



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

**In re: Rancho Viejo Limited
Partnership, Rancho Viejo Solar,
LLC, AES Clean Energy
Development, LLC, Applicants,
Application for Conditional Use
Permit**

Case No. 24-5200 (Consolidated)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case is before the Board of County Commissioners (BCC or “Board”) of Santa Fe County (County) on appeals from the Planning Commission’s Final Order dated March 20, 2025, in Case No. 24-5200, Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC, Applicants, Application for a Conditional Use Permit (CUP) for the construction of a 680-acre solar panel array, a 1-acre collector substation, a 3-acre battery energy storage system (BESS) containing no more than 38 CEN 40-foot containers, and related structures on a property located in an area zoned Rural Fringe (RUR-F).

Four notices of appeal were filed from the Planning Commission’s final order, which have been docketed as Case Nos. 24-5201, 24-5202, 24-5203 and 24-5204 and consolidated by previous order of the BCC. The BCC held a hearing on the application and appeals on August 11, 12, 13, and 26, 2025. At the conclusion of the hearing, and by a vote of four in the affirmative and one in the negative, the BCC denied the appeals and approved the application, with conditions.

As required by NMSA 1978, Section 39-3-1.1, and Section 4.4.13 of the Sustainable Land Use Development Code, Ordinance No. 2016-09, as amended (hereinafter “SLDC”), the BCC hereby documents its final decision with written findings of fact and conclusions of law.

SFC CLERK RECORDED 10/22/2025

Background

These proceedings date to at least November 4, 2021, when the Applicants and County Staff held a pre-application Technical Advisory Committee meeting regarding the issuance of a CUP for the construction and operation of a solar and battery energy storage facility on land in the County's rural fringe zone.¹ On January 26, 2023, Applicants formally submitted an application for a CUP. After County staff deemed that application incomplete, the Applicants withdrew the application.² On August 30, 2024, Applicants submitted the CUP application that is now before the BCC.³

On December 4, 2024, the County's SLDC hearing officer conducted a hearing on the application, and issued written findings recommending that the application be denied.⁴ On February 3 & 4, 2025, the Santa Fe County Planning Commission held a hearing on the application. Following that hearing, the Planning Commission issued a final order approving the application.⁵ After the Planning Commission entered its final order, Ashley C. Schannauer, the San Marcos Association, New Mexicans for Responsible Renewable Energy, and Clean Energy Coalition appealed the matter to the BCC.⁶

On May 28, 2025, the BCC issued an order consolidating the appeals and scheduled a pre-hearing conference with the applicant and parties with standing.⁷ Notice of the pre-hearing conference was published in the *Santa Fe New Mexican*, the County's website, and on social media. At the pre-hearing conference, the BCC heard argument on pre-hearing motions and conferred with the parties regarding the date of the hearing on the merits of the application. Following that hearing, on June 17, 2025, the BCC issued another written order scheduling the hearing on the merits and governing other procedural matters, such as the amount of time to be allotted to the applicants, county staff, and the parties with standing to present

¹ See Santa Fe County Technical Advisory Committee Letter to Applicants (March 29, 2022).

² Letter from M. Gordon to D. Sisneros (Sept. 25, 2024), Case No. 23-5010.

³ See Applicants' Development Permit Application (Aug. 30, 2024).

⁴ See Hearing Officer Recommended Order, Instrument No. 2049479 (Dec. 23, 2024).

⁵ See Planning Comm'n Final Order, Instrument No. 2055136 (March 24, 2025). Under the SLDC, the hearing officer does not issue a decision on the application; instead, the hearing officer recommends a decision to the Planning Commission or BCC, which either body is free to accept or reject, without any deference required. See SLDC § 4.9.8.5(5)(c).

⁶ See SLDC § 4.5.4.

⁷ See Order Consolidating Appeals; Recognizing Parties with Standing; and Scheduling Pre-Hearing Special Meeting, Instrument No. 2059825 (May 28, 2025).

evidence and cross-examine witnesses.⁸ Notice of the hearing on the merits of the application was published in the *Santa Fe New Mexican*, on the County's website, and on social media.

On August 11, 2025, the BCC heard approximately 13 hours of testimony, mostly from parties with standing opposing the application. In addition to the opportunity to present evidence and witness testimony, each party with standing was afforded the opportunity to cross-examine the applicant, members of County staff, and other parties with standing. The BCC recessed its August 11, 2025 meeting shortly before midnight and reconvened that meeting on August 13, 2025. On the intervening day, August 12, 2025, the BCC heard testimony from the public on the application. Members of the public were permitted two minutes to testify in support of or in opposition to the application. Members of the public were permitted to present their testimony in person in the BCC chambers or virtually via videoconference. The August 13, 2025 meeting was recessed and reconvened on August 26, 2025, where, after hearing further presentation from County staff, the BCC orally voted to approve the application.

Legal Standard

After the Land Use Administrator determines a CUP application is complete, the SLDC hearing officer conducts a hearing on the application and issues written findings of fact and a recommended decision on the application.⁹ After the hearing officer issues a written recommendation, the Planning Commission "review[s] the application for compliance with the SLDC and other applicable law."¹⁰ The Planning Commission then issues a final decision on the application.¹¹

Any party with standing in the proceedings before the Planning Commission may appeal the Planning Commission's decision to the BCC.¹² The following standard applies to these appeals:

The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from a

⁸ See Order Governing Prehearing Procedure and Scheduling Hearing on the Merits (June 17, 2025). The BCC also recognized Camilla C. Brom as an additional party with standing and afforded her time to present evidence and cross examine witnesses at the hearing.

⁹ See SLDC § 4.4, Table 4-1.

¹⁰ See SLDC § 4.4.10.

¹¹ *Id.*

¹² *Id.* § 4.5.4.

decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be forwarded by the Administrator to the Board. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal shall be placed on the docket of the Board for consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.¹³

As noted in the legal standard quoted above, the BCC's review of the Planning Commission's decision is *de novo*, which means that the BCC conducts its own hearing and issues its own findings of fact and conclusions of law on the application, with no deference to the hearing officer's recommendations or the Planning Commission's final order.¹⁴ After the BCC issues a final, *de novo* decision on an appeal of a Planning Commission decision, a person aggrieved by the BCC's decision may appeal to district court pursuant to NMSA 1978, § 39-3-1.1, Rule 1-074 NMRA and Section 4.5.5 of the SLDC.

Under the SLDC, certain uses of land "that, because of unique characteristics or potential impacts on adjacent land uses, are not permitted in zoning districts as a matter of right but which may, under appropriate standards and factors set forth [in the SLDC], be approved. These uses shall be permitted through the issuance of a conditional use permit (CUP)."¹⁵ To issue a CUP, the applicant bears the burden of proving that the proposed use will not:

1. be detrimental to the health, safety and general welfare of the area;
2. tend to create congestion in roads;
3. create a potential hazard for fire, panic, or other danger;
4. tend to overcrowd land and cause undue concentration of population;

¹³ SLDC § 4.5.4.

¹⁴ *Cf. Clayton v. Farmington City Council*, 1995-NMCA-079, ¶ 16, 120 N.M. 448 (describing "de novo" review of an agency's decision as "a trial anew in the sense that the first reviewing court considers the issues presented on its own, not bound, controlled or necessarily influenced, in any way, by the action of the inferior tribunal.") (internal quotation marks omitted).

¹⁵ SLDC § 4.9.6.1.

5. interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. interfere with adequate light and air; and
7. be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or [Sustainable Growth Management Plan ("SGMP")].¹⁶

The SLDC describes conditional uses as follows:

Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district but that require individual review of their location, design and configuration, and the imposition of conditions or mitigations in order to ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses that are enumerated as conditional uses in a zoning district, as set forth in the use matrix, may be authorized by the Planning Commission. No inherent right exists to receive a CUP. Concurrent with approval of a CUP, additional standards, conditions and mitigating requirements may be attached to the development order. Additionally, every CUP application shall be required to comply with all applicable requirements contained in the SLDC.¹⁷

Findings of fact and conclusions of law

I. The proposed use is a commercial solar energy facility, not a "gas or electric power generating facility."

1. The San Marcos Association and New Mexicans for Responsible Renewable Energy make a threshold argument that the proposed solar panel array and BESS is a "gas or electric power generation facility," and is therefore a prohibited use in the rural fringe zoning area. They argue that County staff violated the SLDC by instead treating the proposed use as permitted (subject to issuance of a CUP).

2. This argument turns on Appendix B to the SLDC, known as the SLDC "Use Matrix."¹⁸ That document governs proposed uses of lands within the

¹⁶ See SLDC § 4.9.6.5.

¹⁷ SLDC § 4.9.6.2.

¹⁸ See SLDC App'x B (Dec. 2022).

County's zoning jurisdiction, and the administrative process (if any) required before those uses are allowed.

3. Under the Use Matrix, a proposal to use land located within the County's rural fringe for a "commercial solar energy production facility" is permitted upon the issuance of a CUP. On the other hand, a "gas or electric power generation facility" is prohibited.¹⁹

4. The BCC concludes that the proposed use is a "commercial solar energy production facility," and is therefore permitted in the County's rural fringe, contingent on the issuance of a CUP. This conclusion flows from a straightforward application of the SLDC's text. The SLDC specifically defines "commercial solar energy production facility" as "a renewable energy production facility that uses sunlight to generate, and may store, energy for sale or profit."²⁰ Treating this proposed use as allowed, subject to issuance of a CUP, is consistent with the County's Sustainable Growth Management Plan ("SGMP," adopted by Resolution No. 2015-155), which makes "[s]upport [for] the development and use of sustainable, renewable energy production and distribution infrastructure and reduce dependence on non-renewable energy use" a formal goal of the County's development plan, as well as the "[a]llow[ance of] solar . . . or other sustainable green technologies in existing and proposed developments throughout the County" a specific county policy.²¹

5. The San Marcos Association and New Mexicans for Responsible Renewable Energy argue that the more general classification in the SLDC Use Matrix for "gas or electric power generation facility" encompasses this proposed use, and therefore controls over the specific definition of "commercial solar energy production facility." This argument is flawed in two ways. First, the BCC must construe the SLDC as it would construe any other statute, and it is well-established that a specific statutory provision controls over a more general statutory provision.²² To illustrate the point, suppose a County ordinance prohibited vehicles in all county open spaces, and a separate county ordinance provided that "bicycles are permitted in County open space between sunrise and sundown." Even though bicycles are considered vehicles, a specific ordinance governing the use of bicycles in county open spaces would trump the more general prohibition against the use of

¹⁹ See *id.*, Attach. 3:11.

²⁰ See SLDC App'x A, Attach. 2:13 (Supp 2, March 2024).

²¹ See Santa Fe County, 2015 Sustainable Growth Management Plan (SGMP Goal 24, Policy 24.2).

²² See *State v. Garcia*, 2013-NMCA-005, ¶ 27 ("The general/specific rule states that if one statute deals with a subject in general and comprehensive terms, and another statute addresses part of the same subject matter in a more specific manner, the latter controls."); see also *Burroughs v. Bd. of Cnty. Comm'rs of Bernalillo Cnty.*, 1975-NMSC-051, ¶ 13, 88 N.M. 303 ("In construing municipal ordinances or county zoning ordinances, such as the one here before us, the same rules of construction are used as when construing statutes of the legislature.").

vehicles altogether. The San Marcos Association and New Mexicans for Responsible Renewable Energy would flip this rule on its head, requiring the more general provision (in our example, “vehicles”) to control over the more specific (“bicycles”). This ordering would render the more specific statutory provision superfluous, and is therefore disfavored.

6. Second, the San Marcos Association’s argument implies that the SLDC and SGMP treat all power generation facilities equally, such that a coal-powered generating station is the same (for purposes of land use) as a wind energy facility. That view is inconsistent with the goals and policies of the SGMP to encourage the development of renewable energy sources and discourage the continued use of fossil fuels for power generation. It also begs the question of why the County would adopt a specific definition of “commercial solar energy production facility” in the SLDC, if it intended all energy generation facilities in the rural fringe to be treated the same.²³

7. In a related vein, New Mexicans for Responsible Renewable Energy argues that the true intent of the SLDC and SGMP is only to permit the construction of “small mom & pop” commercial facilities, not larger commercial facilities that will cause visual and other impacts to the County’s rural fringe. But this proposed division of “mom & pop” commercial solar and “large-scale” commercial solar facilities has no support in the text of the SLDC or SGMP. To the extent some notion of a “mom & pop commercial solar facility” has any support in law, it is in the Community Solar Act, which (along with implementing provisions of the SLDC) allows the construction of community solar facilities as of right anywhere in the county.²⁴ So if the true intent of the SLDC was to permit only community solar facilities, there would be no need to expressly define “commercial solar” as a conditional use in the County’s rural fringe.²⁵

II. Applicants have satisfied the standard for issuance of a CUP.

8. The BCC has reviewed the administrative record, as established by the Applicants, staff, and parties with standing in the proceedings before the BCC as well as the earlier proceedings before the hearing officer and Planning Commission. The BCC carefully considered all of the evidence and testimony presented at its hearing on the application on August 11 & 12, 2025.

²³ See, e.g., SGMP § 7.1.2 (stating county policy to “[e]stablish base line for energy consumption and set incremental goals to reduce energy consumption and support renewable energy projects to address climate change and related economic impact.”).

²⁴ See NMSA 1978, § 62-16B-7(B)(10) (2022).

²⁵ Cf. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24 (“This Court must interpret a statute so as to avoid rendering the Legislature’s language superfluous.”) (citations omitted).

9. Much of the testimony and evidence received by the BCC was expert or technical in nature. Sitting as both the trier of law and fact, the BCC considered the reliability and credibility of the expert testimony and other technical evidence that was offered. In large part, the BCC reached its decision by crediting some of this expert testimony and discounting conflicting testimony by others. As the trier of fact, the BCC was permitted to give more weight to the testimony of one expert than it gave to the conflicting testimony of another expert.²⁶

10. Based on a review of the whole record, as well as an assessment of the arguments, evidence, and testimony presented at the hearing, the BCC finds that the application for a CUP should be granted, subject to the conditions set forth in this written decision and any conditions that might be imposed as part of any future development permit application process.

A. Findings of fact regarding the proposed solar and BESS detailed in the application

11. Applicants seek permission to construct a 96-megawatt solar facility on an 828-acre tract (the “Property”) and a 2.3-mile generation tie-in line (gen-tie) with either 70-foot-tall steel monopoles or 50-foot-tall steel H-Frame poles within existing easements.²⁷

12. The Property is located within an area zoned Rural Fringe (RUR-F). The site’s address is 211 Twilight Way, and is accessed via Highway 14. The Property is within Township 15 North, Range 9 East, Section 8, SDA-2 (Commission District 5). The Parcel ID of the Property is #99312727.²⁸

13. The proposed solar facility on the Property will consist of a 680-acre solar panel array, a 1-acre collector substation, a 3-acre BESS containing no more than 38 CEN 40-foot containers containing battery modules; one or more water tanks with a cumulative capacity of 60,000 gallons for fire protection; a maximum 5,000-gallon above ground water tank for potable water, and a 1,400- square foot operations building approximately 18 feet in height with an onsite septic system.²⁹

14. Construction of the proposed facility will take place over an approximately 12-month period. During that period, there is expected to be increased vehicle traffic, including heavy equipment traffic, arriving and departing the Property. Typical construction work schedules are expected to be from 7:00

²⁶ Cf. Rule 13-213 NMRA; *see also* *Martinez v. Martinez*, 1984-NMCA-026, ¶ 12, 101 N.M. 493 (“A fact-finder is not bound to accept opinion evidence of an expert witness.”).

