



THE SAN MARCOS ASSOCIATION

P.O. Box 722
Cerrillos, NM 87010

<https://thesanmarcosassociation.org/>

A Community Voice Advocating for Our Neighbors and the Land

List of Links to Online Resources and Exhibits – SMA – Feb. 3, 2025 CPC Hearing

Links to Online Resources

- YouTube video of SMA's presentation to the SLDC Hearing Officer – Dec. 4, 2024 - <https://www.youtube.com/watch?v=foYJIdMDgO8&t=20768s>
- The San Marcos Association Website - <https://thesanmarcosassociation.org/>
- SMA Solar Webpage containing correspondence between SMA and Santa Fe County and other information available to the public - <https://thesanmarcosassociation.org/solar-power-santa-fe-county/>

Exhibits

Exhibit #1 List of Exhibits and Links to Online Resources – Feb. 3, 2025, CPC Hearing

Exhibit #2 Images of SMA Postcard – Exhibits 2a and 2b - Front and Back

Exhibit #3 SMA PowerPoint Presentation – Feb. 3, 2025, CPC Hearing

Exhibit #4 Selected LBCS Structure Codes related to the “Gas or Electric Power Generating Facility” Use in the SLDC use Matrix (Appendix B, p. 11)

Exhibit #5 Proposed Conditions and Procedures should the Rancho Viejo Solar CUP application be approved

Exhibit #6 SMA PowerPoint Presentation – Dec. 4, 2024, SLDC Hearing Officer Hearing

Exhibit #7 Highlighted Copy of SLDC Hearing Officer Recommended Order – Dec. 23, 2024

Exhibit #8 Documents Previously Submitted by SMA related to Case #24-5200

Exhibit #9 SMA Letter to CPC Requesting Standing in Case #24-5200

SMA Mission: To serve as a trusted resource by listening to community concerns, sharing information, and influencing policy and decisions affecting all of us.

President – Dennis Kurtz
Vice-President – Janet McVickar

Treasurer – Gail Buono
Secretary – Laird Graeser



CONTACT SMA

info@thesanmarcosassociation.org

JOIN OUR MAILING LIST

by visiting our website:
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OUR MISSION

To serve as a trusted resource by listening to community concerns, sharing information, and influencing policy and decisions affecting all of us.

OUR VISION

To preserve the rural character of the San Marcos region, to inspire effective civic engagement, and to advocate for and amplify the voice of our community.

JOIN THE SMA MAILING LIST

FOR TIMELY NOTIFICATIONS ABOUT AREA EVENTS AND ISSUES

CURRENT AND PAST SMA EFFORTS INCLUDE:

Advocating for greater community input into Santa Fe County decisions

Educating residents about proposed area developments including: ongoing solar development, cell tower proposals, fire and senior facilities

Preservation of Mt. Chalchihuitl

Mitigating surface and sub-surface pollution from past gold mining operations in the Ortiz Mountains

Santa Fe County Nuisance Abatement Ordinance

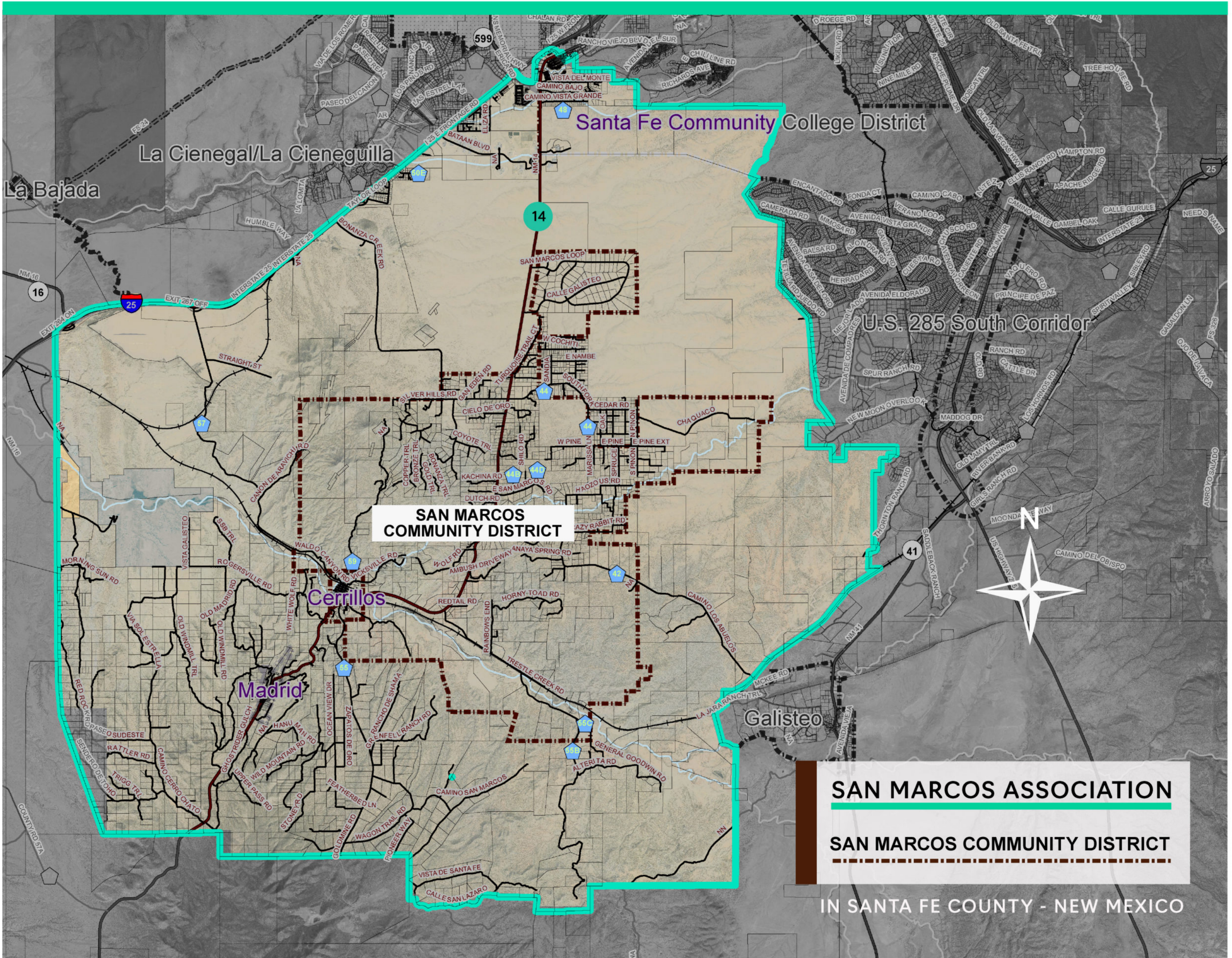
Preventing the Hwy 14/599 truck stop



COMMUNITY MEMBER ENGAGEMENT IS IMPORTANT TO US

WWW.THESANMARCOSASSOCIATION.ORG

SAN MARCOS ASSOCIATION AREA OF ADVOCACY





Santa Fe County Planning Commission Hearing

Case # 24-5200

The San Marcos Association

[\[https://thesanmarcosassociation.org/\]](https://thesanmarcosassociation.org/)

Proposed AES Rancho Viejo Solar Project

Conditional Use Permit Application

February 3, 2025

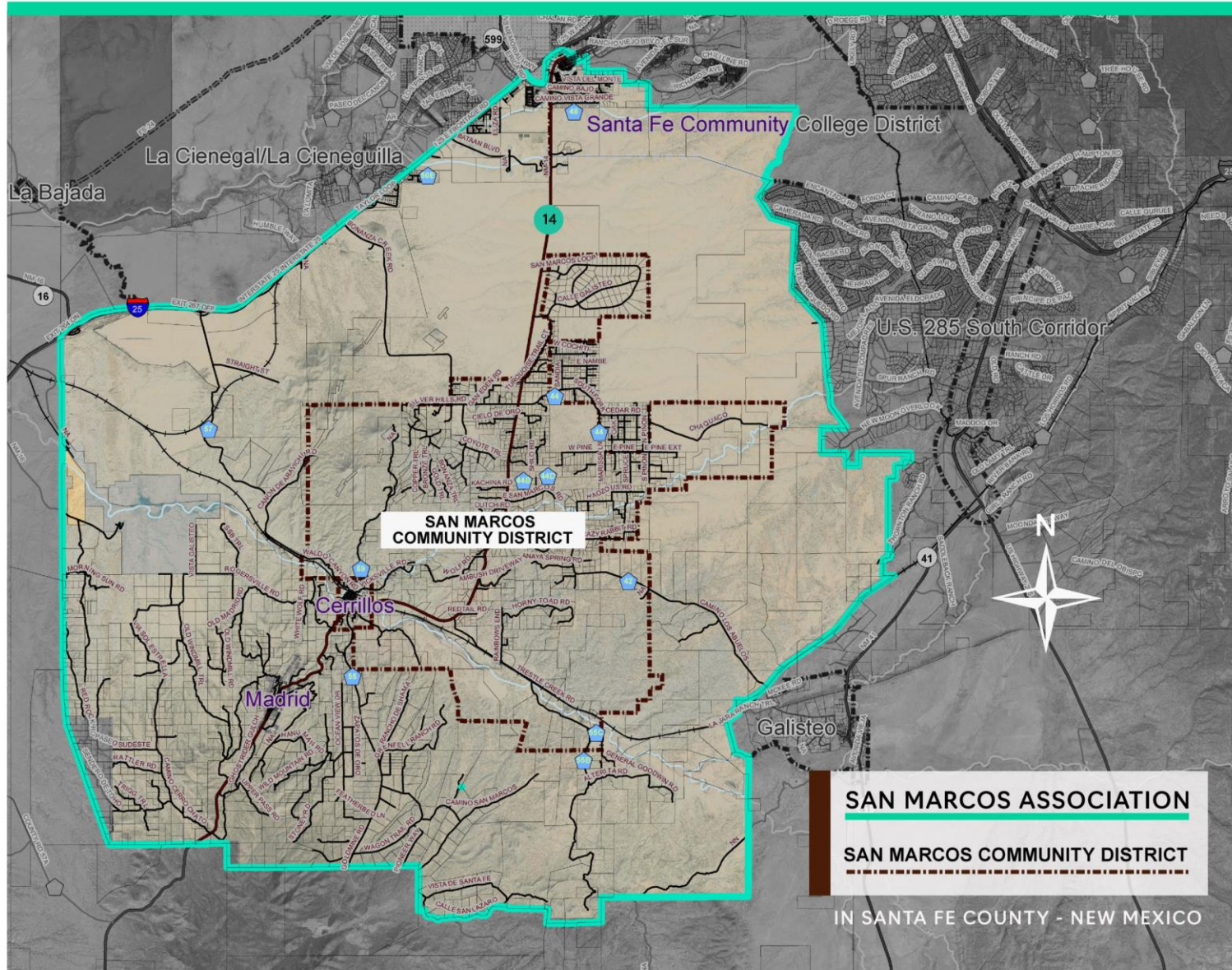


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SAN MARCOS ASSOCIATION AREA OF ADVOCACY





The Rancho Viejo Solar Project is a 'Gas or Electric Power Generating Facility'

- Gas or Electric Power Generating Facility [LBCS Structure Code 6400]
 - PROHIBITED in areas zoned Rural Fringe [SLDC Appendix B – Use Matrix]
 - This use includes “solar panel farms” [LBCS Structure Code 6460]
 - Utility Scale per SGMP “>300 kW” [SGMP Section 7.2.3.2, p. 121]
 - Conditional Use Permits (CUP) are not an option



The Rancho Viejo Solar Project is a 'Gas or Electric Power Generating Facility'

SUSTAINABLE LAND DEVELOPMENT CODE

Use	Function	Structure	Activity	Agriculture/ Ranching	Rural	Rural Fringe	Rural Residential	Residential Fringe	Residential Estate	Residential Community	Traditional Community	Commercial Neighborhood	Mixed Use	Commercial General	Industrial General	Industrial Light	Public Institutional	Planned Development	Special Conditions
Septic tank service, repair, and installation business	4346			X	X	X	X	X	X	X	C	C	C	P	P	P	X	P	
Household hazardous waste collection facility				C	C	C	X	X	X	X	C	X	C	C	P	C	X	P	
Hazardous waste storage facility		6340		C	C	X	X	X	X	X	X	X	X	X	C	X	X	P	
Hazardous waste treatment and disposal facility				C	C	X	X	X	X	X	X	X	X	X	C	X	X	P	
Sewage treatment plant and disposal facilities		6350		C	C	C	C	C	C	C	C	X	C	C	C	C	C	P	
Gas or electric power generation facility		6400		C	C	X	X	X	X	X	X	X	X	X	C	C	C	P	
New wireless		6500		C	C	C	C	X	X	X	X	X	C	C	C	C	C	C	

From SLDC Appendix B: Use Matrix, p. 11



The Rancho Viejo Solar Project is **NOT** what the SLDC intended as a ‘Commercial Solar Energy Production Facility’

- “Commercial” defined as “for sale or profit” [SLDC Appendix A]
 - SGMP Renewable Energy Infrastructure should “allow residential and commercial property owners to be able to make renewable energy improvements in an accessible and affordable manner.” [SGMP Section 3.2.5.2, p. 67]
 - This use is Conditional in Rural Fringe (Rural Fringe defined as “suitable for a combination of estate-type residential development, agricultural uses and other compatible uses”) [SLDC §8.6.3.1]
 - Of “neighborhood” scale



Rancho Viejo Solar Project is NOT a 'Commercial Solar Energy Production Facility'

Use	2016 SMD RUR	SLDC RUR	2020 SMD RUR	2016 SMD RUR-F	SLDC RUR-F	2020 SMD RUR-F	2016 SMD RUR-F	SLDC RUR-R	2020 SMD RUR-F	2016 SMD CN	SLDC CN	2020 SMD CN	SM 2019 Plan Language Notes
Residential													
Commercial solar energy production facility	X	C	P	X	C	P	X	X	P	X	C	C	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities
Geothermal production facility	X	C	C	X	C	C	X	X	C	X	X	X	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities
Large scale wind facility	X	C	C	X	C	C	X	C	C	X	C	C	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities
Small scale wind facility		A	P		A	P		A	P		A	A	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities

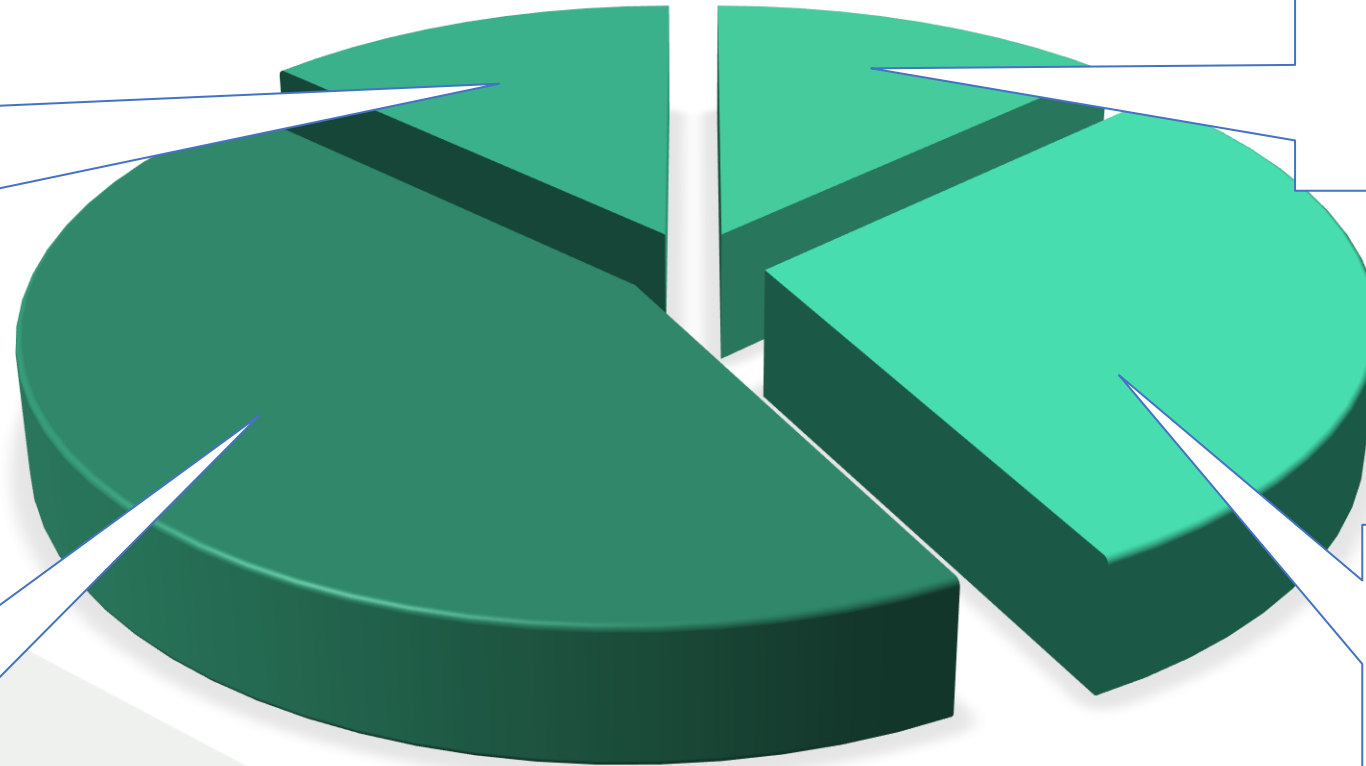


Figure 1: Sections of Worksheet provided by County staff to guide discussion when revising the San Marcos Planning District Use Matrix in 2020
 Portions of page 1 (to show header) and page 8 (containing the Commercial solar energy production facility line) are combined.



