	Staff notified Mr. Aaboe (District 4) that he would be reappointed.
January 6, 2025	Staff notified County Commissioner Bustamante (District 3) that Staff had not received any applications for the expiring position in District 3 and that Staff was recommending that current Planning Commissioner Gonzales stay on until Staff can find a replacement.
January 7, 2025	Staff notified County Commissioner Hughes (District 5) that "legal is going to recuse [Commissioner Mendoza, District 5] from the AES hearing."
January 8, 2025	Staff (Assistant County Attorney II Prucino) asks Planning Commissioner Mendoza to recuse himself from the AES hearing; Mr. Mendoza refuses, denying Mr. Prucino's alleged reasons for his recusal.
January 9, 2025	Staff notified Steven Brugger that Commissioner Hughes (District 5) was going to appoint Mr. Brugger as the District 5 representative.

January 15, 2025	Staff conducted an orientation session for Mr. Brugger on January 15, prior to the prehearing conference in which Staff sought recusal of Commissioner Mendoza.
January 16, 2025	Staff attempted to recuse Commissioner Mendoza at the January 16 prehearing conference. Commissioner Mendoza defended himself **and the Planning Commission members agreed he need not recuse himself**.
January 28, 2025	Staff presented a memorandum to the BCC recommending reappointment of Planning Commission members for Districts 1 and 4, continuation of expired term for Commission member for District 3 and appointment of Steven Brugger for District 5 (replacing Commissioner Mendoza). The BCC approved without discussion.

There are legitimate questions about whether Staff's preparatory work and recommendations were appropriate or not. But the issue here is its impact on the due process rights of the participants in this case -- whether it was appropriate for the same members of County Staff to be doing the preparations and recommendations for new Planning Commission members while, at the same time, preparing recommendations Staff would be submitting to the new Planning Commission members for their decision on the Rancho Viejo Solar CUP. The case law cited above suggests that the commingling of the responsibilities of the Staff members and the timing of their work created an appearance of an unfair hearing process.

4. Time-keeping at hearings

County Staff assumed the role of time-keeper in both the Planning Commission and Hearing Officer hearings. As noted earlier, the Planning Commission voted on January 16 to establish the following order of witnesses and time limits for the parties' and public's presentations:

Applicant	60 minutes
Parties with standing	30 minutes each
Applicant rebuttal	30 minutes
Public comment	3 minutes per person or 12 minutes per person upon receipt of donated time from other public commenters

Staff, however, allowed more time to AES than the Planning Commission approved in the January 16 prehearing conference. Staff chose not to enforce the time limits for AES, which presented its case uninterrupted for 1 hour and 53 minutes. Questions from the Commissioners gave AES an additional 34 minutes of presentation time.

The first party of standing, 350.Org, presented for 36 minutes in support of the Rancho Viejo Solar CUP without interruption by Staff. The second party with standing, however, was the first party stopped by Staff. At exactly 30 minutes into the presentation of CEC (the first party with standing to speak in opposition to the application), Staff sounded a bell indicating the expiration of CEC's allotted time. The Planning Commissioners nevertheless allowed CEC to

quickly finish 2 minutes later. The rest of the parties with standing also finished approximately the time originally allotted.

III. DUE PROCESS VIOLATIONS: DENIAL OF OPPORTUNITY TO SUBMIT RELEVANT EVIDENCE

Procedural due process includes the right to submit relevant evidence. Relevant evidence is generally obtained through discovery and cross-examination. New Mexico courts have stated that parties in administrative cases have the right to conduct cross-examination and, in an appropriate case, the right to conduct discovery. Due process was violated in this case by the denial of my discovery requests and the Planning Commission's prohibition against direct cross-examination of Staff, applicant and other opposing parties' witnesses.

Discovery is not specifically authorized in the SLDC or the Board's Rules of Order, but the rules' silence on discovery does not mean that parties don't have the right to it.

Courts have stated the authority to order discovery may, in an appropriate case, be inherent in the authority of a quasi-judicial body to conduct a fair administrative hearing. Discovery may be appropriate where the rules provide for testimony and cross-examination, and relevant evidence for those purposes is within the sole control of the opposing party and the evidence cannot readily be produced through cross-examination or other means.

The New Mexico Supreme Court, for example, said an order denying a request for discovery must be reasonable, even where an agency's procedural rules do not provide for discovery.[62] The New Mexico Court of Appeals has also stated that, although there is not a general due process right to conduct discovery in administrative cases, due process might require that discovery be allowed to afford a party a meaningful opportunity to prepare.[63]

Indeed, as pertinent to this case, the County's Sustainable Growth Management Plan describes the right to discovery as a requirement of due process in a quasi-judicial proceeding:

> The Quasi Judicial process will be detailed in the SDLC to ensure that both the applicant and any protestant will have sufficient opportunity for discovery and have equal opportunity to present their case before a hearing Officer. The Quasi-Judicial Process will:
>
> 1. Afford the applicant with sufficient opportunity to present evidence supporting the application;
> 2. Afford potential protestants with timely notification of the Quasi-Judicial process;

[62] *Archuleta v. Santa Fe Police Dept., ex rel. City of Santa Fe*, 2005-NMSC-006, para. 20, 137 N.M. 161, 108 P.3d 1019 *Archuleta*, para. 20. (Footnote omitted.) (Procedural rules for Santa Fe's Grievance Review Board were silent on discovery but provided for the presentation of "relevant documents, witnesses or other evidence" to support the grievant's case.)