²⁷ *See* Staff Report regarding Rancho Viejo Solar, LLC Conditional Use Permit (July 23, 2025).

²⁸ *Id.*

²⁹ *Id.*; *see also* Verbatim Minutes of August 11, 2025 Hearing, at 12.

a.m. to 7:00 p.m., Monday through Friday, with the potential for work to occur from 7:00 a.m. to 7:00 p.m. on Saturday. Work on the gen-tie may occur at night to minimize outages. In addition, certain activities, such as concrete pours, may occur outside of the specified hours when heat conditions are conducive to the activity.³⁰

15. As noted above, the BESS consists of up to 38 40-foot (2 TEU) shipping containers assembled off-site containing racks of lithium-ion battery modules.³¹

16. In addition to furthering county renewable energy policy, the proposed BESS will further the County's support for preserving open space in the County's fringe areas and promoting denser, mixed-use development in more urbanized areas. The Applicants testified that if this application is approved, the owner of the Property will sever development rights from the 5,706-acres surrounding the project site,³² preserving that area as open space, and enable denser development in areas designated as a mixed use or otherwise suitable for denser development, such as a planned development district or industrial district.³³

B. The proposed solar energy and BESS facility will not be detrimental to the health, safety and general welfare of the area, and does not create an appreciable risk of fire, panic, or other danger.

17. The proposed BESS uses lithium-ion battery modules. These modules (whether in a BESS array, an electric car, or a laptop battery) are susceptible to something called "thermal runaway"—essentially, when the temperature of a battery module exceeds the module's heat dissipation features.³⁴ This can be the result of internal chemical reactions or external sources of heat.³⁵ The excess heat causes the temperature of the area surrounding the battery module to rise, which in turn increases the rate of chemical reactions taking place in the battery cells contained within the module. This can cause the release of flammable gases and toxic fumes, and can result in a fire that causes further thermal runaway in other cells and modules. In a BESS system (where hundreds or thousands of battery modules are contained in an enclosure), a fire on one module can spread to nearby

³⁰ See Staff Report regarding Rancho Viejo Solar, LLC Conditional Use Permit (July 23, 2025).

³¹ *Id.*

³² See Verbatim Minutes of August 11, 2025 Hearing, at 30.

³³ See SGMP §§ 2.2.4.1, 2.2.4.6.

³⁴ See Rancho Viejo BESS First Responder Mitigation Guidelines, at 10 (Aug. 27, 2024).

³⁵ See Draft Preliminary Hazard Mitigation Analysis (Aug. 13, 2024).

modules, resulting in a fire that burns some or all of the batteries within the enclosure. Thermal runaway can also cause the release of explosive gases.³⁶

18. The enclosures used in the proposed BESS system will contain non-water based fire suppression systems.³⁷ But in the event a fire propagates in a lithium ion battery enclosure, the fire cannot be directly suppressed with water, as a result of lithium ion batteries' chemical properties. Now (and with this proposed BESS), if an enclosure's internal fire suppressing systems fail, the generally accepted response strategy is to allow thermal runaway to run its course, venting excess heat from the enclosure and preventing its spread to adjacent arrays or enclosures. Other passive fire mitigation design features, such as minimum setbacks between battery enclosures, ensure that a fire does not spread from enclosure to enclosure. Water is applied to adjacent BESS containers to keep them cool and prevent the fire from spreading.³⁸

19. As part of the staff's assessment of the application, the County required Applicants to prepare a Pre-Incident Plan, an Emergency Response Plan, and a Hazard Mitigation Analysis for the proposed facility. County staff retained Nicholas Bartlett, P.E., and Todd LaBerge, P.E., to review those plans, as well as proprietary testing and modeling reports for the proposed BESS. These County-retained experts and the County's Assistant Fire Chief/Fire Marshal have opined that the proposed BESS complies with the National Fire Protection Association's 2021 edition of the International Fire Code and 2023 Standard for the Installation of Battery Energy Storage Systems, NFPA 855.³⁹ The County also required the preparation of an environmental impact report detailing the project's potential environmental impacts, as well as a biological survey report detailing the project's potential effects on plants and animals in the site area. The BCC has reviewed these materials and has duly considered the environmental impacts of the proposed project.

20. The main subject of testimony and concern expressed at the public hearing surrounded the potential for thermal runaway and the danger of fire at the facility. On this subject, Applicants testified that the proposed BESS contains active and passive safety features that (i) minimize the risk of thermal runaway; and (ii) in the event of thermal runaway, will reduce the risk of a major incident. Applicants testified that the BESS would be constructed and operated in accordance with Underwriter's Laboratory Standard for Test Method for

³⁶ Draft Preliminary Hazard Mitigation Analysis (Aug. 13, 2024).

³⁷ See Verbatim Minutes of August 11, 2025 Hearing, at 30.

³⁸ See Environmental Impact Report for the Rancho Viejo Solar Project, Table ES.5 (July 2024).

³⁹ See Santa Fe County Fire Department, Fire Prevention Division, Conditional Use Permit Plan Review (Oct. 11, 2024).

Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems (UL 9540A).⁴⁰ Applicants testified that “every battery cell in those containers has a sensor in it,” and the sensors transmit information to a monitoring facility that is operated 24 hours a day, 7 days a week. This monitoring will provides the ability for the system to disconnect itself from energized power if anomalous behavior is detected; in the unlikely event of a thermal runaway event, the sensor and monitoring apparatus will ensure that an appropriate emergency response is triggered.⁴¹ These sensors include the ability to detect flammable gas at 10 percent of the lower explosive limits of such gases, triggering alarms and enabling the operating staff to shut down the system.⁴²

21. The BCC heard testimony about instances in other states where thermal runaway at a BESS has resulted in fires that damaged the BESS. Those incidents include fires at facilities operated by AES or its corporate affiliates. Notably, the BCC did not hear any testimony that these fires spread to homes or businesses surrounding the BESS, nor did it hear any testimony that a fire from a surrounding area encroached upon a BESS and caused a thermal runaway incident.

22. Although there was no evidence BESS fires killed or caused chronic injury to nearby residents, there was testimony from the Clean Energy Coalition that at least one BESS fire in Moss Landing, California released heavy metals and chemicals into the surrounding, populated areas. Likewise, there are reports that BESS facility fires have injured responding firefighters, and have led to shelter-in-place or evacuation orders for the area near the facility, which can be traumatizing for affected residents.

23. Testimony about the environmental impacts of the Moss Landing fire was distressing. The BCC carefully considered that testimony. But in the end, the BCC finds that it had little probative value. The Moss Landing BESS fire involved a facility operated by a different company, containing different battery modules stored in a different configuration. The main point of difference between the Moss Landing Facility and the proposed facility is that Moss Landing was essentially a single-enclosure BESS; arrays of battery modules were stored within the same repurposed building, allowing a fire in one array to easily spread to the entire facility. In contrast, the proposed facility before the BCC consists of many individual enclosures, separated by setbacks that are designed to prevent the spread of fire. Thus, even if there is a fire in one enclosure, it is exceedingly unlikely that

⁴⁰ See Environmental Impact Report for the Rancho Viejo Solar Project, at 2-4 (July 2024).

⁴¹ Verbatim Minutes of Special Meeting of August 11, 2025, at 35, 184.

⁴² *Id.*

the fire will spread to other enclosures and cause the kind of sustained conflagration that was observed at Moss Landing.