SMA Rancho Viejo Solar Survey

Where do you live?



Elsewhere in SF
County
13%
37

Rancho San Marcos
13%
36

Total SMA = 42%
118

Outside SMA /
Near Development
45%
125

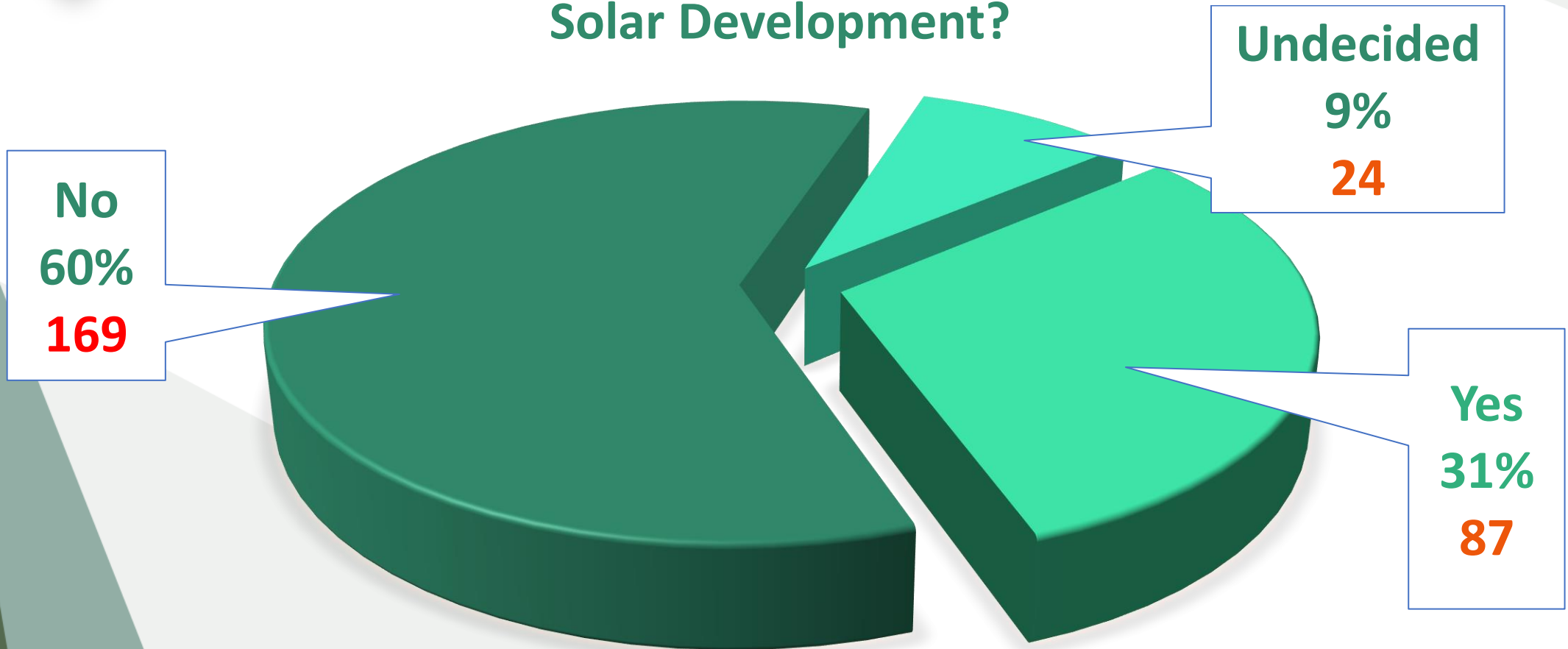
Elsewhere in
SMA
29%
82

280 Total Respondents



SMA Rancho Viejo Solar Survey

Are you in favor of the Rancho Viejo Solar Development?

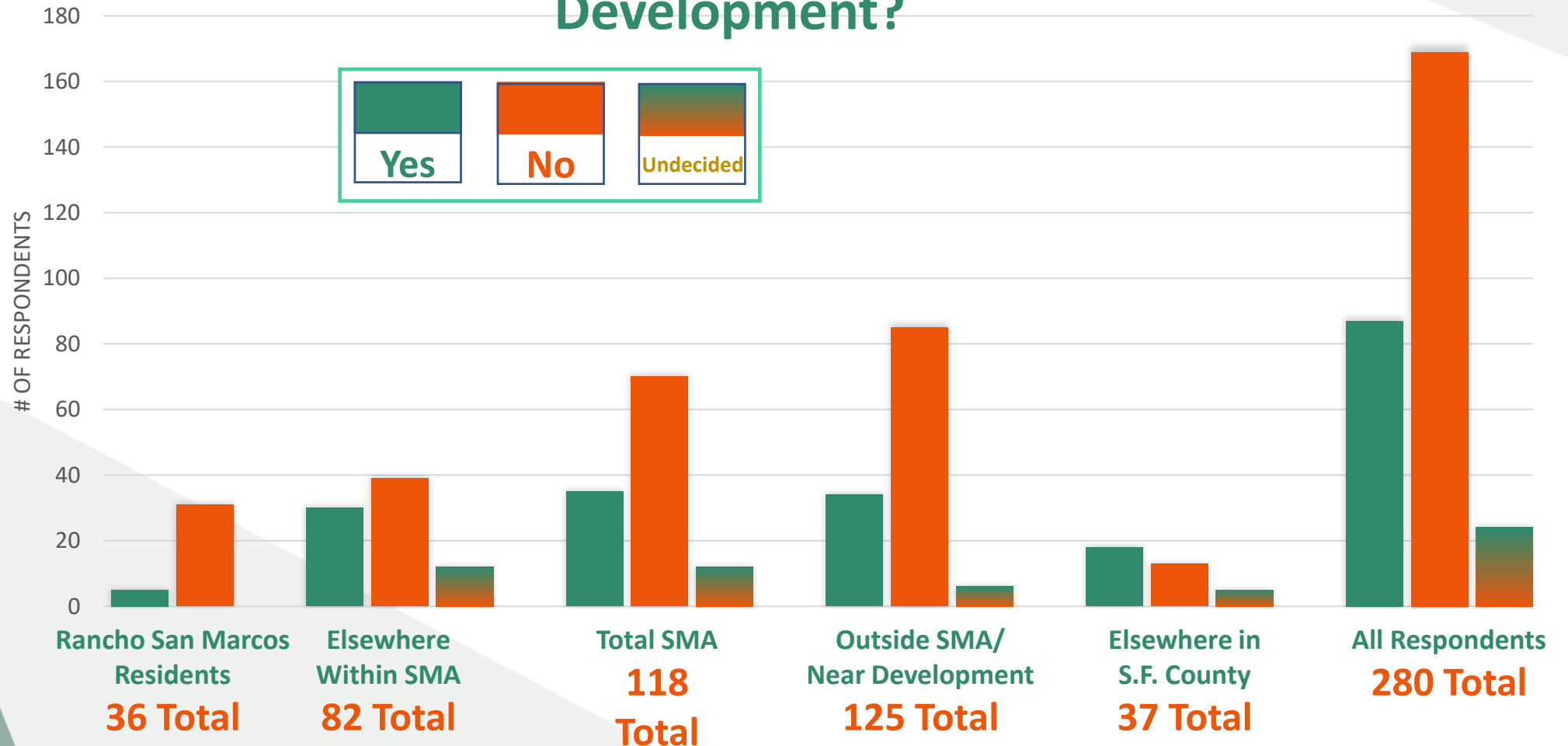


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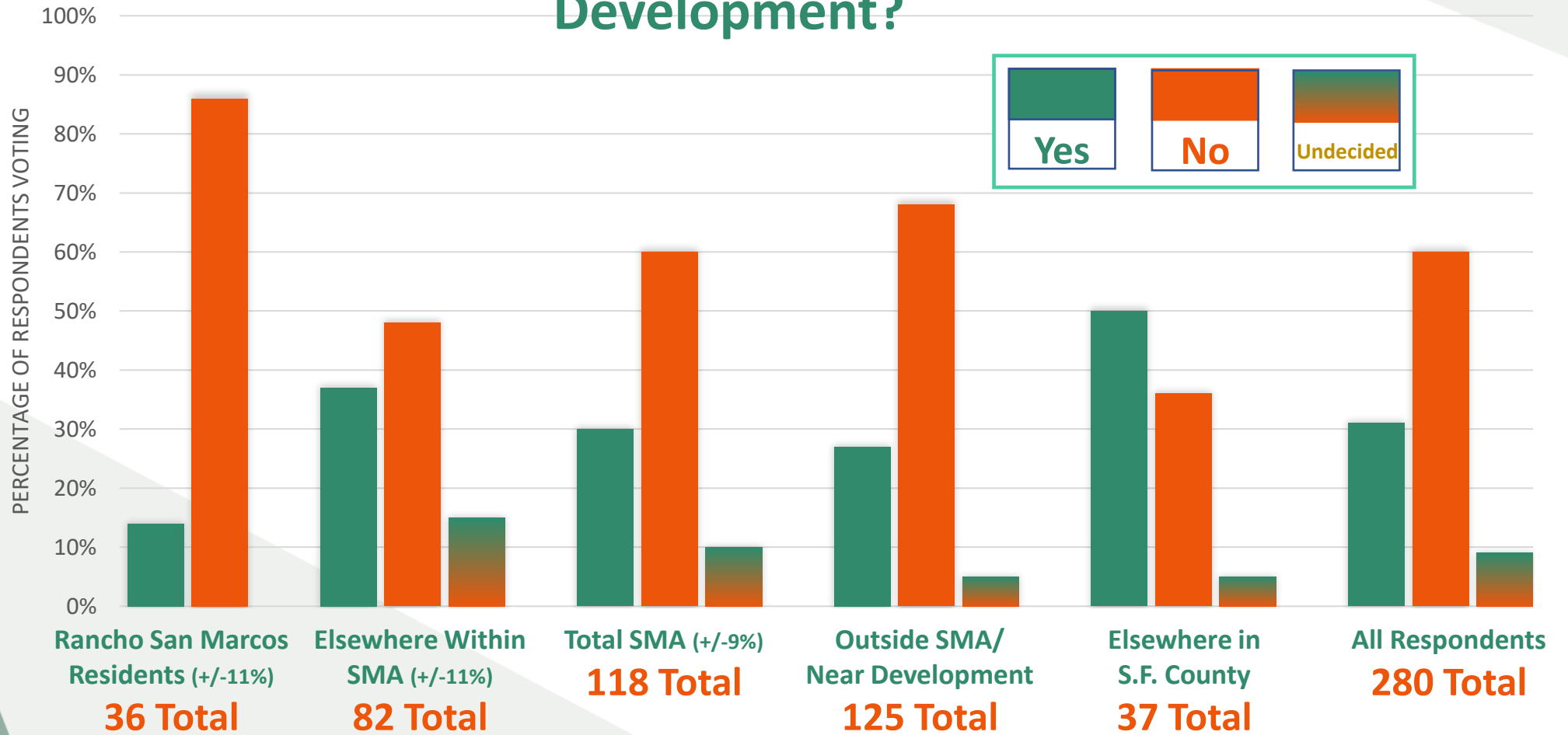
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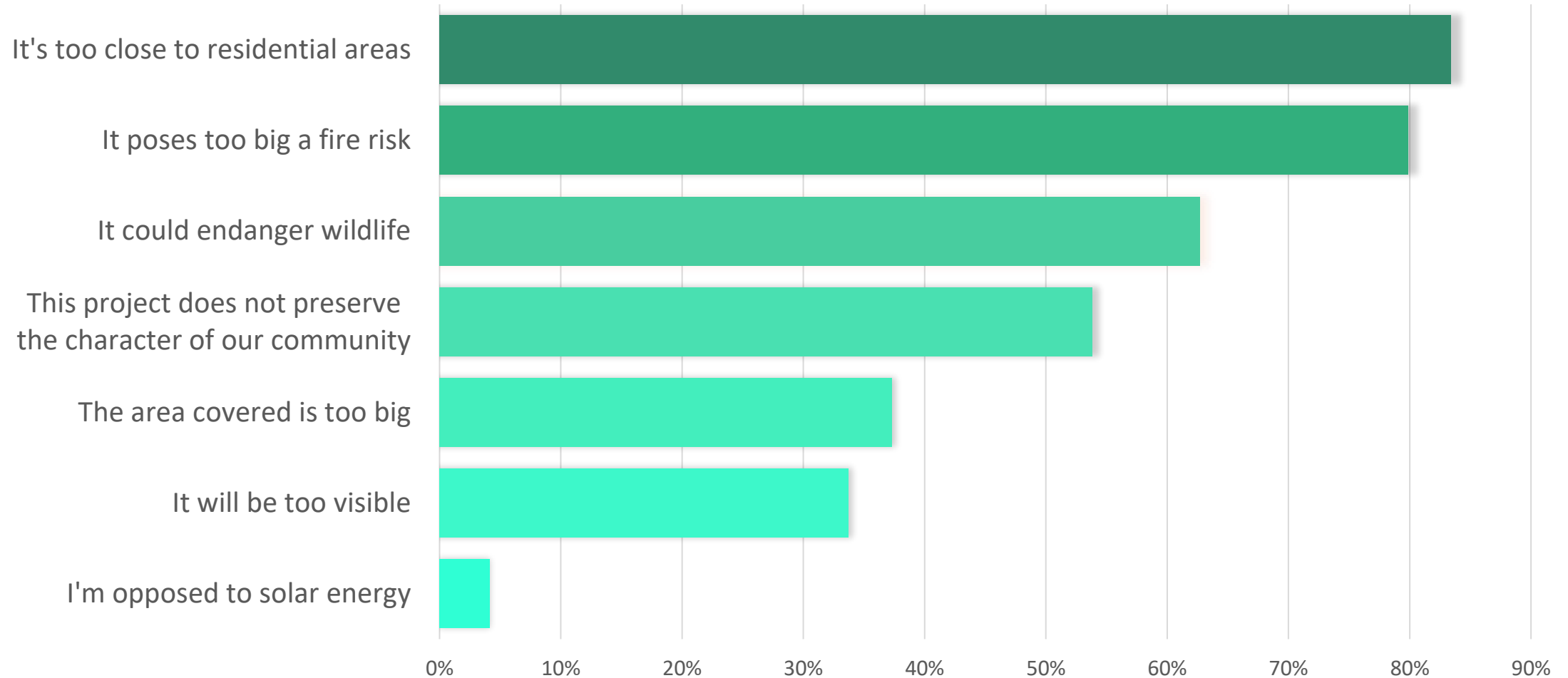
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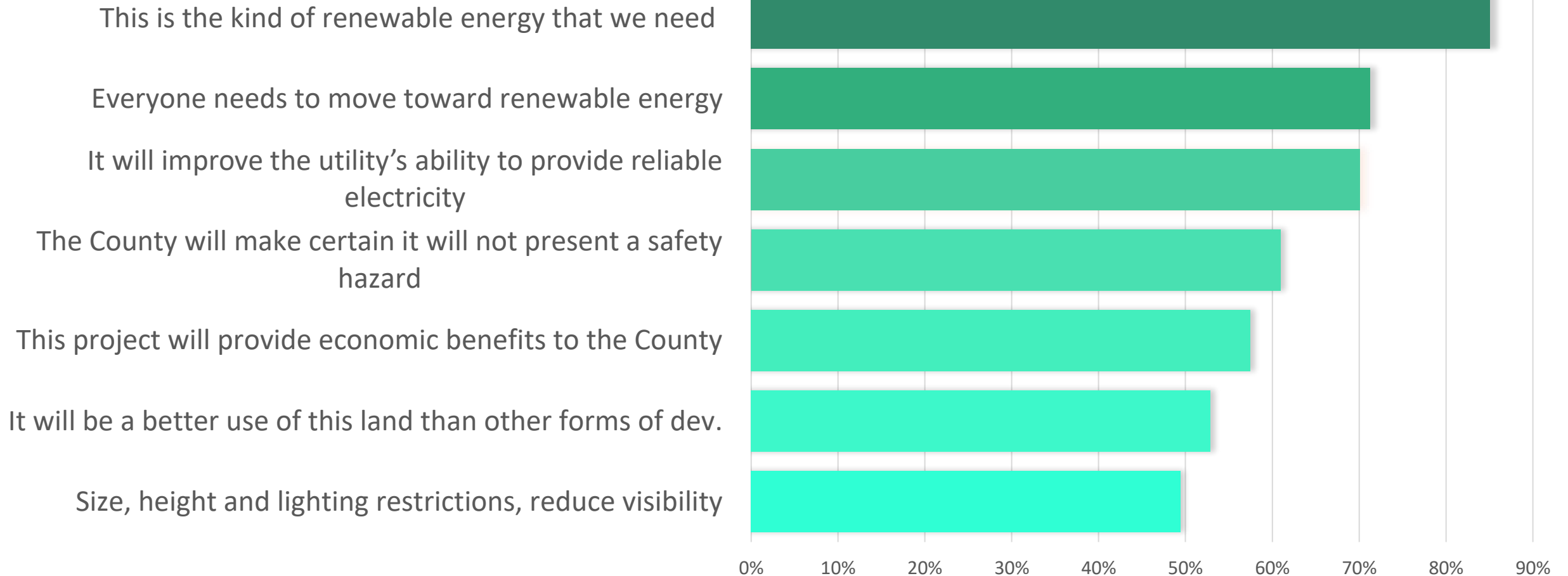
**% of Those Who Oppose
(169)**





SMA Rancho Viejo Solar Survey

**% Of Those Who Approve
(87)**





Proposed Conditions and Procedures

CUP-related Suggestions

- Facility should be staffed 24/7
- Audible warning systems to notify residents of dangerous events
- Evacuation/emergency plan developed with public input
- Formal report of inspection of BESS before start-up



Proposed Conditions and Procedures

Immediate and On-going Procedures

- Transparency in CUP Activities
 - Public meetings and reports
- Inform the Public regarding Financial Implications
- Institute Periodic Reporting Procedures
 - BESS performance, upgrades, etc.
 - Incidents of concern
 - Impacts on wildlife, water, soil, air



QUESTIONS?



