THE SAN MARCOS ASSOCIATION

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A Community Voice Advocating for Our Neighbors and the Land

EXHIBIT 2
The San Marcos Association before the Santa Fe County Board of Commissioners
August 11, 2025

Before the Santa Fe County Board of County Commissioners, August 11, 2025

Cases #24-5200 & 24-5202

Rancho Viejo Solar, LLC Conditional Use Permit (CUP) Application

Applicants: Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC

Summary of Testimony by The San Marcos Association (SMA) [Case #24-5202] Appealing Santa Fe County Planning Commission (CPC) Final Order of March 20, 2025, Regarding Case #24-5200 – Conditional Use Permit (CUP) Application

SMA Appeals the CPC Decision as Incorrect, Wrong and Not in the Public Interest for the following Reasons:

- CPC Ignored Facts by SMA Presented in its Findings of Fact
- CPC Prioritized Opinion over Demonstrable Facts
- CPC Did not Request an Independent Fiscal Analysis of this Project

1. The San Marcos Association Appeals the CPC Decision as Incorrect, Wrong and Not in the Public Interest in that the CPC Ignored Irrefutable Facts and Did Not Include Those Facts in its Findings of Fact in its Final Order. [Exhibit 7]

A. **FACT**: The Rancho Viejo Solar Project is a "Gas or Electric Power Generating Facility" as listed in the SLDC Use Matrix – Appendix B [Exhibit 9]
   a. That the facility will generate millions of watts of electric power and transmit it to the PNM power grid for use by residents of the City of Santa Fe, Santa Fe County,

and others in surrounding areas as stated by the Applicant and County staff repeatedly – verbally under oath, in writing and on the AES website. This fact has never been refuted.

b. The Land Based Classification Standard (LBCS) Structure Code 6400, referenced in SLDC Appendix B for this use, accurately describes facilities like the proposed Rancho Viejo Solar Project, and so that Use, as listed in Appendix B, applies to this project.

B. **FACT**: The LBCS 6400 Use, "Gas or Electric Power Generating Facility," in addition to including such electricity generating energy sources as nuclear, hydroelectric, fossil fuels, and geothermal, also includes "Solar and Other Forms of Energy" (LBCS 6460). LBCS Structure Code 6460 specifically identifies "solar panel farms" as "Gas or Electric Power Generating" facilities. Therefore, solar installations are not exempt from this SLDC Use category. [Exhibit 10]

C. **FACT**: The Rancho Viejo Solar Project is proposed to be located in an area zoned Rural-Fringe. [Exhibit 11]

D. **FACT**: Pursuant to SLDC Appendix B, a "Gas or Electric Power Generating Facility" is ***Prohibited*** in areas zoned Rural-Fringe.

E. **FACT**: There is no provision in the SLDC for Conditional Use Permits (CUP) in zoning districts where the Use is Prohibited. SLDC 4.9.6.2 states that "**Only** [emphasis added] those uses that are enumerated as conditional uses in a zoning district, as set forth in the use matrix, may be authorized by the Planning Commission." Thus, a CUP is not an option.

F. **FACT**: Applicants have no 'inherent right' to a CUP [SLDC 4.9.6.2], and SLDC 4.9.6.5 states that "CUPs may only be approved if it is determined that the use for which the permit is requested 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." [Criteria #7][Exhibit 12]

a. The SLDC Hearing Officer agreed with this contention (SLDC Hearing Officer Recommended Order - Case #24-5200 - of December 23, 2024). [Exhibit 5]

Based upon these FACTS, SMA had recommended to Santa Fe County as early as March of 2023 [Exhibit 8a], and to the CPC [Exhibit 6] that this CUP application be denied as it was Prohibited in areas zoned Rural-Fringe. The CPC ignored these undeniable facts in making its decision, did not explicitly include them in its Findings of Facts, ignored these facts in its Conclusions of Law, ignored the considered Recommended Order from the SLDC Hearing Officer (a very experienced individual familiar with the SLDC), and did not offer any explanation for those choices. SMA feels that those actions were Incorrect, Wrong and Not in the Public Interest.

The San Marcos Association Appeals the CPC Decision in Case #24-5200 and Recommends Dismissing the CUP application for the Rancho Viejo Solar Project.

2. Additionally, The San Marcos Association Appeals the CPC Decision as Incorrect, Wrong and Not in the Public Interest in that, as the CPC Not Only Ignored Irrefutable Facts, It Instead Relied upon Debatable Opinion in Order to Grant the CUP Application in Case #24-5200.

A. Public officials, when in possession of undeniable facts, should rely upon those facts rather than opinions, and should as a matter of good governance use those facts to make decisions. This is especially true when those facts contradict self-serving opinions presented by, or on behalf of, an Applicant.

B. The County Attorney, in a memorandum dated January 31, 2025, to the County Planning Commission, titled "Confidential and Privileged Attorney-Client Communication" [Exhibit 13] asserted that SMA's interpretation of the facts presented above was "flawed." This document, a document never intended to be made public and never intended to be distributed in a way that SMA would have an opportunity to rebut its arguments, was delivered to CPC Commissioners just a few days before its February 3, 2025, Hearing about this Case.