24. The Clean Energy Coalition (the main proponent of the Moss Landing testimony) did not present any evidence that tended to show the proposed facility shared design or technology with the BESS at Moss Landing, such that testimony about the fact and effects of the Moss Landing fire makes any likelihood of a similar catastrophic fire in the proposed BESS any greater. For example, there was no testimony that the Moss Landing BESS was installed and operated in compliance with the 2021 International Fire Code or NFPA 855.

25. The testimony presented by the Clean Energy Coalition boiled down to emphasizing (and reemphasizing) the inherent risk of thermal runaway. As a result, the Clean Energy Coalition's position proves too much: on its view, no BESS configuration or design can have an acceptable degree of risk to the health and safety of surrounding areas. Indeed, a Clean Energy Coalition witness was asked directly whether there was any set of rules or regulations that the County could adopt that would adequately address its concerns regarding thermal runaway. The answer was no: on CEC's view, no design, configuration, or safety standard for lithium-ion batteries can satisfactorily address the risks.⁴³

26. Ultimately, the BCC was persuaded by evidence and testimony regarding the cell-, module-, and enclosure-level safety features that will be used with this BESS. Further, the BCC found persuasive (and credited) the Applicants' testimony that even while the number of thermal runaway events has plateaued or increased, these incidents have declined as a share of the number of deployed gigawatts of BESS across the United States.

27. This is not to say that the BCC did not find the Clean Energy Coalition's (or others') testimony entirely irrelevant or unpersuasive. In particular, the Clean Energy Coalition pointed to evidence that insurers and other authorities recommend at least ten feet of separation between BESS enclosures. Although the Applicants maintain that a three-and-a-half-foot distance was sufficient to prevent thermal runaway in one enclosure from jumping to an adjacent enclosure (consistent with the minimum setback requirements of NFPA 855), the BCC agreed that its approval of the CUP application would contain an additional condition requiring that all enclosures be placed at least ten feet apart.

⁴³ See Verbatim Minutes of August 11, 2025 Hearing, at 121 (Testimony of B. Rowley). This argument was echoed by other parties with standing. For example, Ashley C. Schannauer highlighted SEC reports filed by Applicants' parent company, which identified the inherent risk of thermal runaway as a financial risk to investors. See Verbatim Minutes of August 11, 2025 Hearing, at 88 (Testimony of A. Schannauer). Again, acknowledgment of inherent risk from the technology in general does not bear on the specific risk of the proposed development. Put differently, the Applicants' acknowledgment of the risk does not speak to the sufficiency of the measures (both Applicant-, staff-, and BCC-proposed) that have been developed to respond to that risk.

28. Ashley C. Schannauer submitted written testimony asserting that the proposed facility carries air quality and ground water contamination risks. The BCC finds that those risks are adequately addressed by the draft Hazard Mitigation Analysis, as well as the additional condition imposed by the BCC requiring the use of non-persistent, non-bioaccumulating, non-toxic clean agent fire suppressants. Mr. Schannauer further argues that Section 6.3.10.2 of the SLDC prohibits the use of “draft” hazard mitigation analyses; he contends that the SLDC requires that the analysis be “completed and mitigation measures approved” before a CUP may issue. But the relevant provision of the SLDC states that “[f]ormulation of mitigation measures shall be identified at the first discretionary approval”⁴⁴ While the hazard mitigation analysis is subject to revision, the BCC finds that it complies with the identified provisions of the SLDC governing identification of mitigation measures. The measures identified in the analysis are identified with sufficient particularity, and they specify the relevant performance standards that will be used to mitigate the contemplated impacts. The SLDC does not prohibit the further development of these identified performance standards and mitigation measures post-approval.

29. Some parties with standing raised concerns about wildfire risk. However, the area where the proposed facility is located is sparsely-vegetated scrubland, which (as noted in the SGMP) is the subject of minimal relative wildfire risk.⁴⁵ Further, the application notes that active vegetation management at the facility, as well as passive measures (such as fencing and setbacks between the facility border and battery enclosures) minimize any risk that a thermal runaway event will ignite nearby vegetation. Conversely, these same safeguards minimize any risk that an off-site wildfire will affect the facility.

C. The proposed solar energy and BESS facility will not tend to create congestion in roads;

30. The BCC credits the findings of staff and the testimony of the Applicant that this proposed facility will not cause road congestion.

31. Although the construction phase of this project, which is estimated to take up to 12 months,⁴⁶ will result in increased traffic on Highway 14, the staff- and BCC-imposed conditions on the application (such as requiring heavy construction traffic to enter and exit the Property outside of the morning rush hour) will minimize the effects of any temporary construction-caused road congestion.

⁴⁴ SLDC § 6.3.10.2.

⁴⁵ See SGMP Map 9-1.

⁴⁶ See Environmental Impact Report for the Rancho Viejo Solar Project, at 3-74 (July 2024).

32. After the construction phase, the facility will have minimal traffic. The applicant will employ up to four full-time employees at the site. These employees' comings and goings will cause negligible road traffic.⁴⁷ Although this does not bear directly on the BCC's consideration of this application, it is worth noting that subdivisions containing single-family homes are a permitted use in the rural fringe. As a result, the proposed conditional use will cause significantly less traffic impacts than permitted uses, and supports granting the CUP.

33. Facility maintenance will involve periodic washing of the solar panels, general equipment maintenance, and vegetation trimming.⁴⁸ The traffic associated with these activities will be negligible.

D. The proposed solar energy and BESS facility will not create a potential hazard for fire, panic, or other danger;

34. As stated above, the BCC's assessment of the proposed BESS facility's effect on the health, safety, and general welfare of the area largely overlapped with its assessment of concerns over the risk that thermal runaway in battery enclosures would lead to fire, panic, or other danger. The BCC did not see evidence to support those concerns; indeed, the weight of evidence supported a finding that operation of the proposed facility will not lead to fire, panic, or other dangerous conditions. The batteries will be in enclosures with fire and heat suppression in each enclosure and the enclosures will be separated by ten feet to avoid any chance of fire being spread from one enclosure to another.

E. The proposed solar energy and BESS facility will not tend to overcrowd land and cause undue concentration of population;

35. The proposed facility will not have any full-time residents. Indeed, under the SLDC, the construction of single-family residences is permitted as a matter of right on the Property.⁴⁹ Accordingly, the BCC finds that the application, if granted, will not tend to overcrowd land or cause the undue concentration of population.

⁴⁷ See Environmental Impact Report for the Rancho Viejo Solar Project, at ES-2 (July 2024).

⁴⁸ See Environmental Impact Report for the Rancho Viejo Solar Project, at 2-8 (July 2024).

⁴⁹ See SLDC App'x B, Attach. 3:2 (Dec. 2022).

- F. The proposed solar energy and BESS facility will not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

36. The staff- and BCC-imposed conditions on approval require Applicants to secure water for the construction and operation of this facility. The facility will not create any additional demand for parks, water, sewerage, transportation, or other requirements.

37. If anything, the expected tax proceeds from the construction of this facility, as well as any subsequent tax proceeds from its operation, will help provide adequate provision for schools, parks, water, sewerage, transportation, and other public infrastructure requirements.

- G. The proposed solar energy and BESS facility will not interfere with adequate light and air.

38. The BCC finds that the proposed facility will not interfere with area residents' access to light and air. The facility's profile is lower than an ordinary single-family residence, and is several hundred yards away from the nearest residence. Staff-imposed conditions require any facility lights to be downcast and comply with Section 7.8 of the SLDC. Under normal operation the facility will not produce air pollution. In the unlikely event of a fire, models show that plumes of air pollution will not affect nearby residents.

- H. The proposed solar energy and BESS facility will not be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or SGMP.

39. As noted above, the SLDC specifically defines "commercial solar energy production facility" as "a renewable energy production facility that uses sunlight to generate, and may store, energy for sale or profit."⁵⁰ The SLDC's use matrix states that a commercial solar energy production facility is a permitted use in the County's rural fringe, subject to the issuance of a CUP.