Santa Fe County Planning Commission Hearing

Case # 24-5200

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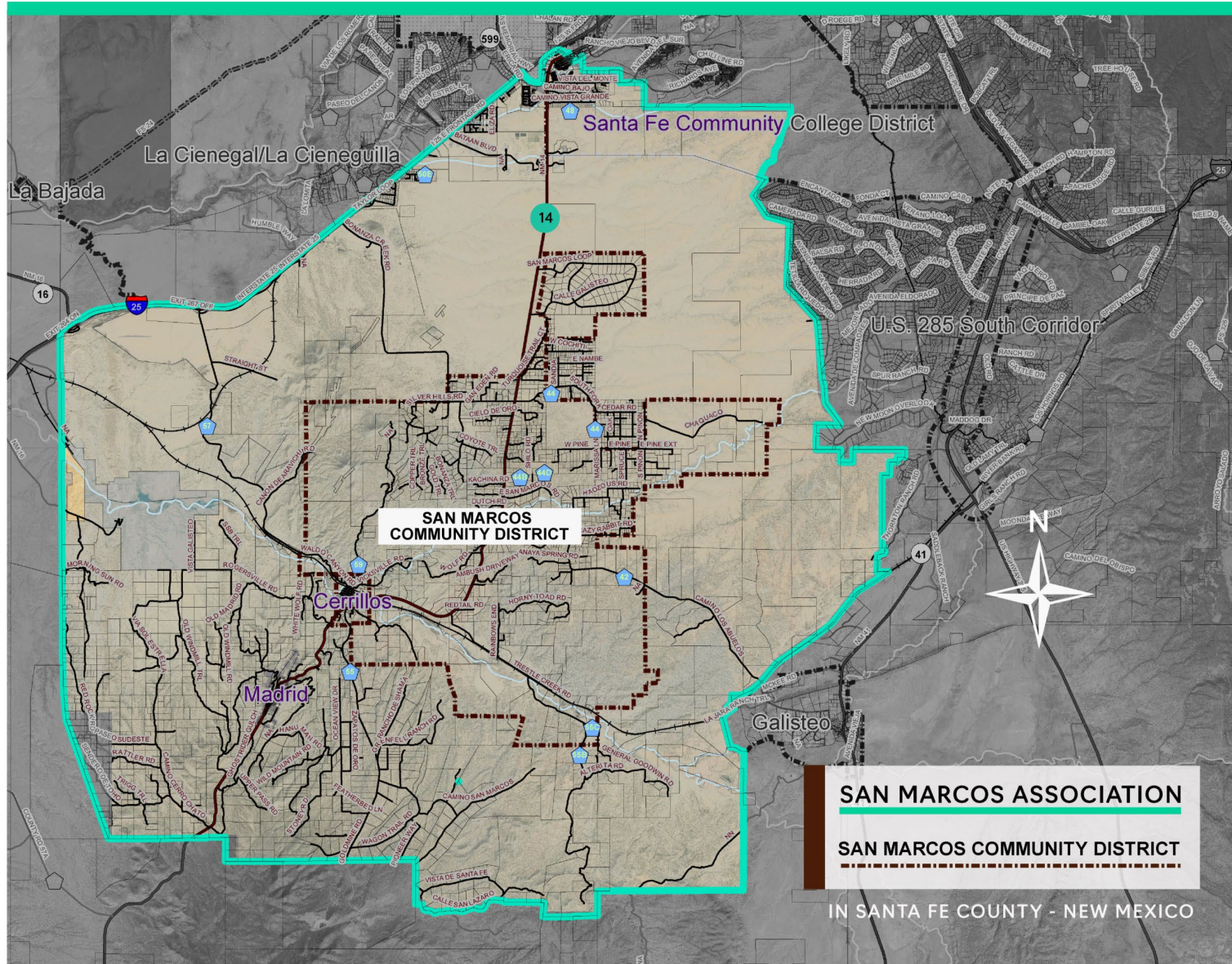


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Hazardous waste storage facility		6340		C	C	X	X	X	X	X	X	X	X	X	C	X	X	P	
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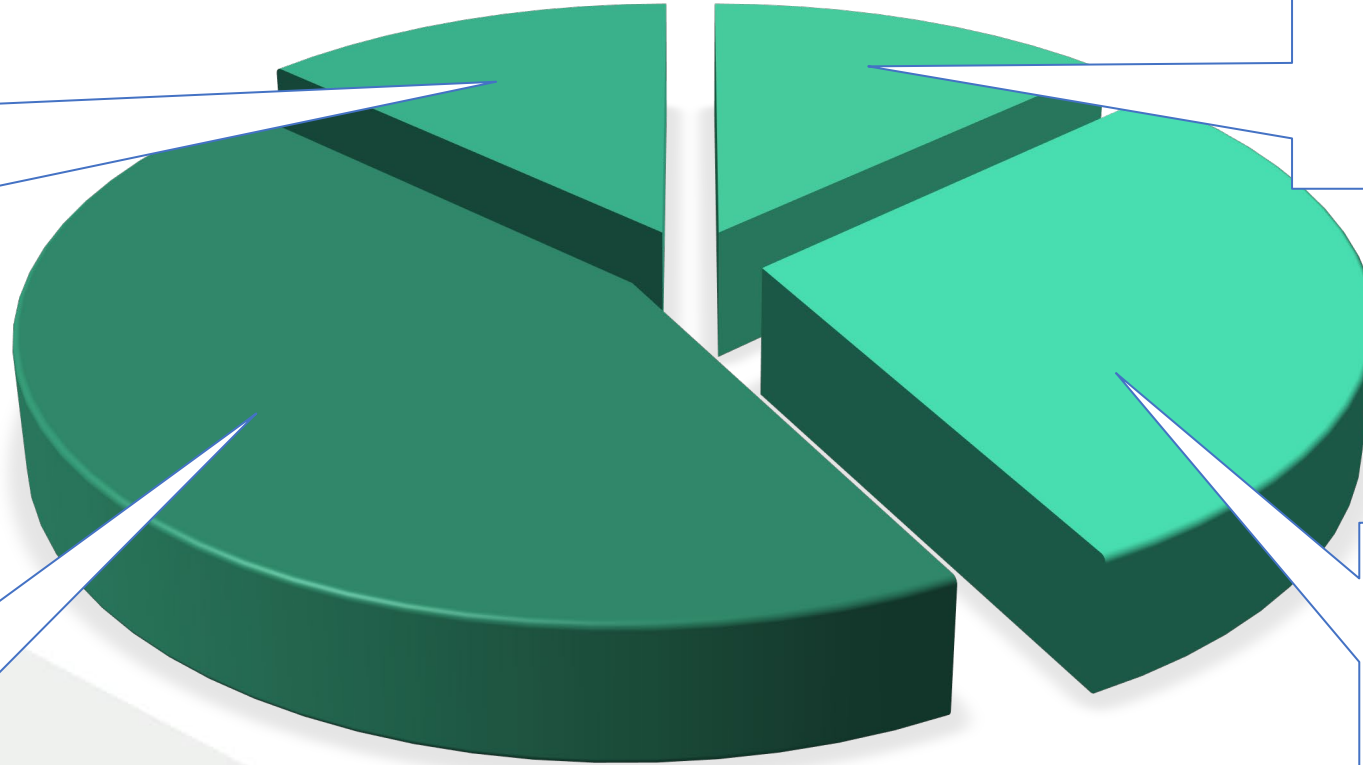
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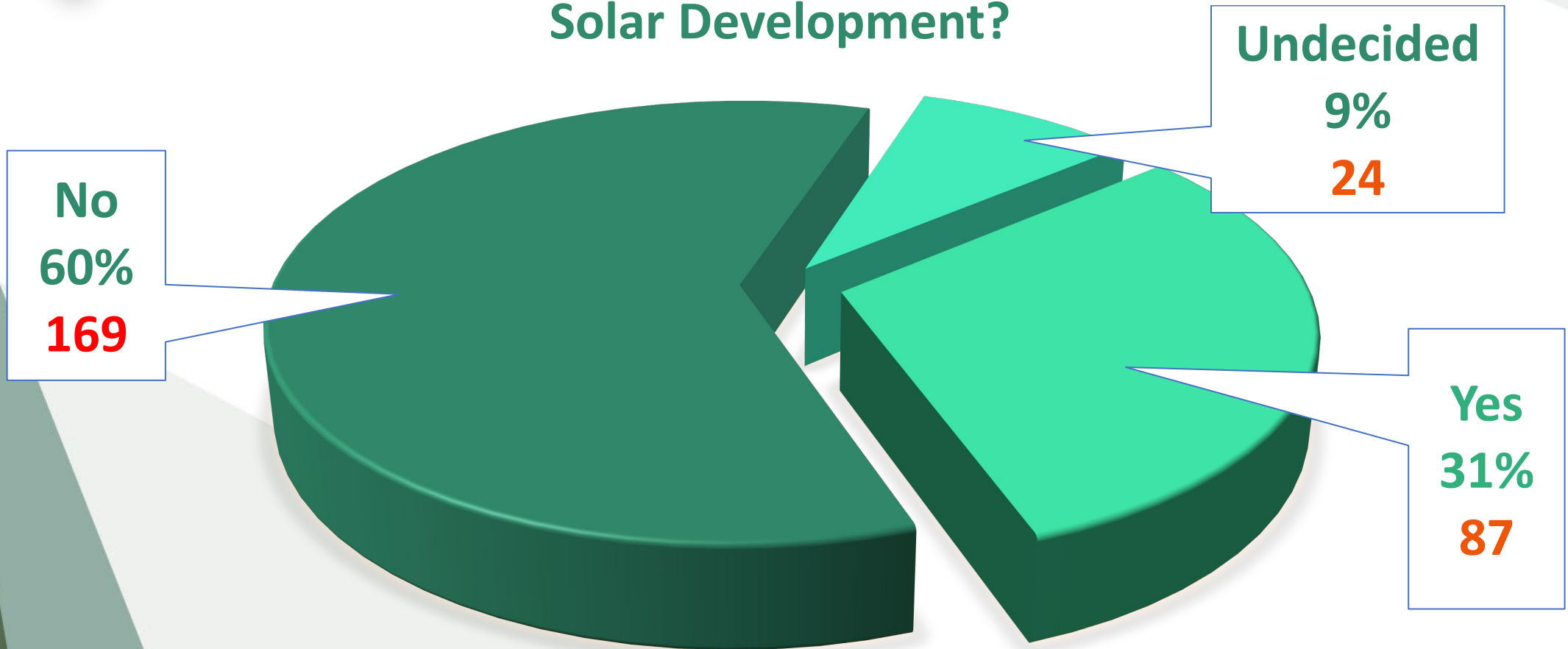


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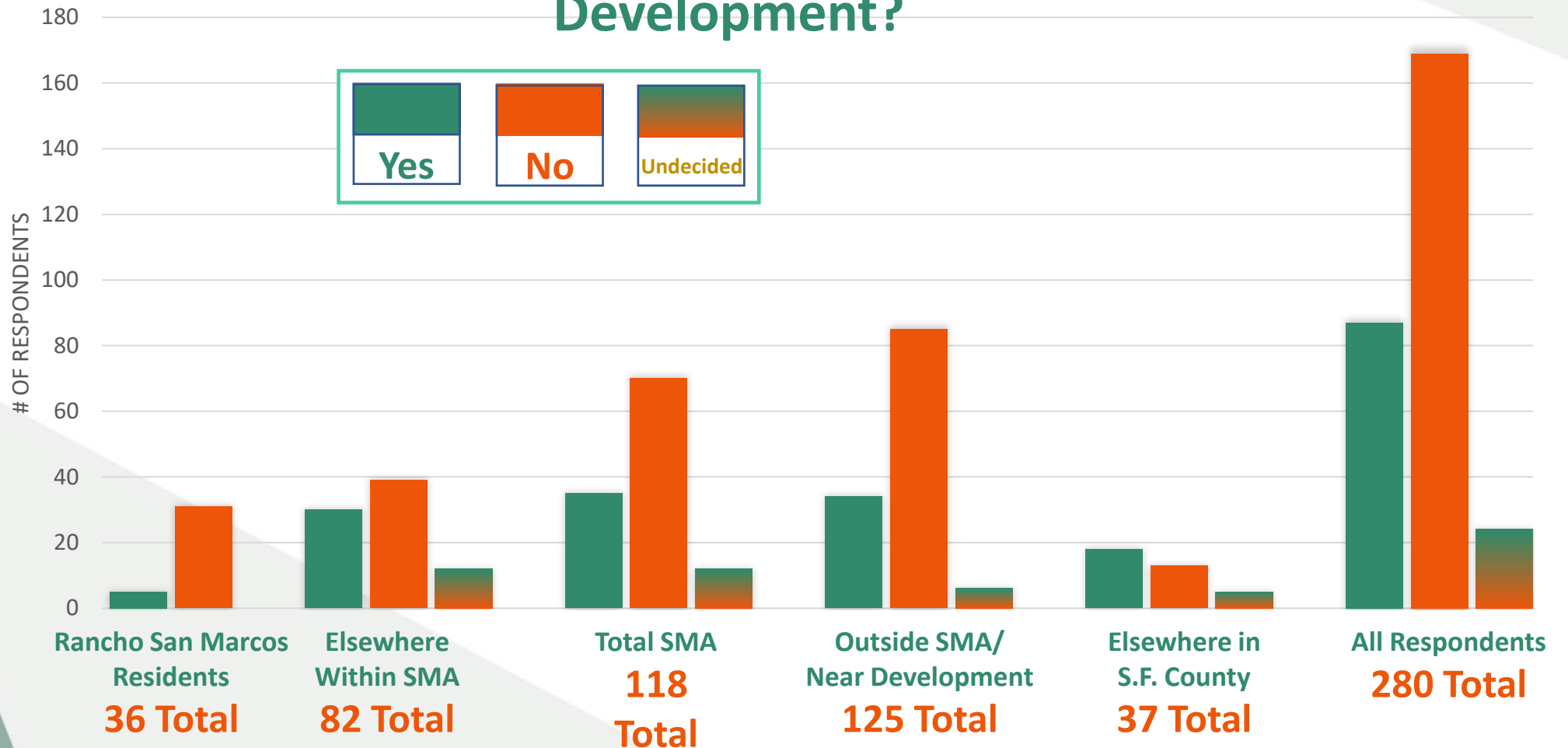