[63] *Dente v. State Taxation & Revenue Dep't*, 1997-NMCA-099, para. 8, 124 N.M. 93, 946 P.2d 1104 (overruled on other grounds in *State Taxation & Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.) para. 8.

> 3. Afford both applicant and protestants sufficient time for discovery and other aspects of due-process;
> 4. Insure that the County shall provide a Hearing Officer, hearing date or dates and sufficient time to hear arguments for and against the application;
> . . . .[64]

Section 3-21-5(A) of the Municipal Code states that the "regulations and restrictions of the county . . . are to be in accordance with a comprehensive plan," which in this case is the Sustainable Growth Management Plan.[65]

Thus, whether discovery is specifically authorized in the SLDC or not, the County's SGMP recognizes it as a due process right, and the County's presiding officers in quasi-judicial proceedings have the inherent authority to allow it. This is particularly true where, as recognized by New Mexico courts, there is a compelling need for discovery under the circumstances of a specific case.

Indeed, there is a compelling need for discovery under the circumstances of the Rancho Viejo Solar case. Much of the evidence relevant to the SLDC criteria for a CUP in this case involves complex battery technology, fire safety engineering and financial information that is within the sole control of AES. The evidence includes information about the causes of AES's accidents, information about the financial and other damages they have resulted, and even information about the identities of the applicants. AES has that information. The information is not publicly available.

AES refused to respond to discovery requests I issued on October 18, and the Hearing Officer denied my Motion to Compel the discovery.

As is discussed in Section I.2.c above, both the SLDC and the Board's Rules of Order grant parties with standing the right to conduct cross-examination of Staff, applicant and opposing party witnesses. That right is also important to satisfy parties' due process rights. The New Mexico Supreme Court has stated that a party in an administrative hearing "is entitled to a full, fair, and impartial hearing which conforms to the fundamental principles of due process and which includes the right to confront and cross-examine witnesses."[66]

I was denied the opportunity to conduct cross-examination at the December 4 hearing because I was not allowed to participate as a party with standing despite the Hearing Officer's Oct. 16, 2024 order granting me standing. I was subsequently allowed to participate in the February 3-4 hearings before the Planning Commission. But County Staff ruled (without the authority to do so) that cross-examination in the Planning Commission hearings could be conducted only by the submission of written questions to the County Staff that would then be asked by the Chair of the Planning Commission.

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[64] 2015 Santa Fe County Sustainable Growth Management Plan, p. 262 (emphasis added).
[65] NMSA 1978, 3-21-5; BCC Resolution 2015-155.
[66] *N.M. Dep't of Workforce Solutions v. Garduno*, 2016-NMSC-002, para. 39, 363 P.3d 1176. *See also, State ex rel. Battershell v. City of Albuquerque*, 1989-NMCA-075, citing *People ex rel. Klaeren v. Village of Lisle*, 781 N.E.2d 223, 234-235 (Ill. 2002).

I submitted discovery requests and submitted cross-examination questions on the issues listed below.[67] But I was not allowed to compel answers to the discovery requests, and the cross-examination questions I submitted were either not asked or were not pursued to obtain direct answers. A few examples follow:

Causes of AES's accidents:

In discovery prior to the Hearing Officer hearing and in proposed cross-examination questions I submitted to County Staff for the Planning Commission hearing, I asked whether AES has prepared any reports that investigate and identify the causes and impacts of the April 2019 and April 2022 fire and explosion incidents in Surprise and Chandler AZ; and, if so, whether AES willing to make the reports public. This was relevant to determine the extent to which AES's prior design, installation and operational practices may continue and affect the proposed project. The Chair of the Planning Commission did not ask the questions.

Damages caused by AES's accidents:

I asked about the dollar amounts of claims that have been made against AES, its subsidiaries and/or insurers for personal injury, property damage, business loss, costs of emergency response, or other damages related to the accidents in Surprise AZ, Chandler AZ, Escondido CA and Moss Landing CA. This question relates directly to the CUP criteria in Section SLDC Section 4.9.6.5, i.e., whether the project will be "detrimental to the health, safety and general welfare of the area" and "create a potential hazard for fire, panic, or other danger." The dollar amount of damages that nearby residents and businesses have suffered from BESS accidents is a relevant measure of the harm caused by the accidents. The Chair of the Planning Commission did not ask the question.

Applicants, Owners and Operators:

There are three applicants for the CUP at issue here: Rancho Viejo Limited Partnership, AES Clean Energy Development, LLC and Rancho Viejo Solar, LLC. The CUP application indicates that Rancho Viejo Solar, LLC will build and operate the facility.