40. This proposed use is also consistent with the spirit and intent of the SGMP, which makes "[s]upport [for] the development and use of sustainable, renewable energy production and distribution infrastructure and reduce dependence on non-renewable energy use" a formal goal of the County's

⁵⁰ See SLDC App'x A, Attach. 2:13 (Supp 2, March 2024).

development plan, and articulates a county policy supporting the “[a]llow[ance of] solar . . . or other sustainable green technologies in existing and proposed developments throughout the County.”⁵¹

III. The BCC rejects the arguments made by the parties with standing in opposition to the application.

A. Ashley Schannauer and New Mexicans for Responsible Renewable Energy waived their demand for additional discovery from the Applicants.

41. Ashley Schannauer and New Mexicans for Responsible Renewable Energy filed pre-hearing motions demanding discovery from the Applicants on certain subjects. In its prehearing order, the BCC essentially denied those motions without prejudice: while the SLDC did not permit the type of forced pre-hearing discovery requested by Mr. Schannauer and New Mexicans for Responsible Renewable Energy, the BCC concluded that some or all of the subjects of proposed discovery could be inquired into by the BCC at the hearing on the merits of the application.

42. Consistent with this understanding of the BCC’s pre-hearing ruling, Mr. Schannauer filed a pre-hearing motion that the BCC demand disclosure of certain information from the Applicants at the hearing on the merits.

43. At the hearing on the merits, Ashley Schannauer and New Mexicans for Responsible Renewable Energy, along with all other parties with standing, were given the opportunity to directly cross-examine County staff and the Applicants. Neither Mr. Schannauer nor New Mexicans for Responsible Renewable Energy asked the Applicants to testify on any of the subjects identified in their pre-hearing motions for discovery.

44. Although members of the BCC inquired into certain subjects raised in those motions on their own accord, those inquiries were not prompted by Mr. Schannauer, and the BCC had no occasion to consider the propriety of any demand for additional disclosures from the Applicants at the hearing. Accordingly, the BCC finds that Mr. Schannauer and New Mexicans for Responsible Renewable Energy waived any demand for additional disclosure of information by the Applicant or staff on the subjects identified in their pre-hearing motions.

45. In addition, the BCC finds that the information requested was likely irrelevant. As a condition of approval, Applicants are required to purchase a decommissioning bond sufficient to cover the cost of decommissioning the facility.

⁵¹ SGMP Goal 24, Policy 24.2.

Likewise, Applicants were required to submit proof that they held liability insurance of a sufficient amount to cover likely losses from injury or property damage caused by their operations. There was no evidence presented that Applicants would be unable to comply with these requirements, or that additional, more stringent conditions than those adopted by the BCC were needed to assure Applicants' financial responsibility. As a result, additional information about Applicants' ownership structure and assets is of little probative value.

46. In a related vein, the parties with standing sought to introduce testimony tying the Applicants to BESS facilities designed by Fluence, an AES corporate affiliate.⁵² The Applicants denied that Fluence had any role in the design of the proposed BESS under review.⁵³ The Applicants further testified that no Fluence personnel were involved in the application.⁵⁴ The BCC finds these denials persuasive, as they were unrebutted by any of the parties with standing.

47. Finally, some parties with standing and members of the public testified that they were concerned the Applicants' profit motive (or "greed") would cause AES to "cut corners" and avoid expenditures that would make the facility safer. However, as one of the Applicants' chief witnesses explained, all safety requirements, whether a function of the relevant fire code, or a specific condition imposed by the BCC, do not reduce the profit realized from the facility: instead, it influences the energy rate that the Applicants use in their bid to the relevant power utility (here, that is likely PNM). If the costs get too high, a utility may not enter into a contract with the Applicants, and the facility would not be constructed. It does not follow that the Applicants will ignore these costs or cut corners in order to achieve a higher profit.⁵⁵

B. The risks of on- and off-site wildfire are minimal and adequately addressed.

48. Camilla Brom and the Clean Energy Coalition presented extended testimony about the risk of wildfire to nearby properties. The gist of this testimony was that a thermal runaway event at the BESS could ignite brush or vegetation at the facility. Wind could then cause a wildfire, which would threaten a nearby gas line and residences.

49. Initially, the BCC notes there was no evidence or testimony presented of any past thermal runaway incident leading to a wildfire.

⁵² See, e.g., Verbatim Minutes of Special Meeting of August 11, 2025, at 86, 93.

⁵³ Verbatim Minutes of Special Meeting of August 11, 2025, at 43.

⁵⁴ See Verbatim Minutes of Special Meeting of August 11, 2025, at 168.

⁵⁵ See Verbatim Minutes of Special Meeting of August 11, 2025, at 177.

50. In any event, the BCC finds that the proposed facility contains adequate setbacks and other passive fire mitigation measures to address the concerns raised by Ms. Brom and the Clean Energy Coalition. First responders will have the use of 60,000 gallon water tanks for fire suppression efforts. Further, setbacks and vegetation management will make the facility site less prone to wildfire than the surrounding area, which is by all accounts unmaintained scrubland.

51. The BCC also finds that the Clean Energy Coalition and Ms. Brom's testimony conflates two distinct issues: the risk of thermal runaway in lithium-ion batteries and the county-wide, and pre-existing, risk of wildfires, on the other. As noted above, there was no evidence connecting these two distinct issues. Indeed, there is an existing and elevated risk of human-caused wildfires in Santa Fe County from gas stations, burning of yard waste, fireworks, et cetera. The approval (or disapproval) of the proposed BESS has no material bearing on this risk.

52. Moreover, there was ample testimony demonstrating that the Applicants' proposal satisfactorily addressed wildfire risk. First, as noted above, the area in question is considered a low risk area—the sparsely vegetated scrubland is unlikely to provide the sustained fuel needed for a wildfire to propagate. Second, passive fire prevention measures at the facility site—perimeter road, setbacks, and fireproofing of the battery enclosures—further reduces the risk that an on-site fire will cause an off-site wildfire, or vice versa. Finally, active measures, such as the required on-site 60,000 gallon-capacity water tank(s) further reduce wildfire risk.

C. Clean Energy Coalition failed to timely object to, or demonstrate any prejudice caused by revised noise and plume reports.

53. In its final order approving the application, the Planning Commission required Applicants to submit a smoke and plume model to be reviewed by the Santa Fe County Fire Prevention before the conditional use permit was recorded. For its part, County staff recommended that the Applicants conduct a 2-hour ambient noise study, to determine whether the proposed facility would comply with SLDC noise requirements.⁵⁶ Preferring to put both matters to the BCC before approval, Applicants obtained and submitted noise and plume studies prior to the BCC hearing. The BCC has reviewed those studies.

54. The BCC finds that the noise study, which was been reviewed by third-party expert Glorieta Geoscience, is based on reliable scientific methods and

⁵⁶ See SLDC § 7.21.4 (stating that a development application may be denied or noise mitigation conditions imposed if projected noise from a development exceeds 5dBA above ambient noise levels over a thirty minute period).

credible; the study establishes that the proposed facility will not raise ambient noise levels above the 5 dBA threshold set out in SLDC Section 7.21.4.

55. The BCC likewise finds that the plume model is based on reliable scientific methods and is credible. The plume study shows that the plume of toxic chemicals that could be released during any thermal runaway scenario will not cause health effects in unprotected persons, including sensitive individuals, who are more than 86' away from the facility. As noted elsewhere, the proposed facility will be located a great distance away from the nearest residence.