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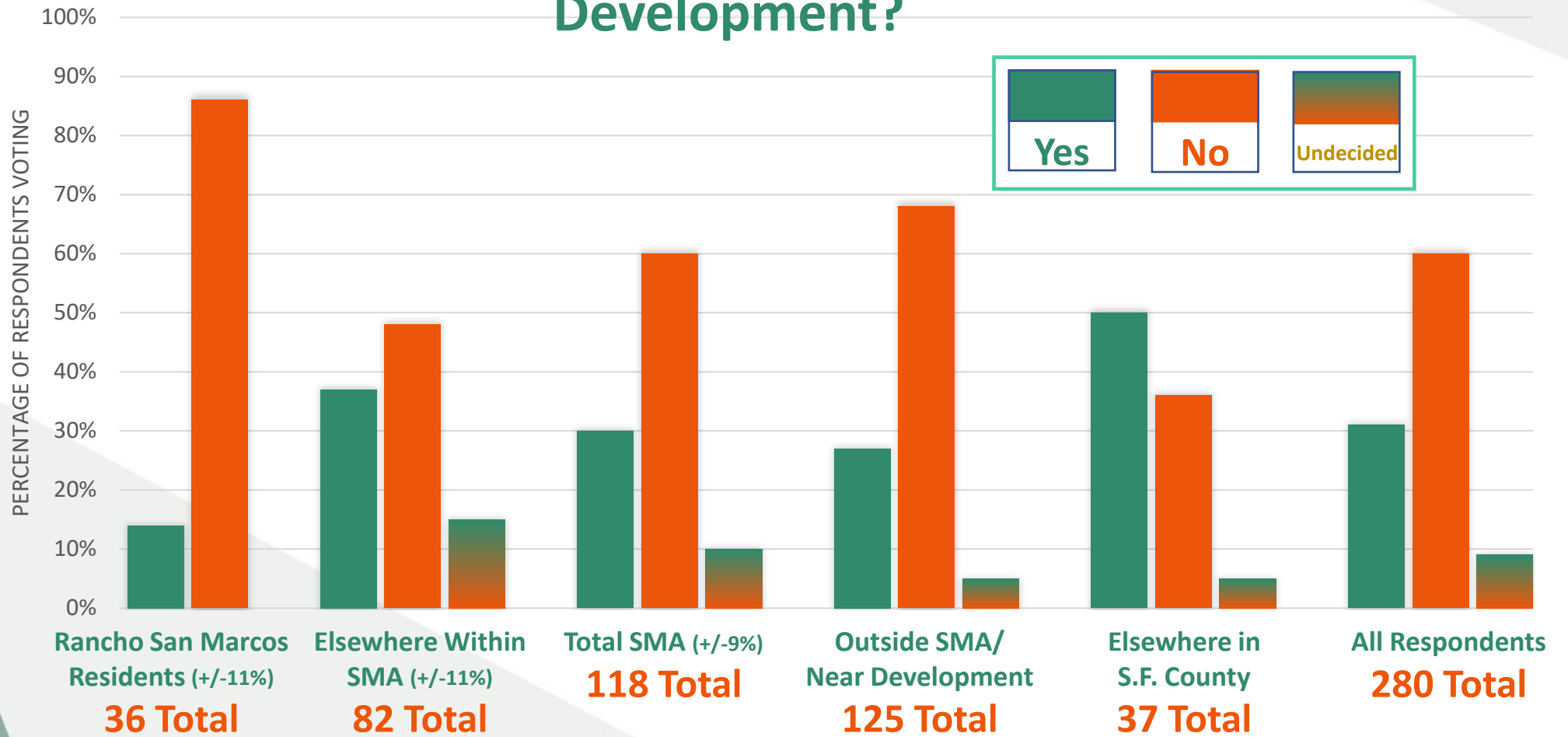
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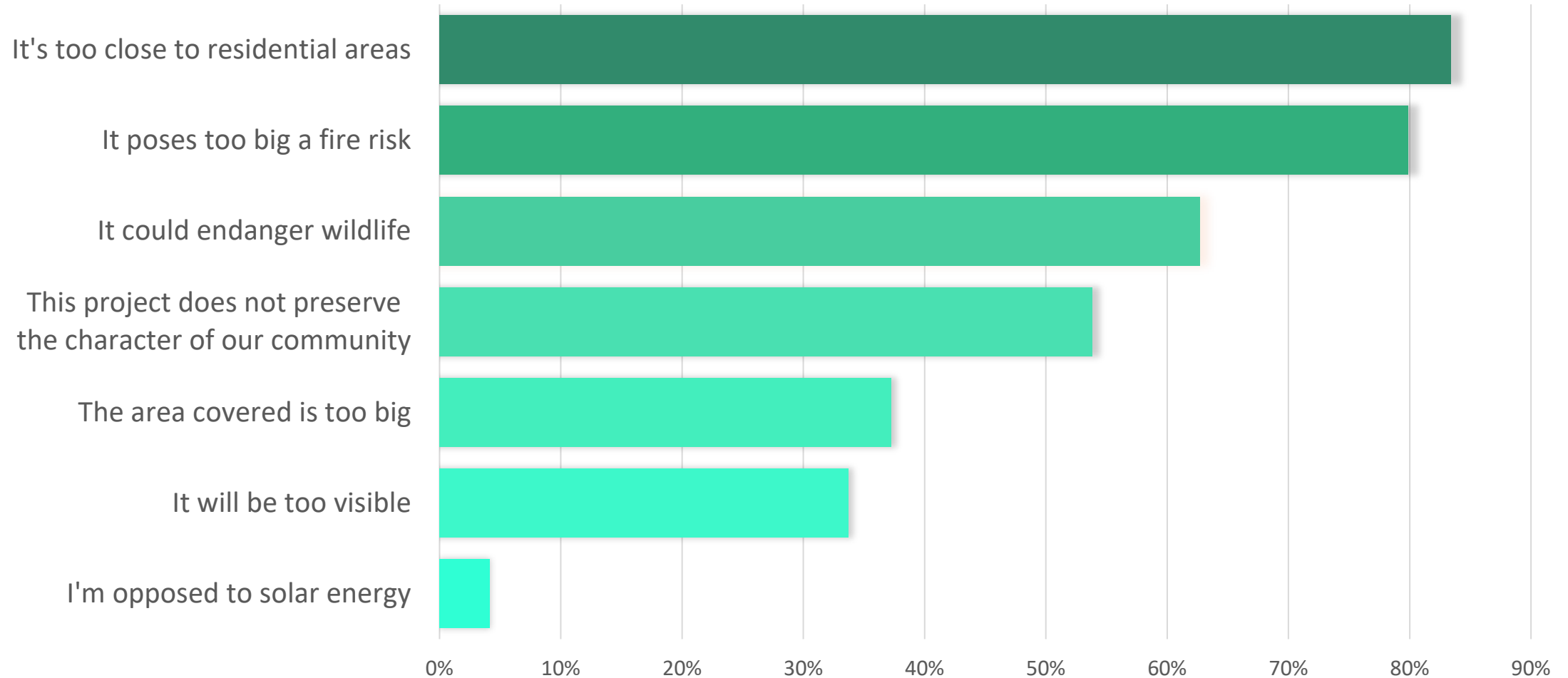
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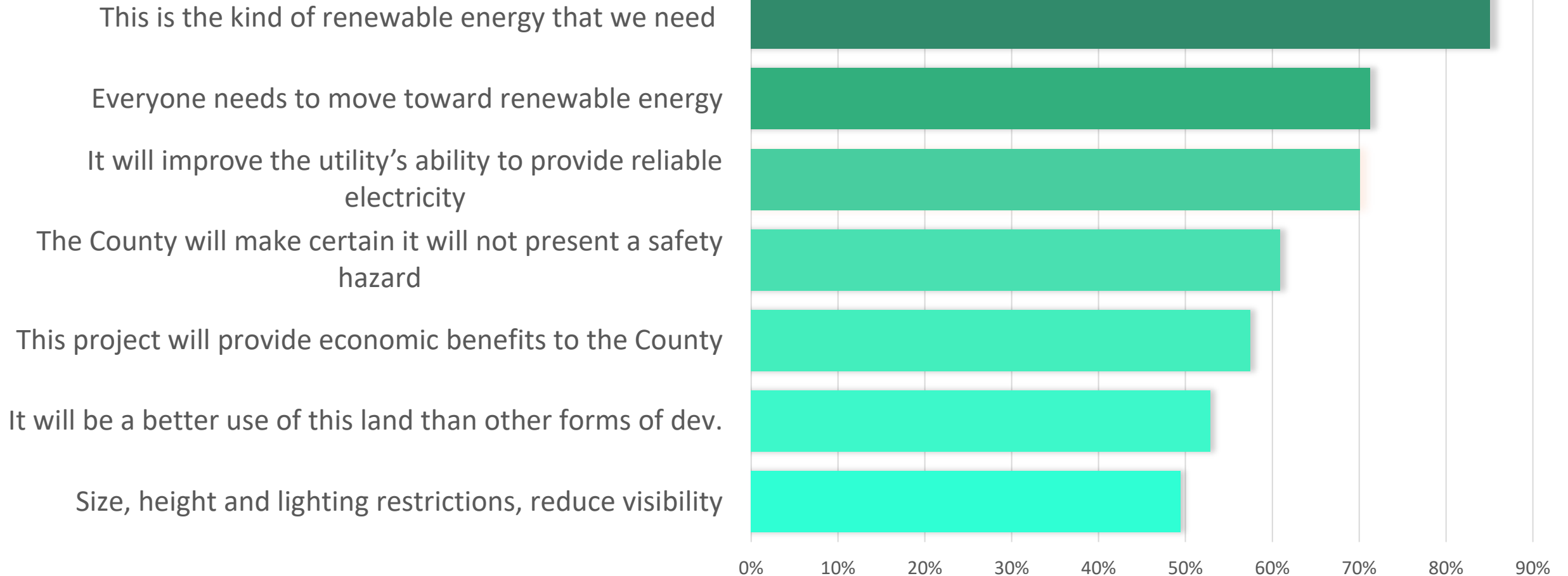
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Proposed Conditions and Procedures

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Proposed Conditions and Procedures

Immediate and On-going Procedures

- Transparency in CUP Activities
 - Public meetings and reports
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QUESTIONS?



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A Community Voice Advocating for Our Neighbors and the Land

Below are selected Land Based Classification Standards (LBCS) Structure Dimension Codes related to the Use referred to as “Gas or Electric Power Generation Facility” in the SLDC Use Matrix (Appendix B). This use is **Prohibited** in areas zoned Rural Fringe. LBCS Code 6400 is specifically referenced in the SLDC; the others are subcodes incorporated into the regulations by that reference. Portions highlighted below are emphasized by SMA.

6400 Gas or electric power generation facility

6430 Power generation plants

Because these structures are of special concern for emergency management and other disaster recovery applications, they appear in a separate category with subcategories useful for emergency planners. Many state and federal emergency management applications (as described in the U.S. Federal Emergency Management Agency's HAZUS manual) specify these distinctions.

6460 Solar and other forms of energy facility

Includes windmills, solar panel farms, etc. Windmills are also known by other specialized terms, such as air mill, horizontal air mill, post mill, smock mill, and tower mill.

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Proposed Conditions and Procedures

The list of proposed conditions and procedures below contains items for which the applicant alone would be responsible; items for which Santa Fe County would have primary responsibility; and items for which responsibility would be shared between the applicant and the County.

Below are the conditions SMA offers that are directly connected to the CUP.

From CUP Approval Criteria – SLDC 4.9.6.5.

“CUPs may only be approved if it is determined that the use for which the permit is requested will not... create a potential hazard for fire, panic, or other danger.”

Related to that concern, SMA suggests the following conditions and procedures.

- The facility should be staffed 24/7 by two or more individuals, preferably local workers, certified by County staff as being trained to respond to any potentially hazardous/dangerous situations; individuals with direct lines of communication with local law enforcement and emergency responders; individuals with the authority to terminate operations of any malfunctioning or otherwise unreliable equipment. [Suggested Condition of CUP approval]
- Audible warning systems, linked to readily available informational online and social media sites, should be installed in neighborhoods within 5-8 miles of this facility that will warn residents, schools and businesses of the occurrence of dangerous events (e.g. fire, battery leaks, toxic air quality, soil, water contamination, or other health issues) that may necessitate their evacuation. [County instituted and maintained in cooperation with applicant]
- A clear plan that is developed in concert with the public, and then communicated to the public, regarding emergency response procedures and responsibilities, evacuation protocols and routes, sources of information pertaining to the emergency, etc. [County instituted and maintained in cooperation with applicant]
- Inspection/certification of BESS fire systems before start-up, with formal reporting to the public. [County instituted and maintained in cooperation with applicant]

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More generally, considering the next 35 years after construction, SMA offers the following.

Transparency – Once a CUP is approved, future efforts concerning that project are normally invisible to the public. In this case, Santa Fe County has an obligation to its residents to ensure complete transparency for something as large, as impactful, and as potentially hazardous as this facility. There should be regular public meetings, regular progress reports, and regular summaries of Applicant-County staff meetings about the project as it moves forward after approval. For example, this project is at roughly the 30% design phase. Public meetings should take place at future design benchmarks, perhaps 50%, then 75%, and 100%, to keep the community informed as to design changes and to give the public an opportunity to understand how any changes might affect safety.

Financial Information - Additionally, the public should be fully informed – initially and for the ensuing 35 years - as to the financial ramifications of this facility that impact them. The County needs to inform the community about such implications as the facility’s impact on the tax base, potential changes in property value or homeowners’ insurance costs, revenues and taxes generated, etc. For example, the applicant’s offered property taxes and gross receipts taxes may not materialize if the company proceeds with applying for an Industrial Revenue Bond.

Ongoing Reporting Procedures - Later, once the project has been constructed and is in operation, the County should prepare periodic reports and/or facilitate public meetings concerning such issues as:

- BESS performance, replacement, installation of replacement batteries, etc.
- Solar panel performance, replacement, installation of replacement panels, etc.
- Incidents of concern that may affect air and water quality, or public health
- Community involvement efforts on the part of the applicant such as support for local educators or emergency responders
- Impacts of this facility on wildlife and the ecosystem in the immediate area surrounding the facility.

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SLDC Hearing

Case # 24-5200

The San Marcos Association

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Proposed AES Rancho Viejo Solar Project

December 4, 2024



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Types of Solar Regulated in SF County

- Residential Solar (National average size ~7.2 kW)
- Commercial Solar Energy Production Facility
(Of “Neighborhood” scale, SFCo Overlay guidelines)
- Community Solar (≤ 5 MW, NM 2021 Community Solar Act)
- Gas or Electric Power Generating Facility
(Utility scale is > 300 kW , SGMP)
(LBCS Structure Code 6400; Solar – Structure Code 6460)



The Rancho Viejo Solar Project is a 'Gas or Electric Power Generating Facility'

- Gas or Electric Power Generating Facility
 - Described effectively this way in AES documents and website
 - Of Utility Scale [SGMP]
 - Transmits power directly to the Grid
 - This use includes “solar panel farms” [LBCS Structure Code 6460]
 - They are PROHIBITED in areas zoned Rural Fringe [SLDC Appendix B – Use Matrix]
 - Conditional Use Permits (CUP) are not an option



The Rancho Viejo Solar Project is a 'Gas or Electric Power Generating Facility'

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Hazardous waste storage facility		6340		C	C	X	X	X	X	X	X	X	X	X	C	X	X	P	
Hazardous waste treatment and disposal facility				C	C	X	X	X	X	X	X	X	X	X	C	X	X	P	
Sewage treatment plant and disposal facilities		6350		C	C	C	C	C	C	C	C	X	C	C	C	C	C	P	
Gas or electric power generation facility		6400		C	C	X	X	X	X	X	X	X	X	X	C	C	C	P	
New wireless		6500		C	C	C	C	X	X	X	X	X	C	C	C	C	C	C	

From SLDC Appendix B: Use Matrix, p. 11



The Rancho Viejo Solar Project is **NOT** a 'Commercial Solar Energy Production Facility'

- Commercial Solar Energy Production Facility
 - A “renewable energy production facility that uses sunlight to generate, and may store, energy for sale or profit” [SLDC Appendix A]
 - A definition largely from 2016
 - Conditional in Rural Fringe (Rural Fringe defined as “suitable for a combination of estate-type residential development, agricultural uses and other compatible uses”) [SLDC §8.6.3.1]
 - Of “neighborhood” scale



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AES failed to Notice SMA of its January 4, 2023 Neighborhood Meeting

- AES held a virtual neighborhood meeting on 01/04/23 [Jan. 2023 Pre-Application Neighborhood Meeting Report]
- Purposes of Neighborhood Meetings
 - Applicant Presents Information about a Development
 - Community Members Respond to that Information
 - ***All parties Hear the Statements of Both Sides***
- SMA was denied the opportunity to inform the community and to hear community members' thoughts
- Potentially not the only example of AES 'cutting corners'



QUESTIONS?

**HEARING OFFICER MEETING
DECEMBER 4, 2024
CASE NO. 24-5200
RANCHO VIEJO LIMITED PARTNERSHIP
RANCHO VIEJO SOLAR, LLC
AES CLEAN ENERGY DEVELOPMENT, LLC
Jointly the APPLICANT
CONDITIONAL USE PERMIT**

RECOMMENDED ORDER

THIS MATTER came before the Sustainable Land Development Code (“SLDC”) Hearing Officer for hearing on December 4, 2024, on the request of the above-referenced Applicant for a conditional use permit (“CUP”) to allow a 96-megawatt solar facility (“Project”) on approximately 684 acres (“Site”) in Sections 2-9, Township 15 North, Range 9 East that is zoned Rural Fringe (RUR-F) and is accessed from NM State Highway 14 in Commission District 5.

The requirements of the SLDC used to process the Application:

- Chapter 4.9.6 Conditional Use Permits
- Appendix B – Use Matrix

Two organizations that registered pursuant to Chapter 2.2.3 of the SLDC intervened this case: Clean Energy Coalition for Santa Fe County and the San Marcos Association.

The Hearing Officer, having reviewed the Application, the testimony and exhibits from the hearing including the County’s Staff report, as defined below, recommends the Application be denied and makes the following Findings of Fact and Conclusions of Law.