In discovery and in cross-examination questions, I asked about the identities and financial resources of the applicants, including Rancho Viejo Solar, LLC. This was important to determine whether the party directly responsible for any accidents will have sufficient assets to remediate site contamination and compensate residents and business owners for damages. The question was asked, but the answer was vague and incomplete. Joshua Mayer stated that "the direct owner would be the Rancho Viejo Solar, LLC, which is wholly owned by AES," but there was no follow-up to clarify and obtain a direct answer. Mr. Mayer also said the purpose of the ownership structure is to facilitate financing on the merits of each project.[68]

But another likely purpose of the ownership structure is to confine responsibility for any damages caused by the project to the direct owner – Rancho Viejo Solar, LLC – and to shield the

[67] November 8, 2024 Motion to Compel Discovery Responses and Supporting Brief (Exhibit 20); February 2, 2025 Cross-Examination questions submitted by Schannauer (Exhibit 21).

[68] Planning Commission Hearing, Tr. 52 (2/3/2025).

upstream ownership. Unless Rancho Viejo Solar, LLC has sufficient resources, nearby residents and businesses who suffer harm will be at risk for not being compensated.

IV. CONCLUSION

County Staff cannot be an advocate and a decision-maker in the same case. The commingling of those functions in Staff's public and private roles violated parties' due process rights. The inability to conduct discovery and to directly cross-examine opposing witnesses violated the right to produce relevant evidence and, thus, the right to a fair hearing.

Date: May 2, 2025

Respectfully submitted,
/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER

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SELF AFFIRMATION

I, Ashley C. Schannauer, upon penalty of perjury under the laws of the State of New Mexico, affirm and state that the foregoing Legal Authority and Testimony on Denial of Due Process is true and correct based on my personal knowledge and belief.

DATED: May 2, 2025

/s/ Ashley C. Schannauer
ASHLEY C. SCHANNAUER

Exhibits

1 Staff Memorandum to Planning Commission, January 29,2025
2 Email string September 17-18, 2023 between Selma Eikelenboom and Fire Marshal Jaome Blay
3 County Staff email string June 11-August 7, 2024 on Annex G stakeholder process
-- June 11 email from Blay with proposed press release on HMA stakeholder process
-- August 5 email from Blay to resident on proposed stakeholder process
-- August 6 email from Shaffer scheduling Staff meeting (with proposed resolution) for August 13 BCC meeting
-- August 7 email from Blay to Growth Management to discuss "next course of action" after stakeholder process was rejected at August 7 meeting
4 Case Timelines and Expiration, Yutzy Memorandum to Building and Development Staff, July 2, 2024
5 December 10, 2024 email string between Fire Marshal Blay and Atar Fire
6 Interim Fire Protection Guidelines for BESS Facilities, San Diego County Fire Protection District, December 10, 2024.
7 December 3, 2024 email, Yutzy to Gordon (AES), Mayer (AES), Gonzales (Staff) and Sisneros (Staff) re Rancho Viejo – Status Update
8 AES Response to the Third-Party Review of the Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, SWCA Environmental Consultants, January 2025
9 Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, Glorieta Geoscience, January 29, 2025 Report
10 April 24, 2025 email from Roger Prucino to Selma Eikelenboom-Schieveld
11 Email communications between Staff and AES regarding Staff's third-party reviewers:
-- December 10-16, 2024 email string: Staff and AES re Rancho Viejo - EIR Third Party Review Comments
-- January 3-10, 2025 email string: Staff and AES re Rancho Viejo Follow-up Items
-- January 17-February 22, 2024 email string: Staff and AES re Questions and Comments related to January 17 meeting with Glorieta Geoscience
-- January 31, 2025 email string: Staff and AES re Rancho Viejo Solar – Atar Fire Review
12 October 16, 2024 Hearing Officer Order on Motion to Intervene
13 Motion Requesting Order Addressing *Ex Parte* Communications and County Staff's Blocking of the Hearing Officer's October 16, 2024 Order on Motion to Intervene, November 20, 2024
14 Prucino Memorandum, Re: Planning Commission Meeting February 3, 2025, Rancho Viejo Limited Partnership, et al, January 31, 2025
15 February 4, 2025 email string between Nathaniel Crail and Alexandra Ladd regarding Staff participation in Executive Session
16 November 1, 2024 Notice of Special Meeting for November 14, 2024 Prehearing Conference with Hearing Officer
17 January 8, 2025 Notice of Special Meeting for January 16, 2025 Prehearing Conference with Planning Commission
18 January 24, 2025 Order on Staff request for consideration of procedural matters in advance of February 3, 2025 hearing

19 January 27, 2025 Order on Staff request for consideration of procedural matters in advance of February 3, 2025 hearing
20 November 8, 2024 Motion to Compel Discovery Responses and Supporting Brief
21 February 2, 2025 Cross-Examination questions submitted by Schannauer