56. The parties with standing did not challenge the reliability or conclusions of the noise and plume study. Instead, in a post-hearing written submission styled as a "notice of objection," the Clean Energy Coalition objects that revised noise and plume studies were produced to the parties with standing "just days before the Hearing was to begin." The Clean Energy Coalition complains that this late disclosure left it with "an inadequate amount of time to review, analyze and evaluate the information [in the noise and plume studies], and insufficient time to try and incorporate the findings into their time-limited presentations."⁵⁷

57. As an initial matter, this objection ignores that the submission of a noise study and plume model were proposed conditions on the permit; there was no requirement that Applicants produce a noise study or plume model before the BCC hearing. Put differently, had Applicants elected to defer commissioning the noise study and plume model until after the BCC hearing, that decision would not have been a basis to deny the application.

58. To be sure, it made sense for Applicants to commission these reviews before the hearing, in order to head off the objection that their failure to produce evidence that the project would not impermissibly raise ambient noise or risk a dangerous plume supported a finding that Applicants had failed to meet their burden of proof, and therefore were not entitled to issuance of a CUP. But as a result, the parties with standing cannot complain about being blindsided or unfairly prejudiced by the late production of these materials. Instead, they ought to have produced their own evidence rebutting the Applicants' expert analyses, pointed out the flaws in those analyses, or requested that the hearing be continued. This they did not do.

59. Moreover, the BCC finds that the Clean Energy Coalition's objection should have been made when the BCC had an opportunity to address the matter, i.e., during the hearing on August 11, 2025. If the objection had been made at that time, the BCC could have considered whether to continue the hearing to give Clean Energy Coalition more time to address the updated noise and plume studies

⁵⁷ See Clean Energy Coalition Notice of Objection, at 3 (Aug. 25, 2025).

through cross examination or rebuttal testimony. By waiting until August 25, 2025 to make its objection (more than two weeks after the updated noise and plume studies were disclosed), Clean Energy Coalition failed to fairly invoke the BCC's authority to correct the issues raised.

60. Moreover, and as an independent ground for denial of the late-filed objection, the BCC notes that Clean Energy Coalition does not explain how it suffered any prejudice as a result of the updated noise and plume study. Although Clean Energy Coalition states that the reports "should be fully incorporated in all evidentiary presentations, vigorously debated and meticulously dissected," it does not explain why it was unable to scrutinize the reports at its presentation after the reports' disclosure; nor does it explain what additional evidence it would have presented if the hearing had been continued.

61. Finally, the BCC notes that the Clean Energy Coalition's post-hearing objection mischaracterizes the record of these proceedings. The Clean Energy Coalition states that County staff "considers [the project] the "most hazardous project in Santa Fe County.""⁵⁸ The Clean Energy Coalition appears to maintain that this is a verbatim quote of staff testimony. However, the cited portion of the Hearing Officer's recommended order states only that "when [County staff was] asked if there was any commercial or industrial facility in the County that posed a comparable degree of hazard as the proposed Project, Staff responded that it was not aware of any past, present, or future projects that posed such hazard as the proposed Project." The hearing officer's recommendation speaks for itself, as does the transcript of the staff presentation cited by the hearing officer. Neither supports the Clean Energy Coalition's assertion that County Staff believe this project to be the "most hazardous project in Santa Fe County."

62. Similarly, the Clean Energy Coalition mischaracterizes the hearing process. The Clean Energy Coalition broadly asserts that it and other opponents "have been treated as little more than a "necessary" evil by the various governing bodies and allowed just enough participation so that the County and Commissions can make a credible claim of due process sufficiency," and that Santa Fe County "lost the ability to dispassionately and impartially evaluate this project."⁵⁹ This contention is belied by the evidence and Clean Energy Coalition's own arguments. The Clean Energy Coalition complains the conditions of approval were modified to require (i) up to 60,000 gallons of water tanks at the Property, a doubling of staff's initial 30,000 condition; (ii) that battery enclosures be placed at least 10' apart; and (iii) that the proposed Gen-tie line be reconfigured to avoid areas where high-

⁵⁸ Clean Energy Coalition Notice of Objection, at 2 (Aug. 25, 2025).

⁵⁹ *Id.* at 1.

voltage electrical lines are prohibited.⁶⁰ The gist of the Clean Energy Coalition's complaint seems to be that it was not given sufficient notice of these changes so that it could present testimony refuting their efficacy. But these changes were made as a direct result of its presentation and testimony; Clean Energy Coalition cannot complain about the County changing the conditions of approval to address issues that Clean Energy Coalition itself presented to the BCC during the hearing.

63. In the end, Clean Energy Coalition's objection is that instead of denying approval outright, the County adopted conditions of approval to address opponents' health and safety-related objections. Put differently, Clean Energy Coalition maintains that any condition of approval is a "Band-Aid," because there are no set of conditions that would make a solar power and battery energy storage facility safe.⁶¹ But that is not what the hearing record showed: the record evidence and testimony established that, with appropriate conditions, a solar energy collection and battery energy storage facility meet the requirements for issuance of a CUP.

D. Evidence and testimony regarding unadopted resolutions, or amendments to the SLDC, is irrelevant to the BCC's decision

64. Several parties with standing submitted argument and testimony about the BCC's deliberations over Resolution 2023-093, which directed County Staff to engage with expert consultants regarding commercial renewable energy projects in Santa Fe County and post information about the conditional use permit applications for such projects on the County's website. An earlier draft of this resolution directed staff to impose a moratorium on commercial solar energy production facilities and designate such facilities developments of countywide impact (DCIs) under the SLDC; that language was not included in the final resolution.

65. This evidence and testimony is not—indeed, it cannot be—relevant to the BCC's decision. A resolution is a statement of policy by the BCC at the time of its adoption; it cannot create or modify the binding rules of decision for quasi-judicial proceedings governed by the SLDC. Furthermore, evidence of language that was considered and rejected by the BCC in its deliberations on the resolution is minimally persuasive: the fact that the BCC considered language requiring commercial solar facilities to be treated as DCIs under the SLDC but did not adopt

⁶⁰ Clean Energy Coalition Notice of Objection, at 4 (Aug. 25, 2025).

⁶¹ *Id.* at 4.

that language in the resolution if anything demonstrates an intent by the BCC that commercial solar facilities not be treated as DCIs.⁶²

IV. The BCC otherwise credits the staff report dated July 23, 2025.

66. As noted below, the BCC has determined that its own review of the evidence and testimony requires the imposition of certain additional conditions of approval. It likewise has made its own findings of fact and conclusions of law in documentation of its decision on the application and appeals from the Planning Commission's final order.

67. The parties with standing have submitted hundreds of pages of written testimony and other submissions in support of their positions. In these findings, the BCC has set forth the factual findings that form the basis of its decision, after hearing testimony from the Applicants and the parties with standing. To the extent there is question of fact or law is not explicitly addressed in these findings of fact and conclusions of law, the BCC hereby adopts the findings set out in the final staff report to the BCC, dated July 23, 2025. In the event there is a conflict between any statement in the staff report and these findings, these findings control.

V. The BCC will adopt the staff-proposed conditions of approval and impose several additional conditions of approval on the application.

68. The BCC hereby imposes the following conditions on its approval of the CUP:

1. Compliance with all Reviewing Agencies' requirements, including the 93 conditions imposed by Santa Fe County Fire Prevention (see memo from Fire Marshal's office) before commissioning of the facility.
2. The drilling or use of individual and/or shared wells for this use on the Property is prohibited.
3. 3. The Applicant shall provide proper buffering and screening by installing paneling to a portion of the proposed 8' tall fence that will be located on the

⁶² Cf. *State v. Vest*, 2021-NMSC-020, ¶ 33 (“[W]e caution against relying on *draft* versions of bills or *proposed* statutory language in interpreting legislative intent. There are countless reasons why language may be added or deleted during the legislative drafting process”); *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 670 (2020) (“[S]peculation about why a later Congress declined to adopt new legislation offers a particularly dangerous basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt.”) (internal quotation marks and citations omitted).