I. THE APPLICATION

1. The Applicant states that it seeks a CUP to build and operate the Project, which would be located on privately-owned property approximately three miles south of Santa Fe city limits, to include the following: a 680-acre solar facility; a one-acre collector substation; a three-acre battery energy storage system (“BESS”); a 2.3 mile tie-in line; a 2.1-mile access road; a 26.3-foot diameter

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by 7.2-foot above ground water storage tank; and a 1,400 square foot operations building . (Ex. B 1-1)

2. The Applicant states the Project would generate 96 megawatts (MW) and would include 48 MW of four-hour duration BESS for storage and delivery of solar energy intended to replace part of the fossil fuel portfolio of the Public Service Company of New Mexico (“PNM”). (*id.*)

3. The Applicant submitted studies, reports, and assessments as specified in the Technical Advisory Committee (“TAC”) letter dated March 23, 2022, and the Applicant lists these in the CUP application. (Ex. B 2-5; Ex. E)

4. The Applicant addresses the specific criteria of Chapter 4.9.6.5 of the SLDC for a CUP as follows:

i. *will not be detrimental to the health, safety and general welfare of the area*

The Applicant states that the Project is a static, non-obtrusive land use that will be compatible with surrounding land uses, because solar projects do not create significant noise, light, traffic, or other operational impacts. (Ex. B 2-6)

ii. *tend to create congestion in roads*

The Applicant states that the Project will have higher traffic volume during the 12-month construction period but will have very low traffic once it is operational. The Applicant explains that access to the Site is from an existing gated access point on NM 14. (*id.*)

iii. *will not create a potential hazard for fire, panic, or other danger*

The Applicant states that it will comply with the most current applicable codes of the state, county and other entities and lists the rules and ordinances. *See* Ex. B 2-7 The Applicant states that is has been working with Santa Fe County Fire Department to “ ... design and construct the [P]roject’s access, circulation and emergency measures.” (Ex. B 2-7)

iv. *tend to overcrowd land and cause undue concentration of population*

The Applicant states that the Project will not be detrimental to the use or development of adjacent land, because the Project is static, non-obtrusive, and will not overcrowd the land or cause undue concentration of population, nor will it change any existing population patterns. (*id.*)

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v. *interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements*

The Applicant states that compared to permitted uses in the RUR-F zoning district, the Project will provide a net positive impact to the County's services. The Applicant maintains that the Project will not require a significant long-term water supply although during the construction period, approximately 100 to 150 acre-feet will be delivered to the Site by water trucks from the County's bulk water station commercial pipe water, Ranchland Utility Company Class A reclaimed water, County reclaimed water, or any other legally permitted commercial water sources. The Applicant estimates the Project's long-term water use will be two to three acre-feet per year for solar panel washing and potable water for the operations building. The Applicant states that portable toilets will be used during construction, and a septic tank will be constructed for the operations building. (Ex. B 2-7, 2-8)

vi. *interfere with adequate light and air*

The Applicant states that any required lighting will comply with the SLDC and the County's night sky ordinance. The Applicant anticipates that the only air impact would be short-term emissions from equipment use and the dust from road travel during the construction period and maintenance phase. (Ex. B 2-8)

vii. *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 [Sustainable Growth Management Plan]*

The Applicant responds by quoting the SLDC's definition for the RUR-F and stating that "... commercial solar energy production facilities are permitted within the RUR-F zoning district only after review and approval of a Conditional Use Permit." (*id.*)

5. The Applicant addresses the relevant Sustainable Design Standards set forth in Chapter 7 of the SLDC that are applicable to all development. (Ex. B 3-1 through 3-7)

Sections 7.2 and 7.5 - The Applicant states that the Project will have higher traffic volume during the construction period but will have very low traffic once it is operational. (Ex. B 2-6) The Applicant states that the Project has been designed to comply and conform with state and county fire codes. The Applicant states that it is working with third parties to provide safety and fire management training for fire departments located within the vicinity of the Project, and that this training will occur prior to the completion and energization of the Project. The Applicant states that Hazard Mitigation Analysis ("HMA") has been prepared to include site and product

specific fire risk assessment and a first responder plan and that local responders will have access to these reports. The Applicant maintains that no special materials are required to respond to a fire event for the containerized BESS units as only standard water application to the adjacent BESS containers is required, and this is necessary only in the case where all internal fire suppression systems have failed. The Applicant continues to explain that if a battery fire occurs, the enclosures would release fire suppressant in large concentration directly into the cell which would remove heat and prevent thermal runaway throughout the enclosure. The Applicant claims that the UL 9540a tests of this system indicate adequate prevention of thermal runaway, and the AES Energy Storage solution will achieve UL 9540 certification prior to the Project's commercial operation. (Ex.B 3-2)

Sections 7.6; 7.7; 7.8; 7.9; 7.10 – The Site will have a minimum 1,000-foot setback from any adjacent property line. The solar project perimeter will be enclosed by an 'agricultural style' fence with posts between 8 and 12 feet tall. The collector substation and BESS may be enclosed by a chain-link fence. The Applicant anticipates a motion sensor and downcast shaded security lighting at the access gate, battery storage and substation location operations building, and solar pads – all of which will comply with county lighting ordinances. A small identification sign may be posted at the entry gate to the Project. The Applicant describes the parking at the Site and explains that work on the 2.3 mile generation tie-in line ("gen-tie") may occur at night to minimize outages. (*id.*)

Sections 7.11; 7.12; 7.13; 7.14; 7.15 - The Applicant describes the internal roads at the Site and states that the operational electrical needs will be provided from the Project substation. The Applicant states that the long term water use following construction will be two to three acre-feet a year of water stored in the 5,000-gallon potable water tank; portable toilets will be used during construction, and a septic tank will be constructed for the operations building. The Applicant states that once the Project is operational, it will produce energy seven days a week. As the Project is to be located on property that is zoned RUR-F, it is outside the designated open space areas. (Ex. B 3-3)

Section 7.16 - The Applicant reviewed the steps it has taken to comply with the Historic Preservation Division of the Department of Cultural Affairs Department's regulations. (Ex. B 3-4; Ex P)

Sections 7.17; 7.18; 7.20 - The Applicant describes the measures it proposes to control runoff and reduce erosion at the Site. The Applicant references the Hydrologic and Hydraulic Study it had performed for the Project and notes that other than 0.5 acre of the proposed gen-tie corridor, the Project avoids the Zone A floodplain. The Applicant states that the solid waste generated during construction will be hauled away by a private contractor to a licensed waste management facility. (Ex. B 3-4, 3-5)

Section 7.21 - The Applicant describes the efforts it will make to suppress emission and air pollutants during construction and notes that an air quality permit is not required. The Applicant notes that similar emissions would occur during the decommissioning of the Project. The Applicant acknowledges that there will be a temporary increase in ambient noise levels during construction, but this increase will dissipate within approximately 0.15 to 1.2 miles of the Project area. The Applicant maintains that once the Project is operational, it will have a negligible effect on ambient noise levels beyond the immediate vicinity and refers to the Noise Technical Report

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for a detailed analysis prepared by SWCA Environmental Consultants (“SWCA”) submitted with the CUP. (Ex. B 3-5, 3-6)

Section - 7.22 The Applicant submitted the Rancho Viejo Solar Project Decommissioning Plan prepared by SWCA that indicates a lifespan of the Project of 25 to 35 years if properly maintained. This Plan estimates approximately \$8.9 million in decommissioning expenses, and Applicant will provide such a commitment prior to final plat recording and permit approval and issuance. (Ex. B 3-6)

Section 7.26 - The Applicant explains that any easements required will be surveyed, executed, and recorded by separate instrument. (*id.*)

II. THE STAFF REPORT

6. At the hearing, Staff summarized the Staff report, which was submitted as part of the record. The written Staff report, including exhibits, attachments, and the oral summary is collectively referred to as the Staff Report (“SR”).

7. Staff explain that the Applicant’s request for a CUP is necessary pursuant to Chapter 4.9.6.1 and the Use Matrix of the SLDC as certain land uses are not permitted in zoning districts as a matter of right, but with appropriate standards and factors, may be permitted by the issuance of a CUP. Staff confirms that the Site is zoned RUR-F in which a commercial solar energy production facility is a conditional use. (SR 2)

8. Staff explain that any development must also comply with the following: the submittal of the required studies, reports and assessments of Table 6-1 of Chapter 6 of the SLDC, and the applicable design standards of Chapter 7. Staff comment as follows on the Application:

Section 6.6 (Traffic Impact); Sections 7.4 and 7.11 (Access and Road Design)

Staff state that the existing access point for the Project off of Highway 14, approximately 350 feet north of the Turquoise Trail Charter School, does not require additional public road construction, but the Applicant must comply with the specific requirements of the New Mexico Department of Transportation’s access permit issued on May 31, 2023. (SR 2-3)

Sections 6.5 and 7.13 (Water Supply and Water Conservation)

Staff restate the Applicant’s projected water use and water sources and notes that the Application does not address a passive water harvesting system, which is required by Section 7.13.11.7.3.b.iv and will be required of the Applicant. (SR 3-4)

Sections 6.3 (EIR); 6.4 (APFA); and 6.7 FIA

Staff state that the Environmental Impact Report was submitted and reviewed by Glorieta Geoscience, Inc. (Ex. J). The Applicant submitted the Adequate Public Facilities and Services Assessment, but a Fiscal Impact Assessment was not required. (SR 5)

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Section 7.5 (Fire Protection)

Staff state that the Site will include 20-foot-wide internal roads with fire lanes, minimum inside turning radii of 28-feet, gates equipped with emergency opening systems, and a 30,000 gallon above ground water storage tank for fire protection. Staff state that a Preliminary Hazard Mitigation Analysis has been prepared for the Project, and a final analysis will be done as part of the detailed engineering process, which will include site and product specific fire risk assessment and first responder plan. Local first responders will have access to these reports, and the Applicant will provide on-site, in-person training to local responders prior to commercial operation of the Project. Staff state that no special materials are required to respond to a fire event for the containerized BESS units, and only standard water application to the adjacent BESS containers is required and only after internal fire suppression systems fail. Staff repeat the Applicant's assertion that in the event of a battery fire, the enclosures would release fire suppressant in large concentrations directly into the initiating cell thereby removing heat and preventing thermal runaway throughout the enclosure. Staff state that the Applicant will provide UL 9540 certification for this specific system indicating adequate prevention of thermal runaway prior to the Project's commercial operation. Staff state that the Application was sent to the Santa Fe County Fire Department in addition to third party reviewer Atar Fire, and both entities have concluded that a sufficient level of information has been provided to validate the issuance of a CUP. (SR 5-6)

Section 7.6 (Landscaping)

Staff state that no new landscaping is proposed for the Project. (SR 6)

Section 7.7 (Fences)

Staff state the Applicant proposes to enclose the perimeter of the solar project with a maximum 8-foot-tall fence, and the on-site collector substation and BESS will 'more likely be' enclosed by a maximum 8-foot-tall chain-link fence. (*id.*)

Section 7.8 (Lighting); Section 7.9 (Signs)

Staff state that there will be motion sensor, downcast shaded security lighting at the access gate, battery storage and substation location, operations building, and solar pads.

Staff state that the Applicant proposes a small facility identification sign to be posted at the Project entry gate. (SR 7-10)

Section 7.10 (Parking and Loading)

Staff state that during operations, employee and visitor parking will be at the operations building and any loading activities would generally occur between 7:00 a.m. and 7:00 p.m. (SR 10-12)

Section 7.15 (Open Space)

Staff explain that as the project is located on property that is zoned RUR-F, it is outside the designated open space areas; but of the 828-tract, approximately 340 acres will remain as natural open space although some of that acreage will be within the 680-acre solar facility. (SR 12)

Section 7.16 (Protection of Historic Resources)

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Staff state that with the avoidance of two undetermined resources, there will be no effect to any historic resources, *see* Exhibit P. (SR 12-13)

Section 7.17 (Terrain Management); Section 7.18 (Flood Control)

Staff state that during construction a Storm Water Pollution Prevention (SWPPP) will be developed and implemented to meet NMED's discharge permit requirements. Staff explain that a Hydrologic and Hydraulic Study indicates three arroyos flow from east to west through the Site, and the Project design has been refined to avoid placement of solar arrays within the arroyos. (SR 13)

Section 7.20 (Solid Waste)

Staff state that the Applicant will have solid waste generated during construction removed by a private contractor and transported to a licensed waste management facility; solid waste generated during the Project operation, projected to be minimal, will be disposed of at a licensed waste management facility. Staff state that the Applicant estimates a 30-year life for the Project at which time the Project will be decommissioned and the materials removed. (*id.*)

Section 7.21 (Air Quality and Noise)

Staff describe the actions the Applicant proposes to take during the 12-month construction period to reduce dust emissions. Staff state the Applicant anticipates only minimal, short-term emissions during the operations and maintenance phase, and decommissioning emission are expected to be similar to those emitted during construction.

As to noise, Staff explain that the Project is in a semi-rural area with low existing noise levels. Staff state that there will be a temporary increase in ambient noise levels during the construction period, which level will dissipate within 0.15 to 1.2 miles of the Project area. Staff state that during the operational years, the Project will have a negligible effect on the ambient noise levels beyond the immediate vicinity of the Project. (SR 14-15)

9. Staff set forth the seven CUP approval criteria and conclude that the Applicant has satisfied the criteria.

i. *will not be detrimental to the health, safety and general welfare of the area*

Staff respond to the Applicant's statements regarding this criterion by stating that the Applicant will be required to comply with all applicable SLDC requirements as well as state and federal laws and all codes and standards as adopted in Santa Fe County. (SR 17)

ii. *tend to create congestion in roads*

Staff state that the Highway 14 gated access will be improved, and the site threshold analysis indicates additional traffic impact studies are not warranted either for the construction or operation period. (*id.*)

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iii. *will not create a potential hazard for fire, panic, or other danger*

In response to this criterion, Staff recite the applicable codes relevant to this Project. *see* SR 18. Additionally, Staff refer to the 30,000-gallon on-site water tank, and explain that as the BESS containers will be equipped with internal fire suppression systems, only standard water application to adjacent BESS containers is required, and this would only be in the event that all internal fire suppression systems fail. Staff explain that all information required by first responders will be included in the first responder plan part of the final approved Hazard Mitigation Analysis, and the Applicant will provide one-site and in-person training to the local responders prior to commercial operation of the system. (SR 18-19)

iv. *tend to overcrowd land and cause undue concentration of population*

Staff note that the Site will have acres of natural open space. (SR 19)

v. *interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements*

Staff state: "The proposed solar facility is in a remote area of Santa Fe County and will not interfere with adequate provisions for school, parks, water, sewerage, transportation or other public requirements." (SR 19)

vi. *interfere with adequate light and air*

Staff state that the Project includes minimal lighting mainly for security, battery storage and substation location, the operations building and solar pads; all lighting will be required to comply with the SLDC. The monopoles, which Staff recommend for their minimal visual impact, for the gen-tie line will be required to blend into the natural landscape and be non-reflective. (SR 20)

vii. *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*

Staff explain that a commercial solar energy production facility is allowed in the RUR-F zone with the approval of a CUP, and the SGMP explicitly supports the development and distribution of renewable energies at a regional scale. (SR 20)

10. Staff state that the Applicant made the required notice by publication, mailing, and posting. (SR 15; Ex R)

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11. Staff recommend approval of the CUP based on the Application, subject to the following conditions:

- i. Compliance with all Reviewing Agencies' comments.
- ii. The drilling or use of individual and/or shared wells for this use on this property is prohibited.
- iii. The Applicant shall provide proper buffering and screening by installing a paneled fence to a portion of the proposed 8' tall fence that will be located on the southwest portion of the property.
- iv. Construction fencing will be required around all designated archeological sites to preserve the integrity of these areas.
- v. Prior to the recordation of the CUP site development plan, the access road and internal roads shall be permitted through Santa Fe County, built out and inspected, or bonded for 125% of the construction cost.
- vi. The CUP site development plan showing the site layout and any other conditions that may be imposed through the approval process shall be recorded at the expense of the Applicant in the office of the County Clerk in accordance with Chapter 4, Section 4.9.6.8.
- vii. 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.
- viii. A decommissioning bond (may contain salvage value) will be required prior to recordation of the CUP site development plan, and must be in place for the life of the project.
- ix. Applicant will be required to apply for all applicable Development Permits after the CUP recordation.
- x. Prior to the submittal of any applicable Development Permit the Applicant will be required to renew its access permit from NMDOT.
- xi. Applicant shall obtain an approved liquid waste permit from NMED prior to the submittal for a Development Permit.
- xii. 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.
- xiii. Construction activity to be limited to a Monday through Friday, 7 am to 7 pm work schedule. Any deviation from these construction hours will require 48 hours' notice to Santa Fe County and neighboring property owners.
- xiv. Prior to operating the Applicant shall obtain a Santa Fe County Business License.

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

(SR 21-22; Tr 27-28)

III. INTERVENORS

Clean Energy Coalition (“CEC”)

12. CEC stated that it is an organization of 1,300 members, and it opposes the Application to site the Project amid three residential communities with approximately 10,000 homes, 25,000 residents, the Turquoise Trail Charter School and the state prison with 790 inmates. CEC presented three witnesses. (Tr 39-51)

13. CEC stated that the County does not have specific standards regulating utility-scale solar facilities that contain battery storage, and noted that about 300 counties across the country have enacted moratoriums on such facilities. (Tr 39)

14. CEC questioned Staff regarding air quality tests of emissions during operation of lithium battery facilities during operation, explosions and fire, and Staff responded that such air quality tests are not required for the CUP and are not addressed in the EIR. Atar Fire, the County’s third-party fire expert, responded that lithium batteries do not give off emissions during normal operations and stated that tests following the fire at the Escondido, California facility developed by the Applicant indicated no detectable toxic gases outside the property line; the Otay Mesa fire, also in California but not at a facility designed or operated by the Applicant, which burned for eleven days, also reported no detectable amount of toxic gas emissions. (Tr. 31-32)

15. CEC questioned Staff on three fires at AES facilities: Surprise Arizona; Chandler, Arizona; and Escondido, California. Staff responded that it was aware of the fires, Atar Fire reviewed them as well, and determined that the battery systems used at those facilities represented an older design of such systems and were not the newer generation that is proposed for the Project. (Tr 36)

16. CEC’s witness Kaye Cooper-Mead, an Eldorado resident, addressed the Project *vis a vis* the surrounding area and points out that there are residences as close as 500 feet from the

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Project's boundaries, and the area is drought-prone with high winds predominantly blowing from west to east toward Eldorado with some homes reliant solely on well water from a shallow aquifer. (Tr 40)

17. Cooper-Mead stated that there have been three fires from battery energy storage systems in the last five years at the Applicant's facilities, and she believes there is potential for groundwater contamination at the proposed Site from the PFAS-laden fire suppressant. The Applicant responded that the PFAs for the cells proposed for this Project are not liquid, do not dissolve in water, and would not penetrate to groundwater. (Tr 41; 47)

18. Cooper-Mead questioned the effect the Project's proximity to the community on homeowner's insurance and whether such insurance would become unavailable. (*id.*)

19. Cooper-Mead pointed to the limited economic benefit, after the initial construction, to the County of only four to five jobs for the remainder of the facility's life of 35 years. (*id.*)

20. Cooper-Mead cited to Chapter 7 of the SGMP defines "utility-scale" as 300 kilowatts, or about one-third of a megawatt and that utility-scale generation facilities such as this Project with 570,000 lithium-ion battery cells are not allowed in the RUR-F zone in compliance with the goals of the SGMP. (Tr 42-43)

21. Randy Coleman, vice-president of CEC and resident of Eldorado testified that the proposed utility-scale solar and battery Project would be detrimental to the health, safety, and general welfare of the area and described the three fires in the Applicant's battery storage facilities since 2019, He testified that the fire at a facility in Surprise, Arizona is considered the most dangerous fire in the history of battery energy storage systems and resulted in the most serious injuries to first-responders. He stated that this facility had only 10,584 battery cells in one walk-in container as opposed to the 570,000 cells in 38 containers proposed for this Project. He described the 2022 fire in Chandler, Arizona at a 10 MW-facility with 3,200 lithium-ion batteries that created a hazmat situation forcing a quarter-mile evacuation and shelter in place order; reports stated this fire burned for two weeks, and the Applicant has still not released information to the public about the fire and its causes. He stated that the Escondido fire in a facility using BESS designed by the Applicant in September of 2024, forced evacuations in the area. (Tr 44)

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22. Coleman stated that the Applicant has selected the least safe of six types of lithium-ion batteries and the ones most likely to result in thermal runaway fire burning the hottest and fastest. (*id.*)

23. Coleman testified that according to wildfirerisk.org, the Eldorado area has a high risk of wildfire, higher than 80 percent of the United States, and he provides the speed at which a wildfire could travel in winds of eight miles per hour as one mile in 26 minutes; if the wind speed were 16 miles an hour, it would cover a mile in 13 minutes. He describes a possible fire as affecting Rancho Viejo, San Marcos, Eldorado and perhaps even into the City of Santa Fe together with the toxic emissions and damage of PFAS groundwater contamination by efforts to suppress the fire. (Tr 45)

24. Lee Zlotoff, president of CEC and a resident of Eldorado, testified that he informed the County of a major natural gas pipeline that runs along the western border of Eldorado as the line emerges from the ground immediately adjacent to his property at a regulator station; he estimated the gas line is a mile from the proposed battery facility. He noted that the line does not appear in the Application. He testified that over 2,000-area homes are connected to that gas line, and in the event of the line rupturing or exploding, these homes could also be subject to explosion and fire. (Tr 48)

25. Zlotoff states that with over 500,000 lithium-ion batteries proposed for the Project there would be at least one if not multiple BESS fires over the course of the Project's 30-year life. (Tr 49)

San Marco Association ("SMA")

26. Dennis Kurtz, president of SMA, described the SMA as a registered organization that advocates for a large area from the Colibri Subdivision on the north to far below Madrid; from I-25 on the west to the borders of, but not including Eldorado or Galisteo, but including Cerrillos, Cerrillos Hills, and the western Galisteo Basin including Madrid. The SMA asks that the Application be denied. (Tr 51, 55)

27. Kurtz testified that the SLDC's CUP process does not apply to the Project as the Project is a huge electric power generating facility, *i.e.* a power plant, and is prohibited in the RUR-F zone. He points out that pursuant to the SGMP, any electric power generating facility greater

than 300,000 watts is considered utility scale, and this Project is 96 million watts. Kurtz continues by distinguishing between 'residential' and 'commercial' solar installation with the latter being something like an installation on a big box store. (Tr 52-54)

IV. PUBLIC COMMENT

28. At the December 4, 2024 hearing 35 attendees testified; six spoke in favor of the Application, and the 27 attendees stated their strong opposition to the Application. The pro-Application comments generally supported the development of more renewable energy generation and the increasing safety of solar production facilities. The comments from those opposed to the Application included the following: the size of the Project in an area surround by residential development, especially with the potential for fire, explosion, thermal runaway resulting in not just fire but wildfire; the increase of noise from such a large installation; the possible toxic gas emissions; the pollution of the shallow aquifer by fire suppressants needed in enormous quantities; the Applicant's history of fires and safety violations at its facilities across the country; the Applicant's choice of the older technology of lithium-ion battery storage rather than newer, safer technology such as iron air or flow batteries; and the possible negative effect on home values and difficulty, if not impossibility, of obtaining home insurance because of the proximity to a utility-scale solar generation and storage facility. (Tr 56-84)

29. Ashley Schannuaer, who resides one mile west from the Site in Eldorado, testified in opposition to the Application, and requested that his written testimony be admitted as an exhibit; there was no objection to its admission, and it is designated Hearing Exhibit AA. (Tr 66-67)

30. Schannuaer asserts his three primary points in opposition: i) the Project poses an unacceptable risk of fire, explosion, and toxic gases adjacent to residential land uses; ii) the Application is inconsistent with the spirit and intent of the SGMP; and iii) the Application violates Santa Fe County Ordinance 2023-09. (Ex. AA 3)

31. Schannuaer details the three fires (Surprise, Chandler, and Escondido) at facilities operated or designed by the Applicant, and notes that the Applicant's initial 2023 application to the County contained a Fire Risk Assessment that describes the physical reactions that may occur during a thermal runaway. (*id.* 6-11) Schannuaer continues by providing details of the 2021 Electric Power Research Institute's report on lithium-ion battery storage, which found that in a

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four-year period, lithium-ion battery storage systems were the subject of at least 30 failures and destructive fires. (*id.* at 16)

32. Schannuaer states that the Applicant (AES Corporation) in its 2022 and 2023 Annual Reports filed with the U.S. Securities and Exchange Commission warned its investors of the inherent risks of its battery storage operations. (*id.* at 14)

33. Schannuaer's testimony provides extensive detail of the National Fire Protection Association's NFPA 855 Standard for the Installation of Stationary Energy Storage Systems and its 2022 Annex update titled "Guide for Suppression and Safety of Lithium-Ion Battery Energy Storage Systems." (*id.* 17-21)

34. Schannauer states that the County Commission updated its Fire Code by adopting Ordinance 2023-09 adopting the NFPA 855 including Annex G, but the County has not required the Applicant to comply with Ordinance No. 2023-09 even though another BESS project currently under review by the County, Linea Energy, is being required to do so. (*id.* 29-32)

35. Schannauer cites to Chapter 9 of the SGMP and quotes that "[t]he current emergency response system is not sufficient to service our population today." He also notes that the County has lacked an up-to-date emergency operations plan since 2008, and that an Emergency Management Task Force's 2023 report recommended development of an emergency operation plan for immediate attention. (*id.* 22-26)

36. Schannauer questions the viability of the Applicant's stated goal to sell the Project's output to the PNM, and explains that the Project does "... not appear to align with PNM's existing physical network and its resource and transmission plans." He states that the Project has been rejected at least twice from selection as part of the PNM power portfolio as its PNM's industrial load growth is occurring near Albuquerque, not Santa Fe. The Applicant responded that PNM's prior selection process is irrelevant to its future procurement. The Applicant stated this Project may or may not be selected by PNM, but the Applicant needs a commercial power purchase contract to finance and build the Project. (Ex. AA 53-55; Tr 66)

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WRITTEN COMMENT

37. Prior to the submittal of the initial application in January 2023, and continuing with the subsequent Application, the County has received written comments regarding the Project, both in support and in opposition. These comments are available on the County website.

V. ANALYSIS

38. As several witnesses noted, the SLDC is intended to be consistent with the SGMP. See SLDC Chapter 1.4.1 Section 7.2.3.2 of the SGMP defines “utility scale” renewable energy generating facility as a facility generating more than 300 kW of electricity. Matrix B - Use Table of the SLDC lists under the “Utility” category of Uses “Gas or Electric Power Generation Facility” as a prohibited use in the RUR-F zone. The proposed Project is designed to generate 96 megawatts. The Applicant states that the Project could power the City of Santa Fe, which suggests that it would be classified as a utility-scale facility. However, the Application has been processed as a “commercial solar energy production facility,” also listed under the “Utility” category but not including any size restriction on the generating capacity. The “commercial solar energy production facility” is a category that is allowed in the RUR-F zone as a conditional use and is an apparent carve out of the prohibition of electric power generating facilities in certain zones.

39. Chapter 4.9.6.1 of the SLDC provides that a CUP may be granted if the applicant satisfies each of the criterion set forth in that section. The County’s grant of a CUP is discretionary, not mandatory, even though the criteria is met.

40. The Applicant, in this case, fails to satisfy the following criteria to be granted the requested CUP: *i) will not be detrimental to the health, safety and general welfare of the area; iii) will not create a potential hazard for fire, panic, or other danger; and vii) 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.*

41. The Applicant’s proposed Project contains a 3-acre BESS consisting of 570,000 lithium-ion batteries that as the Applicant itself stated “... the componentry in that system has not been deployed ... [although] every component within that exact system has been deployed.” Unrebutted testimony was presented that solar battery storage systems are evolving to ever safer forms, but the system proposed for this Project are of an older less safe type. (Tr 21, 23-24, 44)

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42. Since 2019, there have been three large fires caused by lithium-ion batteries, some with injuries and involving evacuations, at solar facilities operated or designed by the Applicant; two of these fires occurred at facilities with significantly fewer battery cells, one with 3,200 cells and one with approximately 10,000 cells. The remote monitoring for this Project, which would be the only monitoring outside of the normal work week of onsite personnel, is located in Salt Lake City, Utah and is dependent on telecommunications capabilities. The potential for a catastrophic fire from failure of individual cells is vastly increased at a facility with over one-half million battery cells. (Tr 44)

43. The AES First Responder Mitigation Guidelines report, August 2024, states:

The fire suppression system(s) at the BESS containers are designed to suppress small fires within the ancillary equipment and there is no expectation that a thermal runaway type fire within the battery banks will be suppressed. Thermal runaway produces explosive gases prior to ignition, and it is anticipated that early warning will be provided by the gas detection system within each container.

Thermal runaway is one of the primary risks related to lithium-ion batteries. It is a phenomenon in which the lithium-ion cell enters an uncontrollable, self-heating state. Thermal runaway can result in: Ejection of gas, shrapnel, and/or particulates (violent cell venting) and extremely high temperatures.

(Guidelines 9-10)

44. The County does not have a hazardous material team/unit and utilizes the unit of the City of Santa Fe which is approximately 16 miles away from the Site. The closest County fire team is located off Hwy 14. Testimony about wildfire was provided using data from the National Wildfire Coordinating Group for grassy, juniper environment such as around the Project as follows: at a wind speed of eight miles an hour and low moisture conditions, a wildfire could be expected to cover one mile in 26 minutes; under the same conditions with a wind speed of 16 miles an hour, the fire would travel that mile in 13 minutes. (Tr 45)

45. The consequences of a fire from the Project could be catastrophic because of its proximity to the surrounding communities of Eldorado, Rancho San Marcos, and Rancho Viejo - an area with an estimated 10,000 homes and approximately 25,000 residents. Staff stated that the Site is approximately 550 feet from the Rancho San Marcos subdivision and 4,000 feet from Eldorado. (SR 2)

46. Among other concerns expressed regarding the Project were fears of groundwater contamination from the fire suppressants. In the event of a fire escaping from enclosed cells, there would be potential for PFAS-laden fire suppressant together with massive amounts of water used to extinguish the fire could contaminate the groundwater in areas with a shallow aquifer and residents reliant on domestic wells. (Tr 41)

47. Residents of the surrounding communities, all zoned rural residential, expressed fear that the Project would negatively affect their home values and ability to obtain reasonable home insurance, if such insurance would be available at any cost. The Applicant provided market studies to support its position that the siting of the Project would not negatively affect home values. The comparable properties were located in the vicinity of much smaller solar generation and battery storage facilities, 10 to 20 megawatts. Of the three properties near such facilities of approximately 100 megawatts, one was sited in an industrial area and the other was neighboring an asphalt facility. (Tr 15)

48. At the hearing when 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. (Tr 29)

49. The scale of the Project, over 200,000 panels and 570,000 lithium-ion batteries, together with the proximity to residential communities with homes as close at 500 feet from the Site boundary creates an unreasonable risk to the safety and welfare of the communities. This risk is compounded by the distance of these areas from County fire fighting stations, none of which has a hazardous material team.

50. The evidence indicates the Project would be detrimental to the health, safety and general welfare of the area; the Project would create a potential hazard for fire, panic, or other danger; and the Project is inconsistent with the purposes of the property's zoning classification and inconsistent with the spirit and intent of the SLDC and SGMP.

51. The evidence supports denial of the Application.

WHEREFORE, the Hearing Officer recommends that the Application be denied.

Respectfully Submitted

Marilyn S. Hebert

MARILYN S. HEBERT

Hearing Officer

Date: 23 December 2024

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER 0
PAGES: 18

I Hereby Certify That This Instrument Was Filed for
Record On The 23RD Day Of December, 2024 at 11:54:52 AM
And Was Duly Recorded as Instrument # **2049479**
Of The Records Of Santa Fe County



Witness My Hand And Seal Of Office
Katharine E. Clar

Deputy *[Signature]* County Clerk, Santa Fe, NM

SFC CLERK RECORDED 12/23/2024



THE SAN MARCOS ASSOCIATION

P.O. Box 722
Cerrillos, NM 87010

<https://thesanmarcosassociation.org/>

A Community Voice Advocating for Our Neighbors and the Land

November 26, 2024

Ms. Marilyn Hebert, Santa Fe County SLDC Hearing Officer

Via email at lynhebert@q.com

Case No. 24-5200

Applicants for Conditional Use Permit (CUP):
Rancho Viejo Limited Partnership
Rancho Viejo Solar
AES Clean Energy Development, LLC

In care of Dominic Sisneros via email at djsisneros@santafecountynm.gov

Dear Ms. Hebert:

The San Marcos Association (SMA) [<https://thesanmarcosassociation.org/>], a non-profit Registered Organization (RO) pursuant to Sustainable Land Development Code (SLDC) Section 2.2.3, and granted standing by your **Order on Requests for Standing** of 18 November 2024, has in the past submitted several documents related to what is now designated Case # 24-5200. Because there have been staff changes in Santa Fe County, because some prior documents in unrelated cases were not transmitted to the decision-makers involved, and because AES has resubmitted and/or rewritten its CUP application since the attached letters were originally sent, SMA is resubmitting the attached documents to ensure they are in the packet of materials provided to you for the December 4, 2024 SLDC Hearing in this case. All of these documents do not appear to be currently available to the public on the County's **2024 New AES Project Applications** webpage [<https://www.santafecountynm.gov/growth-management/building-development/large-scale-renewable-energy-projects-2024/uaes>], and so we wish to ensure they are part of the current public record.

These documents include: first, and most directly involved with your decision, a letter from SMA to the then unnamed Hearing Officer outlining our reasoning stemming from regulations within the SLDC as to why this Conditional Use Permit (CUP) application should be denied; and second, a series of letters back and forth between SMA and the County concerning our request that Utility Scale Renewable Energy Projects be considered by the County as Developments of Countywide Impact (DCIs).

SMA's March 20, 2023 letter is most important for the December 4, 2024 Hearing. There, we presented the objection summarized herein. SMA feels that the Conditional Use Permit (CUP) application process does not apply in this case as the proposed solar project, as described on the applicant's webpage and in their presentations, is clearly a 'Gas or Electric Power Generating Facility' (Land-Based Classification Standards [LBCS] Structure Code 6400, subcode 6460) that is **Prohibited** in areas zoned Rural Fringe. This LCBS structure code explicitly lists solar installations as being included in this use. There is no provision in the SLDC allowing a CUP for a prohibited use. Further, we argue that it is not a 'Commercial solar energy production facility' because they are of small scale. That they are of neighborhood scale is documented by the portion of the Use Matrix that Santa Fe County provided the San Marcos Community Planning District Committee included in that letter. This was not

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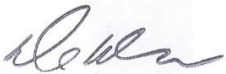
a document prepared solely for that committee as there are no Rural Fringe areas in that Planning District. Our understanding is that this is a County document used to inform Community Planning District Teams in general.