- southwest portion of the Property. This is to be indicated on the CUP Site Development Plan prior to recordation.
4. Permanent fencing will be required around all designated archeological sites to delineate and preserve the integrity of these areas. This is to be indicated on the CUP site development plan prior to recordation.
5. Prior to the recordation of the CUP site development plan, all access roads shall be permitted through Santa Fe County, built out and inspected, with financial guaranties in place.
6. The CUP site development plan showing the site layout and any other conditions that may be imposed through the approval process shall be recorded at the expense of the Applicant in the office of the County Clerk in accordance with SLDC Chapter 4, Section 4.9.6.8.
7. Utilization of the 70-foot-tall steel monopoles will be required, as they have less of a visual impact. The poles will be required to blend into the natural landscape and shall be non-reflective.
8. A decommissioning bond (which may take into account salvage value) will be required prior to recordation of the CUP Site Development Plan. The bond must be in place for the life of the project, and will be subject to periodic revisions to account for any increases in the estimated cost of decommissioning no less frequently than every five (5) years.
9. The Applicant will be required to apply for all applicable Development Permits after the CUP recordation.
10. Prior to recordation of the CUP site development plan, the Applicant will be required to renew its access permit from NMDOT.
11. The Applicant will need to provide a minimum of 1 Accessible Parking Space as per Table 7-9. This Accessible Parking space must be indicated on the CUP Site Development Plan.
12. Applicant shall obtain an approved liquid waste permit from NMED prior to the submittal for a Development Permit.

13. The Applicant is required to work in consultation with the appropriate flood zone authorities to address the requirements specified in Chapter 7, Section 7.18.9.1. of the SLDC for any steel monopole located within a Zone A flood hazard area and submit the findings to staff for the record.
14. Construction activity to be limited to Monday through Saturday, 7:00 a.m. to 7:00 p.m. Any deviation from these construction hours will require 48 hours' notice to Santa Fe County and neighboring property owners, and written approval from the County.
15. Prior to operations, the Applicant shall request and pass all required inspections and obtain a Santa Fe County Business License.
16. A detailed water budget is to be submitted for review and approval by Glorieta Geoscience and Santa Fe County Utilities Division prior to the recordation of the CUP.
17. The Applicant will be required to provide a Smoke and Plume Model that will be reviewed and evaluated by Santa Fe County Fire Prevention and a subject matter expert reviewer. Applicant must satisfactorily address all review comments, and the model must be finalized and approved prior to the recordation of the CUP site development plan.
18. Santa Fe County shall be reimbursed by the Applicant for the third-party reviews conducted by Atar Fire and Glorieta Geoscience pertaining to this submittal prior to the recordation of the CUP site development plan.
19. Per Santa Fe County Fire Prevention requirements, a 10' noncombustible defensible space will be required as part of an overall 30' defensible space around the perimeter of the proposed development and to be illustrated on the recorded CUP site development plan.
20. Construction debris must be disposed of in a solid waste container and hauled off to an authorized landfill as needed for compliance with NMED regulations.
21. Applicant to conduct a 24-hour ambient noise study at the nearest sensitive receiver which is located at the southwest corner property line to collect ambient readings to evaluate the lowest 30-minute readings for

daytime and nighttime. Noise study is to be reviewed and evaluated by Glorieta Geoscience. Applicant is to address all review comments and incorporate mitigation measures as required to comply with SLDC §7.21.4, prior to the recordation of the CUP site development plan.

22. Should an alternate source of water be identified (e.g., City of Santa Fe effluent), the traffic, noise and air quality studies are to be re-evaluated by the Applicant to validate that the impacts disclosed in those reports have not changed. This will be subject to review and comments from Glorieta Geoscience prior to the recordation of the CUP site development plan.
23. Water sources must be identified prior to the recordation of the CUP site development plan.
24. Water storage tank(s) with a cumulative 60,000 gallons capacity. The water storage tank(s) shall be installed in a location and manner approved by the Santa Fe County Fire Marshal and shall be equipped with the required fittings, access, and appurtenances to ensure compatibility with County fire apparatus. The system shall be operational prior to the commissioning of the facility, and the Applicant shall maintain the tank in serviceable condition for the life of the project. The revised site development plan shall be submitted to and approved by Santa Fe County prior to recordation and prior to the issuance of any related development permits.
25. The Applicant shall reconfigure approximately 1,600 feet of the proposed gen-tie line and indicate on the CUP site development plan. The Applicant shall also amend the existing plat to reflect the adjusted easement alignment. Both the revised site development plan and amended plat shall be reviewed and approved by Santa Fe County prior to recordation and prior to the issuance of any related development permits.
26. All containers housing the Batter Energy Storage System (BESS) shall be separated by a minimum of ten (10) feet. The Applicant shall revise the CUP site development plan to reflect this required separation. The revised site development plan shall be submitted to and approved by

Santa Fe County prior to recordation and prior to the issuance of any related development permits.

27. Applicant agrees to use non-persistent, non-bioaccumulating, non-toxic clean agent fire suppressants.
28. Applicant agrees to permit County staff to inspect site compliance with hazard mitigation plan, conditions of approval, and all applicable codes and requirements with at least 3 days' notice.
29. Applicant will submit annual report of reported abnormal readings from battery energy storage system units to County Fire Department.
30. Any agreements regarding supply of power generated by facility must be with a utility that has customers who reside in Santa Fe County.
31. Nothing herein precludes the Board from imposing additional conditions in connection with the issuance of Industrial Revenue Bonds, such as precluding the sale of power generated by this facility outside of New Mexico.
32. Applicant agrees that there will be no heavy equipment construction traffic before 9 AM and no construction-related lighting after dusk.
33. Development rights must be irrevocably severed from the 5,706-acres surrounding the project site prior to recordation of the CUP Site Development Plan, as proposed by Applicants and representative of the surrounding land owner during the public hearing.

Conclusion

The BCC hereby approves the application by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC, Applicants, for a Conditional Use Permit (CUP), subject to the conditions set forth herein. Staff are instructed to prepare a development order consistent with these findings of fact and conclusions of law for filing with any approved plat.

SO ORDERED this 14 day of October, 2025.

Camilla Bustamante
Camilla Bustamante, Chair

ATTEST:
Katharine E. Clark
Katharine E. Clark
Santa Fe County Clerk

Approved as to Form:

Walker Boyd
Walker Boyd
Santa Fe County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDER
PAGES: 32

I Hereby Certify That This Instrument Was Filed for
Record On The 22ND Day Of October, 2025 at 08:27:45 AM
and Was Duly Recorded as Instrument # 2069782
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
Deputy [Signature] County Clerk, Santa Fe, NM



SFC CLERK RECORDED 10/22/2025

In re: Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC, Applicants
Application for Conditional Use Permit

Case No. 24-5200 (Consolidated)

DISSENTING FINDINGS OF FACT AND CONCLUSIONS OF LAW

Commissioner Lisa Cacari Stone, Ph.D.

Pursuant to Section 4.4.13 of the Santa Fe County Sustainable Land Development Code (SLDC), NMSA 1978, Section 39-3-1.1, and Rule 1-074 NMRA, I respectfully submit this written dissent to the Final Order adopted by the majority of the Board of County Commissioners (BCC) approving the Conditional Use Permit (CUP) application submitted by Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, and AES Clean Energy Development, LLC (collectively, "Applicants").

This dissent articulates my independent findings of fact and conclusions of law based on the record before the BCC and provides the basis for my vote opposing the issuance of the CUP. My decision does not oppose solar, renewable or clean energy development. It is grounded in the principle that all conditional use permits must satisfy the criteria set forth under SLDC Section 4.4.13.1(a)–(g). To issue a CUP, the applicant bears the burden of proving that the proposed use will not:

1. be detrimental to the health, safety and general welfare of the area;
2. tend to create congestion in roads;
3. create a potential hazard for fire, panic, or other danger;
4. tend to overcrowd land and cause undue concentration of population;
5. interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. interfere with adequate light and air; and
7. be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or [Sustainable Growth Management Plan ("SGMP")].⁶³

⁶³ See SLDC § 4.9.6.5.