SMA's understanding of what a "Commercial Solar Energy Production Facility" is has evolved since we sent the attached letter in March 2023. The County definition of "Commercial Solar Energy Production Facility" [SLDC 150A Attachment 2.14- Appendix A] is "a renewable energy production facility that uses sunlight to generate ... energy for sale or profit." That circular and seemingly unnecessary definition, where "Commercial" is defined as being "for sale or profit," "solar" is defined as "sunlight," and "energy Production" is defined as "generat[ing] energy" is puzzling. Why is this use even listed? Because every energy production facility generates electricity for sale or profit ... *except* Residential installations. We now view Commercial Solar Energy Production Facilities as essentially the (small scale) "commercial" version of a "residential" solar installation - installed to generate electricity that would allow a rancher or home business owner to reduce their PNM bills and increase their profits, and perhaps to sell excess power to PNM. One can understand why a CUP would be the procedure to follow in that case because that application process would allow for neighborhood input to ensure that the size of such an installation is of neighborhood scale.

Additionally, we also include the exchange of DCI letters as background information to show that SMA has worked since before any CUP application in this case was filed to ensure any such projects benefit from community-wide discussion. We feel that installations this large, that could affect and benefit virtually every County resident, should be discussed County-wide. And, we feel the County should take the lead in facilitating those discussions rather than relying upon volunteer community members to foster awareness of the issues. If you, in your role as SLDC Hearing Officer, have any authority to make a recommendation concerning the DCI status of these utility-scale renewable energy projects, SMA respectfully requests that you make such a determination as a result of this Hearing.

Thank you for your consideration of these matters.

Sincerely,



Dennis D. Kurtz, President
The San Marcos Association

Cc: via email - Alexandra Ladd, Director - Growth Management at aladd@santafecountynm.gov
Gregory S. Shaffer, County manager at gshaffer@santafecountynm.gov
Jeffrey Young, County Attorney at jyoung@santafecountynm.gov
Doninic Sisneros, Case Manager at djsisneros@santafecountynm.gov

Attachments: March 20, 2023 SMA Letter to Hearing Officer re AES CUP application
January 3, 2023 SMA Letter to BCC (generic copy attached) re Possible DCI status of Utility-Scale Renewable Energy Projects
July 24, 2023 Santa Fe County Response to SMA's January 3, 2023 DCI letter
August 17, 2023 SMA Response to County July 24, 2023 letter
September 12, 2023 County Response to SMA August 17, 2023 letter [County letter misdated in the original]

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ATTACHMENT 1

MARCH 20, 2023 LETTER FROM SMA TO THEN UNNAMED HEARING OFFICER

The following letter was sent to Jose Larranaga [joselarra@santafecountynm.gov], SF County staff member on March 20, 2023 at 12:07 PM attached to the email below.

“Hello Jose - The San Marcos Association (an RO pursuant to the SLDC) (<https://thesanmarcosassociation.org/>) submits the attached letter, to be included in any upcoming Hearing concerning the CUP application by AES for the Rancho Viejo Solar Facility. This letter outlines our thoughts based on language and information contained in the SLDC.

Should you have any questions, or wish to discuss this letter, please feel free to contact SMA using this email address.

Thank you for your assistance with this.

Sincerely - Dennis

*Dennis D. Kurtz
42 San Marcos Rd. W.
Santa Fe, NM 87508
President - The San Marcos Association”*



THE SAN MARCOS ASSOCIATION

P.O. Box 722

Cerrillos, NM 87010

<https://thesanmarcosassociation.org/>

March 20, 2023

To: Santa Fe County SLDC Hearing Officer

In care of Jose Larrañaga, Building and Development Supervisor – Santa Fe County Growth Management Department

Re: AES – Rancho Viejo Solar Facility Conditional Use Permit (CUP) Application Hearing

The San Marcos Association (SMA) (<https://thesanmarcosassociation.org/>) is a non-profit community service organization (IRS Code 501(c)(4)), and a Registered Organization under Chapter 2 of the Sustainable Land Development Code (SLDC) of Santa Fe County. Our goals are to protect the rural, residential character of the area for which we advocate; **to monitor development to see that it is consistent with that character and with applicable plans and ordinances of Santa Fe County** (specifically the SLDC in this case); and to advocate on behalf of property owners/residents of the area in matters of public service, utilities, and the general welfare of people. SMA's area of advocacy includes the parcel where the proposed Rancho Viejo Solar Facility would be located.

AES has submitted a Conditional Use Permit (CUP) Application to construct the Rancho Viejo Solar Facility, a solar power plant that would generate some 96MW of electricity and transmit it over 2 miles using 115KV high voltage power lines to a PNM substation where it would enter the power grid. This facility would be located on approximately 800 acres of land zoned Rural Fringe. By any engineering, planning, or governmental definition, the Rancho Viejo Solar Facility is a 'utility-scale solar' facility. See for example the Solar@Scale Government Guidebook (p. 14) [<https://mail.google.com/mail/u/0/?tab=rm&ogbl&zx=9x4f32kome8i#sent?projector=1>].

The SMA Board of Directors, while supporting responsible development and sustainable energy production, including Community Solar, believes this development is not eligible for a CUP under the SLDC for the reasons elaborated below. We respectfully request that the Hearing Officer **Deny** this application.

First, this facility is a "Gas or electric power generation facility" as listed on 150A Attachment 3.11 (Appendix B: Use Matrix) [<https://ecode360.com/attachment/SA6524/SA6524-150Ac%20Appendix%20B.pdf>] of the SLDC (Structure Code 6400) and is **prohibited (X)** in districts zoned Rural Fringe. The Rancho Viejo Solar Facility will produce electricity to be sold to PNM and no other customer. Structure Code 6400, from the Land-Based Classification Standards (LBCS) of the American Planning Association (APA), the basis for the SLDC Use Matrix (Appendix B 150A Attachment 3.1), is the code for "Gas or electric power generation facility" and contains within it Code 6460 - "Solar and other forms of energy facility." Such facilities include "*windmills, solar panel farms, etc.*" The proposed solar facility is clearly an electric power generation facility according to the LBCS; being a solar facility in no way excludes it from consideration as such. [<https://www.planning.org/lbcs/standards/structure/>] Should the applicant assert for any reason that this proposed

facility is Not a “Gas or electric power generation facility” as listed on 150A Attachment 3.11, SMA respectfully requests that such a characterization be factually substantiated before the Hearing Officer.

Second, should the applicant assert that the Rancho Viejo Solar Facility is a “Commercial solar energy production facility” (150A Attachment 3.11) (a characterization found nowhere in the CUP application or on the applicant’s website [<https://www.aes.com/rancho-viejo-solar>]), and is therefore eligible for a CUP, SMA respectfully requests that such a characterization be factually substantiated before the Hearing Officer.

The SLDC definition of “Commercial solar energy production facility” is “*a renewable energy production facility that uses sunlight to generate, and may store, energy for sale or profit.*” (Appendix B 150A Attachment 2.14) [<https://ecode360.com/attachment/SA6524/SA6524-150Ab%20Appendix%20A.pdf>] This definition is redundant (defining “Commercial” as “for sale or profit”), and so broad that it includes virtually any solar facility that generates electricity, except a residential installation. That the SLDC distinguishes between the aforementioned “Gas or electric power generation facility” (prohibited in Rural Fringe) and the broadly defined “Commercial solar energy production facility” (eligible for a CUP) indicates a considered distinction. In this context, the word ‘commercial’ is used in contrast to a ‘residential’ installation where electricity generated is not for sale or profit; it is not intended to include any for sale or profit solar energy facility.

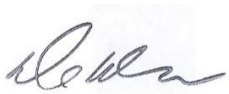
An additional distinction is scale. Utility-scale facilities are prohibited in the Rural Fringe zoning district while smaller solar facilities may be permitted. In further support of this assertion, Santa Fe County seems to regard the CUP-eligible “Commercial solar energy production” facilities noted in Appendix B 150A Attachment 3.11 to be of “Neighborhood-Scale.” The proposed 800+ acre AES Rancho Viejo Solar Facility would not be a neighborhood-scale development. SMA understands this from the following information. Figure 1 shows an image of portions of a worksheet used in discussions led by County staff in revising the San Marcos Planning District Use Matrix, commonly call the “overlay.” Community members used this worksheet (some 9 pages long), under the guidance of County staff, to determine if and/or how to modify the overlay – to create the legal restrictions on development in that Planning District. This process, paused in 2020, involved a three-way comparison of existing San Marcos Planning District uses for each zoning district (labelled “2016 SMD” in the header), existing SLDC uses (“SLDC”), and uses proposed by County staff for the revised Planning District overlay (“2020 SMD”). We realize that the proposed Rancho Viejo Solar Facility does not lie within the San Marcos Planning District; but that is not the purpose of this argument. On Figure 1, the row pertaining to “Commercial solar energy production facility” contains, on the far right, the following note provided by County staff: “*Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities.*” That note, intended to guide discussion regarding legal restrictions of commercial solar energy facilities in Rural-Fringe districts, clearly indicates that the County believes that “Commercial solar energy production” facilities should be of “Neighborhood-Scale” – something the Rancho Viejo facility would not be. If the applicant asserts that the Rancho Viejo facility should be considered as a “Commercial solar energy production facility” for the purposes of the SLDC, SMA respectfully requests that the applicant factually substantiate this assertion before the Hearing Officer.

In summary, The San Marcos Association respectfully requests that the AES Rancho Viejo Solar Facility CUP application be **Denied**, on the grounds that it is not eligible for a CUP. It is not eligible because, pursuant to definitions contained within the SLDC and its supporting documents:

- 1) It **would** be a Gas or electric power generation facility and thus prohibited according to the SLDC in Rural-Fringe zoning districts; and
- 2) It would **not** be a “Commercial solar energy production facility” and so would not be eligible for a CUP on that basis.

Thank you for your consideration. SMA awaits your reasoning and decision concerning the points we have raised in this case.

Sincerely,



Dennis D. Kurtz, President

Cc: Jose Larrañaga via email - joselarra@santafecountynm.gov

Penny Ellis-Green via email - pengreen@santafecountynm.gov

Robert Griego via email - rgriego@santafecountynm.gov

Use	2016 SMD RUR	SLDC RUR	2020 SMD RUR	2016 SMD RUR-F	SLDC RUR-F	2020 SMD RUR-F	2016 SMD RUR-F	SLDC RUR-R	2020 SMD RUR-F	2016 SMD CN	SLDC CN	2020 SMD CN	SM 2019 Plan Language Notes
Residential													
Commercial solar energy production facility	X	C	P	X	C	P	X	X	P	X	C	C	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities
Geothermal production facility	X	C	C	X	C	C	X	X	C	X	X	X	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities
Large scale wind facility	X	C	C	X	C	C	X	C	C	X	C	C	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities
Small scale wind facility		A	P		A	P		A	P		A	A	Action 4.2.1 Create development standards for the siting and installation of Neighborhood-Scale renewable energy production facilities

Figure 1: Sections of Worksheet provided by County staff to guide discussion when revising the San Marcos Planning District Use Matrix in 2020

Portions of page 1 (to show header) and page 8 (containing the Commercial solar energy production facility line) are combined.

ATTACHMENT 2

Generic copy of letter sent January 3, 2023 via email from The San Marcos Association to each of the County Commissioners requesting they consider DCI status for Utility-Scale Renewable Energy Projects.



THE SAN MARCOS ASSOCIATION

P.O. Box 722

Cerrillos, NM 87010

<https://thesanmarcosassociation.org/>

Commissioner <<name>>, Santa Fe County District #
Santa Fe County, New Mexico
[<<email>>](mailto:) - via email

Dear Commissioner <<name>>:

The San Marcos Association (SMA) (<https://thesanmarcosassociation.org/>) is a non-profit community service organization (IRS Code 501(c)(4)), and a Registered Organization under Chapter 2 of the Sustainable Land Development Code of Santa Fe County. Our goals are to protect the rural, residential character of the area for which we advocate; to monitor development to see that it is consistent with that character and with applicable plans and ordinances of Santa Fe County; and to advocate on behalf of property owners/residents of the area in matters of public service, utilities and the general welfare of people. SMA's area of advocacy includes much of the western Galisteo Basin and properties east and west of HWY 14 from Rancho San Marcos north to the HWY 599 Relief Route. Portions of Districts 3 and 5 lie in our area.

At least two (2) national companies have proposed building community and utility-scale solar installations in this part of Santa Fe County. Given the stated interest on the part of the solar industry in this area, and the national focus on increasing carbon-neutral sources of energy, it is reasonable to assume that more renewable energy projects will be proposed in the County. Therefore, the Board of Directors of The San Marcos Association respectfully requests the Board of County Commissioners to strongly consider modifying §11.4 of the Sustainable Land Development Code to designate Utility-Scale Renewable Energy Projects – projects that include, but are not limited to, solar and wind – as Developments of Countywide Impact (DCIs). If so designated, Utility-Scale Renewable Energy Projects would then be subject to regulations and enforcement mechanisms set forth elsewhere in Chapter 11 and in an additional section (e.g., §11.15) dedicated to such projects. These revisions should detail world class regulatory specifications for such projects and should incorporate language allowing for projects employing yet to be developed renewable energy technologies to be designated as DCIs in the future. We also feel that, in the case of large-scale renewable energy projects, all residents, landowners, Registered Organizations and Community Organizations in Santa Fe County should be notified of pertinent meetings. This is a much broader segment of the County than provided for in §11.5.5.

SMA feels that Utility-Scale Renewable Energy Projects should be designated as DCIs, with attendant changes to the SLDC, for several reasons. An important one is the sheer scale of these projects. Utility-scale renewable installations occupy, and impact far more extensive acreages than do traditional power plants. With footprints on the order of hundreds of acres; renewable energy installations can be far larger than many residential developments. Projects of such size will have long-lasting impacts on the landscape – including affecting surface water flow patterns and reducing the space available for wildlife. They will also measurably affect the County finances over the next few decades. Any development of such size will unavoidably affect local quality of life in

President – Dennis Kurtz

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many ways – predictable and unpredictable. Designating these large-scale utility projects as DCIs will allow for greater public input into their potential approval and more opportunities to discuss those quality-of-life issues.

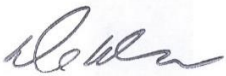
Large scale utility installations involve many developing technologies, technologies whose potentials and risks should be clearly communicated to the countywide public. Language providing for explicit regulation of these technologies, based upon world-class standards, should be included in the SLDC. For example, if a renewable energy installation maintains a battery energy storage system (BESS) to save electricity for times when nature does not permit power generation, those systems come with a small, but real, fire danger. Creating DCI Overlay Zoning Districts for these large utility projects would foster public input into the discussion of risks such as this, highlight appropriate regulatory standards, and promote public education into the likelihood of such an industrial accident occurring. Proactively regulating these technologies, and communicating those regulations to all parties, will help create an environment where the community understands its connection to these enterprises.

Utility-Scale Renewable Energy Projects may impact future development in a variety of ways – perhaps by attracting development that strains local resources, or by curtailing planned development. However, they may also promote a flourishing of clean energy businesses; attract energy-related high-tech companies and job opportunities; or entail lower demands on water and road infrastructure relative to building the maximum allowable number of homes and businesses on that same acreage. Analyzing the scale of these impacts and the countywide risks/benefits associated with them will be a more fruitful endeavor with the increased public input connected with a DCI designation for these projects.

Officials in Santa Fe County have a responsibility to act as stewards of this region, and to ensure that our local communities benefit from development in tangible ways. Though projects such as these solar installations are touted as having numerous benefits, there are also costs associated with them. Ensuring that costs are minimized or mitigated, and are weighed against benefits, are analyses that all county residents have a right to expect. The Board of County Commissioners has already taken action to regulate Community Solar Projects in the County (e.g., §10.25 of the SLDC); large scale renewable energy projects warrant the same attention.

We thank you for your consideration of this matter. The San Marcos Association looks forward to a continuing dialog concerning these issues.

Sincerely,



Dennis Kurtz, President
The San Marcos Association

Cc: All Santa Fe County Commissioners and Constituent Service Liaisons
Penny Ellis-Green, Director – Growth Management Administration, Santa Fe County
Jacqueline Beam - Sustainability Manager, Santa Fe County

President – Dennis Kurtz
Vice-President – Janet McVickar

Treasurer – Gail Buono
Secretary – Jill Cliburn

ATTACHMENT 3

July 24, 2023 County Response letter to SMA's January 3, 2024 letter to BCC concerning DCI status of Utility-Scale Renewable Energy Projects

Justin S. Greene
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Camilla M. Bustamante
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

July 24, 2023

BY EMAIL AND REGULAR MAIL

Dennis Kurtz, President
The San Marcos Association
PO Box 722
Cerrillos NM 87010
Email: dennisdkurtz@gmail.com

RE: Commercial Solar Energy Production Facilities

Dear Mr. Kurtz:

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

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

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

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

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

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

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

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

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

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

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

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

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

Dennis Kurtz
July 24, 2023
Page 3 of 3

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

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

Sincerely,

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

Gregory S. Shaffer
County Manager

cc (by email):

Penny Ellis Green, Growth Management Department Director
Lisaida M. Archuleta, Growth Management Department Deputy Director

ATTACHMENT 4

August 17, 2023 response from SMA to County's July 24, 2023 letter



THE SAN MARCOS ASSOCIATION

P.O. Box 722
Cerrillos, NM 87010

<https://thesanmarcosassociation.org/>

A Community Voice Advocating for Our Neighbors and the Land

August 17, 2023

VIA EMAIL

Gregory S. Shaffer
Santa Fe County Manager
102 Grant Ave.
P.O. Box 276
Santa Fe, NM 87504

RE: Response to July 24, 2023 Communication concerning “Commercial Solar Energy Production Facilities”

Dear Mr. Shaffer:

The San Marcos Association (SMA) appreciates your July 24, 2023 response to our January 3, 2023 letter to the County Commissioners. We are, however, confused because your response to The San Marcos Association’s (SMA) letter of January 3, 2023 appears to reply to a completely different letter, one we did not send. And it did not directly address the suggestion we made. You state, “I am writing in response to your January 3, 2023, letter to Santa Fe County (County) Commissioners and communications from other community members requesting that (1) the County impose a moratorium on commercial solar energy production facilities and (2) develop regulations to treat commercial solar energy production facilities as a Development of Countywide Impact (DCI) under Chapter 11 of the Sustainable Land Development Code (SLDC).” While SMA did request the County work to designate “Utility-Scale Renewable Energy Projects” as DCIs, SMA did not ask for a moratorium on commercial solar energy production facilities; nor did we request that “commercial solar energy production facilities” be especially treated as DCIs. In fact, we did not use the words “moratorium” or “commercial solar energy production facilities” in our letter. If other constituents made those requests, we respectfully ask you to respond to them directly, and would appreciate a more complete response to our rationale for designating Utility-Scale Renewable Energy Projects as DCIs.

In our letter (appended for your convenience), we explicitly requested that “Utility-Scale Renewable Energy Projects,” which we consider to be installations that exceed 5 MW of production that is sold to utility companies for resale to their customers, be designated as DCIs. SMA suggested this because of their large scale could well lead to regional impacts that we felt should be discussed by the Countywide audience a DCI designation would require.

The San Marcos Association explicitly noted that we viewed “Utility-Scale Renewable Energy Projects” as being “projects that include, but are not limited to, solar and wind.” They could also include geothermal, hydroelectric, or nuclear fusion facilities using existing and/or future technologies. We in no way limited our suggestion to solar energy, though that appears to be a major premise in determining your response. Solar and wind farms,

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which could well be of utility scale, are in fact already listed as potential DCIs in the aspirational Sustainable Growth Management Plan [Chapter 2, Section 2.2.6]. We were merely enlarging the list of possible technologies that might be considered; and requesting that the County take legislative action regarding that portion of the SGMP that already existed. Further, while your assertion, the SGMP notwithstanding, that “there is no basis in existing County planning documents to treat commercial solar energy production facilities as a DCI” could well be applied to any of these other technologies, revising County planning documents so that *there is a basis* in County planning documents to review and evaluate such impactful developments is precisely why SMA suggested the DCI approach.

Another very important reason The San Marcos Association suggested that Utility-Scale Renewable Energy Projects be considered for DCI status is that such a designation would promote, and in many ways require, Countywide public input. We explicitly stated, “*Designating these large-scale utility projects as DCIs will allow for greater public input into their potential approval [emphasis added] and more opportunities to discuss those quality-of-life issues.*” And, “*Utility-Scale Renewable Energy Projects may impact future development in a variety of ways – perhaps by attracting development that strains local resources, or by curtailing planned development. However, they may also promote a flourishing of clean energy businesses; attract energy-related high-tech companies and job opportunities; or entail lower demands on water and road infrastructure relative to building the maximum allowable number of homes and businesses on that same acreage. Analyzing the scale of these impacts and the countywide risks/benefits associated with them will be a more fruitful endeavor with the increased public input connected with a DCI designation for these projects. [emphasis added]*” Your response offers no reasons for limiting public input regarding such projects.

The San Marcos Association feels the criteria you list in your letter [**4.9.6.5 Approval Criteria**] should be applied *Countywide* for Utility-Scale Renewable Energy Projects, in ways fostering regional public input. They should not be limited to nearby neighbors as the SLDC currently dictates. Your description of the existing process – public meetings of nearby neighbors organized by the developer, an SLDC Hearing Officer Hearing, followed by a meeting of the County Planning Commission (CPC), then moving to Board of County Commissioners **if** there is an appeal – does not truly allow for regional discussion in our opinion. This is because only a few property owners are affirmatively informed of these opportunities for input, even though the impacts of a Utility-Scale development may extend far beyond their properties. Entire affected communities can remain uninvited to participate. Your response asserts that existing County regulations are “adequate”, an assertion you make for such large-scale utility energy production projects without any substantiation other than to quote existing law. For the reasons outlined in our letter, SMA does not feel this is the case. If remarks from a few neighbors, and the evidence and information they provide to a Hearing Officer, the CPC, and perhaps the BCC are “adequate” to ensure responsible development of Utility-Scale Renewable Energy Projects that will endure for decades and affect the entire region, SMA feels the County can do better than “adequate.” Thus, in our January 3 letter, we suggested modifying those criteria and procedures in the case of such projects. We understand that this would entail more work for County staff but feel that effort will be justified by fostering effective public input.

Projects of this scale are vastly beyond the scope of commercial solar, or of many renewable energy technologies, that are currently regulated in any detail in the SLDC. Depending upon the technologies involved, they may also exceed the expertise of County staff. Encouraging Countywide public input would solicit technological, financial, environmental, and other expertise from the community, expertise that we believe exists in abundance. SMA agrees that Community Solar (less than 5 MW of production), and commercial solar (used by commercial buildings or facilities) is regulated by the SLDC. However, current regulations for utility scale power production presume traditional non-renewable energy production technologies and practices, and Large-Scale Wind

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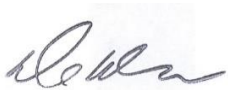
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Facilities. But there are no regulations, for example, for Large Scale Solar Facilities, or for other technologies. Perhaps the reason for this omission is that when the SLDC use matrix was implemented by the County, Utility-Scale Renewable Energy Facilities were not a practical alternative that could be considered. We believe it is time for the SLDC to catch up with the technology, and to involve the Countywide community in its evaluation.

The San Marcos Association greatly appreciates the effort you and your staff invested in your response. However, we respectfully request your office revisit this issue and provide us with a more direct response to our suggestion. If you wish to discuss our views on this matter further, please do not hesitate to contact The San Marcos Association.

Sincerely, on behalf of the SMA Board of Directors,

Dennis Kurtz, President



The San Marcos Association

CC: Penny Ellis-Green, Director, Growth Management Department
Jeffrey S. Young, Santa Fe County Attorney
Jacqueline Beam – Sustainability Manager, Santa Fe County
Commissioner Hank Hughes – District 5
Gabriel Bustos, Constituent Liaison, District 5

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ATTACHMENT 5

County September 12, 2023 response to SMA August 17, 2023 letter

Emailed to The San Marcos Association September 12, 2023, at 11:22 from County Manager Shaffer

with, however, an **incorrect** date

Justin S. Greene
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Camilla M. Bustamante
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

July 24, 2023

BY EMAIL AND REGULAR MAIL

Dennis Kurtz, President
The San Marcos Association
PO Box 722
Cerrillos NM 87010
Email: dennisdkurtz@gmail.com

RE: Utility-Scale Renewable Energy Projects

Dear Mr. Kurtz:

Thank you for your letter, dated August 17, 2023. While Santa Fe County (County) staff respectfully disagrees with the San Marcos Association that so-called Utility-Scale Renewable Energy Projects should be regulated as developments of countywide impact, we do appreciate its thoughtfulness and passion on this topic.

My July 24, 2023, letter to you focused on Commercial Solar Energy Production Facilities for two primary reasons. First, because of the intense community interest in such facilities recently. Second, because the areas with the greatest wind energy potential are relatively few and limited to relatively small areas. [Sustainable Growth Management Plan, Map 7-1 A.] In contrast, the areas with the most potential for solar energy production are much larger and closer to the largest population centers within the County. [*Id.*] I addressed in my July 24 letter the separate request by others for a moratorium on such projects in furtherance of administrative efficiency.

Focusing on other potential renewable projects:

- Large Scale Wind Facilities have specific regulations. [SLDC, Section 10.16.] In addition, where potentially allowed, Large Scale Wind Facilities are conditional uses.
- With regard to Geothermal Production Facilities, in those zoning districts where they are potentially allowed, they are, with limited exceptions, a conditional use.¹

Because Commercial Solar Energy Production Facilities (and other Utility-Scale Renewable Energy Projects) are generally conditional uses, my July 24 letter focused on the conditional use criteria and process.

In your August 17 letter, you do not seem to take issue with the conditional use approval criteria. Instead, you state that those criteria “should be applied *Countywide* for Utility-Scale

¹ According to the use tables within the SLDC, there are already many areas where Geothermal Production Facilities are prohibited. The only zoning districts where Geothermal Production Facilities are a “permitted use” are Industrial General and Industrial Light (and, potentially, Planned Development Districts).

Renewable Energy Projects, in ways fostering regional public input.” Conditional use criteria apply Countywide to all conditional use permit applications, so no SLDC amendment is necessary to make those criteria applicable Countywide.

Your August 17 letter goes on to state that Developments of Countywide Impact (DCI) status for Utility-Scale Renewable Energy Projects “would promote, and in many ways require, Countywide public input.” In staff’s view, however, such designation is not necessary to achieve robust, Countywide input.

Contrary to the statements in your August 17 letter, public input on conditional use permits is not limited to immediate property owners, in law or in fact. In County staff’s experience, conditional use permit applications (e.g., for the Flying J truck stop) can attract widespread interest as well as thoughtful engagement from community experts and the community at large. Utility-Scale Renewable Energy Projects would appear likely to be no different, judging by the number of individuals who have voiced positive and negative opinions about the Rancho Viejo Solar Project even before the first public hearing.

In criticizing the existing regulatory regime, your August 17 letter appears premised on the fact that the only evidence offered at public hearings would be “remarks from a few neighbors”. As indicated above, however, County’s staff experience is different, with public hearings on controversial projects attracting widespread public involvement rather than just immediate neighbors. In addition, our well-educated citizens often offer their subject matter expertise on land use cases, big and small. Indeed, your letter acknowledges that “technological, financial, environmental, and other expertise” exists “in abundance” in our community. There is no reason to believe that this abundant expertise would not be engaged by conditional use permit applications for specific Utility-Scale Renewable Energy Projects, where site-specific environmental and other data and concerns are analyzed and, if necessary, mitigated.

Your August 17 letter suggests that, “[d]epending upon the technologies involved, [Utility-Scale Renewable Energy Projects] may also exceed the expertise of County staff.” While true, this statement overlooks the fact that County staff can, and does, secure independent, technical experts to review permit applications.²

With regard to the battery energy storage systems (BESS) frequently used in conjunction with Utility-Scale Renewable Energy Projects, on August 29, 2023, the Board of County Commissioners adopted Ordinance No. 2023-06, the Santa Fe County Fire Code, which adopts, with modifications, the 2021 Edition of the International Fire Code (International Fire Code). The Santa Fe County Fire Code regulates BESS that exceed specified storage thresholds, requires owners and operators of such BESS to obtain construction permits, and incorporates other standards (such as NFPA 855).

County staff’s opinion is also guided by the Sustainable Growth Management Plan’s commitment to renewable energy and energy efficiency, as well as the reality that the impacts of the status quo dependency on fossil fuels are Countywide and worldwide. Creating additional hurdles to the necessary transition to renewable energy would be inconsistent with that commitment and reality.

² Section 4.4.7.8 of the SLDC allows the County to charge the expense of such technical experts to the Applicant.

In closing, I would note that the Board of County Commissioners (BCC) will likely soon consider for adoption a resolution that bears on these topics. As introduced, that resolution would require certain things proposed by staff to ensure the efficacy and efficiency of the current regulatory regime concerning so-called Utility-Scale Renewable Energy Projects and BESS. Specifically, the introduced resolution would direct County staff:

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

This resolution is being introduced for discussion (not action) at the September 12, 2023, BCC meeting.

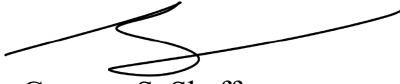
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Again, thank you for your initial letter and August 17, 2023, follow-up letter. While we respectfully disagree on the advisability of regulating Utility-Scale Renewable Energy Projects as DCIs, I trust that this letter reinforces that County staff duly considered the San Marcos Association's perspective.

Dennis Kurtz
September 12, 2023
Page 4 of 4

Please do not hesitate to contact me should you wish to discuss this matter further.

Sincerely,

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

Gregory S. Shaffer
County Manager

cc:

Hank Hughes, County Commissioner, District 5
Penny Ellis-Green, Growth Management Department Director
Jaome R. Blay, Assistant Fire Chief and Fire Marshal
Jacqueline Y. Beam, Sustainability Manager
Jeff Young, County Attorney



THE SAN MARCOS ASSOCIATION

P.O. Box 722
Cerrillos, NM 87010

<https://thesanmarcosassociation.org/>

A Community Voice Advocating for Our Neighbors and the Land

January 10, 2025

Dominic Sisneros, Case Manger

Case No. 24-5200

Applicants for Conditional Use Permit (CUP):

Rancho Viejo Limited Partnership

Rancho Viejo Solar

AES Clean Energy Development, LLC

Via email at djsisneros@santafecountynm.gov

REQUEST FOR THE SAN MARCOS ASSOCIATION TO BE GRANTED STANDING IN THIS CASE BEFORE THE COUNTY PLANNING COMMISSION

Dear Mr. Sisneros:

The Board of Directors of The San Marcos Association (SMA) [<https://thesanmarcosassociation.org/>], a non-profit Registered Organization (RO) pursuant to Sustainable Land Development Code (SLDC) Section 2.2.3, formally requests that we be granted standing in Case No. 24-5200. SMA requests this designation for three reasons. First, SLDC Hearing Officer Hebert granted SMA legal standing at the December 4, 2024, SLDC Hearing to present our concerns. She did so in an Order that recognized our representation and commitment to the San Marcos community. And, in her Order following that December meeting, she cited our testimony as being germane to her final determination.

Second, our Mission is to serve as a trusted resource by listening to community concerns, sharing information, and influencing policy and decisions affecting all of our neighbors. We do this in order to preserve the rural character of the San Marcos region, to inspire effective civic engagement, and to advocate for and amplify the voice of our community. The Association has acted as a *de facto* community organization under those principles since our founding in the mid 1980's, and we have always worked to help the members of our community ensure responsible development.

Third, this proposed solar project lies within our area of advocacy as shown in the Figure below. The approximate area of this solar installation is noted by the blue rectangle in the northeast portion of our area. Since its inception, SMA has been involved with this project. As representatives of our community, we have concerns and comments that warrant more presentation time than would be allocated to a typical member of the public. Considering the importance of this Conditional Use Permit (CUP) application for our area residents, we kindly request standing at the upcoming hearings in the matter of Case No. 24-5200.

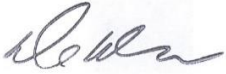
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President – Dennis Kurtz
Vice-President – Janet McVickar

Treasurer – Gail Buono
Secretary – Laird Graeser

Granting standing to The San Marcos Association will enable us to more effectively represent our community in this matter. We respectfully appreciate your willingness to consider our request.

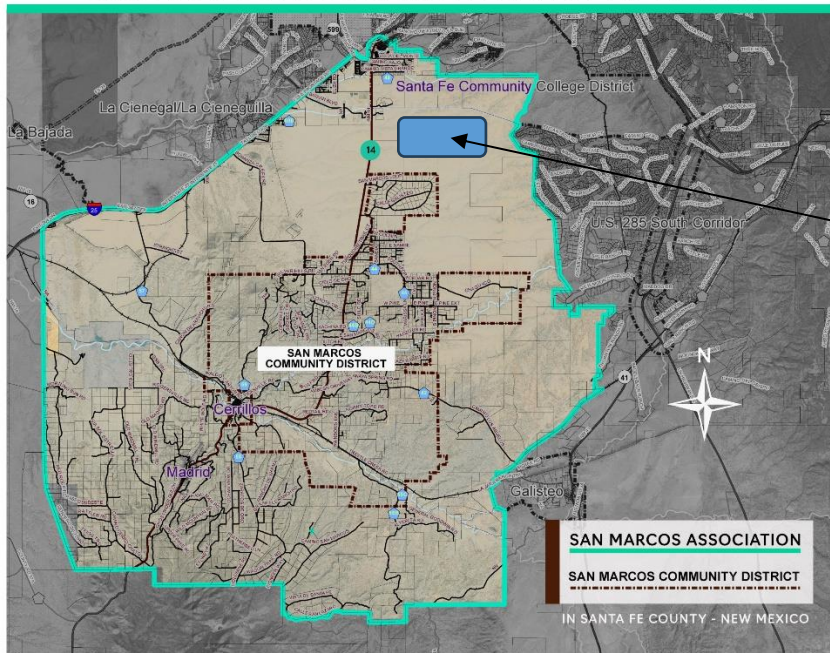
Sincerely,



Dennis D. Kurtz, President
The San Marcos Association

Cc: via email - Alexandra Ladd, Director - Growth Management

SAN MARCOS ASSOCIATION AREA OF ADVOCACY



Approximate location of the
Rancho Viejo Solar field

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