Based on the evidence presented to the BCC and issued publicly in the record, I conclude that the applicant does not fully satisfy the criteria set forth under SLDC.

I. INTRODUCTION

A conditional use permit may only be granted when the applicant demonstrates, by competent and substantial evidence, that all applicable criteria are satisfied. See SLDC § 4.4.13.1. My review of the record—including expert testimony, County staff reports, the Applicants’ submittals, and public testimony—leads me to conclude that the Applicants failed to meet their burden of proof under the SLDC. Specifically, the application does not provide adequate assurances regarding (1) health, safety, and welfare protections; (2) mitigation of potential hazards related to fire and toxic emissions; and (3) enforceable plans for decommissioning, cultural preservation, and environmental stewardship (see Items A through I below).

II. FINDINGS OF FACT SUPPORTING DISSENT

A. Protection of Health, Safety, and General Welfare (SLDC § 4.4.13.1(a))

Testimony and filings raise unresolved risks associated with lithium-ion BESS thermal runaway, plume/toxic emissions, and emergency response capacity; conditions imposed do not credibly mitigate to a level that protects nearby residents and first responders. The expert plume study’s executive summary states that “in a pre-combustion scenario gas concentrations exceed levels required to cause health effects in unprotected persons, including sensitive individuals, at distances closer than ~86–87 feet; and that a flash-fire hazard exists within approximately six feet.” These findings demonstrate that risks to nearby communities remain unaddressed. The evidence and expert analyses show that County emergency operations lack capacity to respond effectively to multi-container ignition or simultaneous fire scenarios under real-world conditions, especially given proximity to residential neighborhoods, the Community College District, and the Tesuque Traditional Area.

B. Potential Hazards (Fire/Panic/Other Danger) (SLDC § 4.4.13.1(c))

The record reflects significant community concern and expert materials regarding battery fires and toxic byproducts. The County’s hazard-mitigation and

Emergency Response Plan (ERP) did not demonstrate operational capabilities for notification, shelter/evacuation, suppression, or containment commensurate with worst-case events. Applicant's testing emphasized laboratory and controlled test-site burns with hundreds of sensors. Yet, when questioned, AES representatives confirmed that AES tests its fire risks in cement parking lots—not in real-world conditions. The Applicant also confirmed that they have not conducted full-scale ignition testing in comparable sites with high fire risk, winds, and desert conditions. The evidence demonstrates that the proposed site includes high fire-risk areas and multiple adjacent communities exceeding 26,000 residents as well as schools, detention facilities, neighborhoods, and the Community College overlay district. The AES application and County codes do not include a comprehensive, enforceable outer-perimeter wildfire containment and response plan proportionate to the facility's scale.

C. Battery Chemistry and Technology Risk

The AES Applicant relies on lithium-ion technology with known thermal-runaway hazards. While mitigation systems (e.g., NFPA frameworks) were described, the record lacks independent, field-based validation under comparable environmental stressors. Safer or lower-hazard chemistries (e.g., sodium-ion or LFP) were not meaningfully evaluated as practicable alternatives at this location and scale, even though they have been scientifically evaluated by Sandia National Laboratories and MIT.

D. Decommissioning and End-of-Life (20–25 years)

The Applicant described general recyclability and industry partnerships but provided no binding, detailed, and funded decommissioning and hazardous-material disposition plan specific to this site (including transportation, interim storage, final processing, and financial assurance). This omission violates the spirit of SLDC § 4.4.13.1(g), which requires mitigation and performance guarantees proportionate to the project's scale and duration.

E. Cultural Resources and Sacred Sites (SLDC § 4.4.13.1(e))

Expert surveys identified roughly fifteen (15) cultural and sacred sites. Avoidance concepts and stop-work clauses were discussed, yet no specific, enforceable plan guarantees preservation outcomes or establishes a structured process for advance consultation with Pueblos or tribal governments prior to ground disturbance. The assessment was largely surface-level and did not include subsurface investigations.

F. Wildlife and Habitat Impacts (SLDC § 4.4.13.1(f))

Biological reports and testimony indicate large-scale habitat disturbance during avian migration seasons and potential burrowing owl and prairie dog habitat loss. Mitigations depend on timing and avoidance but lack enforceable, operational constraints commensurate with the project's footprint and construction phasing.

G. Code Modernization Gap and Regulatory Alignment

Santa Fe County's Sustainable Land Development Code (SLDC) was written a decade ago, before large-scale lithium-ion storage systems were contemplated. The County's 2025 Hazard Mitigation Plan contains no clear guidance on BESS-specific hazards, leaving a governance gap that shifts novel risk management onto outdated or non-specific provisions. This gap undermines compliance with SLDC § 4.4.13.1(a) and (c).

H. Emergency Water and Response Logistics

Questions remain regarding water supply, tender deployment, and sustained fire-suppression capacity under worst-case, multi-point ignition scenarios across hundreds of acres. A quantified, scenario-based staffing and water-flow analysis is absent from the record. The record also shows uncertainty about water availability from the County's own fire districts for a prolonged fire event.

I. Economic Claims and Local Job Impacts

Economic benefits were at times overstated in public discourse; construction jobs are largely temporary and remote operations are anticipated. The record lacks a fiscal impact analysis addressing ongoing County oversight and emergency preparedness costs over the project's multi-decade life.

III. COMMUNITY TESTIMONY AND PUBLIC RECORD

The record contains substantial community-based testimony and expert analysis that I reviewed as part of the findings of fact of the dissent including emails of 418 unduplicated opposers (280 supporters) and the record includes the testimonies provided during the hearings from 112 opposers (40 supporters). This evidence, drawn from residents, engineers, physicians, biologists, and other professionals, underscores the lack of public trust in the applicant/application as well as unresolved risks to public health, safety, welfare, and the environment.

SEC CLERK RECORDED 10/22/2025

IV. CONCLUSIONS OF LAW

1. The Applicant has not demonstrated by competent and substantial evidence that the proposed CUP satisfies SLDC § 4.4.13.1(a)–(g).
2. The proposed project fails to adequately protect the health, safety, and general welfare of residents, as required under SLDC § 4.4.13.1(a) and § 6.3.10.2.
3. The project presents unresolved fire and toxic emission hazards inconsistent with the purposes of the SLDC and the Sustainable Growth Management Plan (SGMP).
4. The lack of enforceable decommissioning, cultural resource protection, and emergency response planning renders the project inconsistent with County purposes and the intent of the SLDC.
5. Approval of the CUP sets a precedent that weakens Santa Fe County's health and safety protections for future renewable energy projects.

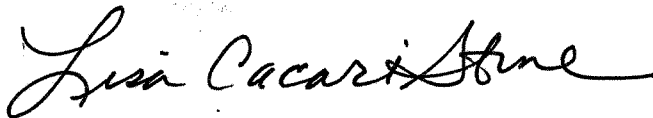
V. FINAL STATEMENT

As I stated during deliberations:

“This process has pushed us to see solar as a critical part of our future in Santa Fe County. We should be a leader in renewable energy. I fully recognize the urgency of addressing climate change and support solar energy. Yet, our leadership demands diligence, transparency, and accountability. **My vote is not against solar—it is against this particular AES proposal** because it does not meet the highest standards we owe all of our communities.”

This dissent is a call for stronger siting standards, updated County codes, enforceable decommissioning requirements, and adequate planning of solar project *with* our diverse communities and larger network of experts. I reaffirm my support for renewable energy that is safe, just, and community-centered.

Respectfully submitted,



Lisa Cacari Stone, Ph.D.

Commissioner, District 2 — Santa Fe County

Dated this 14 day of October, 2025.