C. It is difficult to argue that CPC Commissioners, having read this memo, would still maintain their quasi-judicial objectivity when the San Marcos Association presented its testimony.

D. In this memorandum, and repeatedly in Hearings and other venues, County staff have asserted that the Rancho Viejo Solar Project is a "Commercial Solar Energy Production Facility." This assertion, though repeated numerous times, ***as if it were fact***, is an <u>opinion</u>. And, as an opinion, it does not rise to the level contradicting or superseding undeniable facts.

E. SMA has argued that this use, "Commercial Solar Energy Production Facility," does not apply and was never intended to apply to large-scale solar facilities such as the proposed 96 MW Rancho Viejo installation. The following points support that conclusion.

   a. The Confidential memo asserts that "the solar facility at issue is both a gas or electric power generation facility and a commercial solar energy production facility." This is a dangerous assertion. SMA believes that the SLDC was written to encourage and enforce sustainable growth in the County, and to protect residents from irresponsible growth. Thus, we feel that the SLDC Use Matrix, Appendix B, is constructed such that each use was intended to be <u>mutually exclusive</u>. Otherwise, developers could "game the Use Matrix" by searching through it to find the best, most profitable use for which they could be permitted. From that point of view, a "Commercial" solar facility and a solar "Gas or electric power generation facility" are mutually exclusive Uses. This project can be one or the other, but not both.

   b. The SGMP states, in its Renewable Energy Infrastructure section, that infrastructure should be established to "allow ***<u>residential and commercial property owners</u>*** to be able to make renewable energy ***<u>improvements</u>*** in an accessible and affordable

manner." [SGMP Section 3.2.5.2, p. 67, emphasis added] [Exhibit 14] In terms of legal, regulatory infrastructure, this implies that some mechanism should be included in the SLDC for commercial property owners to improve their existing assets by adding profit enhancing non-residential solar installations. The CUP process allows for and helps guarantee that a commercial property owner, with input from surrounding property owners, would be able to install solar on a scale that is compatible with the neighborhood. Such solar panels could lead to an increase in sales or profits of any commercial product being produced.

c. As evidenced by County communication in February, 2024, prior to the second CUP submission by AES, County leadership fully understood the intent of the SLDC regarding "Commercial Solar Energy Production Facilities." [Exhibit 15] County staff described the commercial solar use as being *"intended to benefit one or more business users, and is typically located on the roof or – or on the ground next – the intended user."* However, they chose to ignore this understanding and applied the definition of these small scale facilities to "a utility solar project," justifying that on the basis of "semantics." SMA believes that expanding this use to include utility-scale solar projects is not what those who wrote the SLDC intended.
d. With the exception 'Commercial' Zoning Districts and the 'Commercial' Category of Uses which includes obviously commercial operations such as restaurants, stores, car washes, etc., the term "commercial" appears only approximately half a dozen times in Appendix B to modify specific Uses. These include uses like "Commercial automobile parking lot," "Commercial airports," "Commercial greenhouses," or "Commercial dog breeding facilities." Those uses can all have a non-commercial analog, whether it be private, military, residential, or something else. So, it is reasonable to assume that those who wrote the SLDC intended the term "commercial," as used in those instances, to distinguish uses intended to generate a profit from those operating for other reasons.
e. Furthermore, guidance documents presented by County staff to members of the San Marcos Planning District (SMPD) Committee in 2019, and presumably prepared by staff familiar with the intent of the SLDC adopted in 2016, indicate that commercial solar production facilities were considered to be of "neighborhood scale." In the Confidential memo, County staff assert that those guidance documents have "no binding effect whatsoever." While it is true that those documents are not legal documents like a marriage license, they were used at the time the SMPD committee members were revising the San Marcos Use Matrix (or Overlay) – i.e. changing the law. Those revisions of law were constrained by that guidance document and County staff did not hesitate to inform committee members that certain suggestions were not permitted – citing this document as their back-up. So, while historical documents today, it is not accurate to state that these documents had "no binding effect whatsoever" then. They clearly show that County staff felt that, at that time,

commercial solar facilities were to be of neighborhood scale. That stance has changed with the advent of the current project.

f. County staff also point out that the phrase "neighborhood scale" is "undefined and therefore meaningless within the SLDC." While this may be technically and legally true, sort of like the undefined phrase "common sense," people have a general understanding of what "neighborhood scale" means – a development or project that is compatible with other features and structures in the existing neighborhood. Staff also argue that because the modifier "neighborhood scale" as used in this guidance document also applied to many other uses, it "was not intended to be applied solely or specifically to commercial solar projects." This irrelevant observation is not an argument, and fails to recognize that the SMPD, like many others, was a Community Planning District Committee and therefore focused upon developments of this scale. It makes sense that many other uses would be considered to have a similar restriction, and in no way exempts "Commercial solar energy production facilities."

g. In writing the SLDC Use Matrix, those who framed it specifically made an exception for "Geothermal Production Facility," a type of "Gas or Electric Power Generation Facility" [LBCS Code 6400] explicitly given its own LBCS Structure sub-Code – Code 6450. (Note, this was NOT named a "**Commercial** Geothermal Production Facility.") Those writers understood the legal mechanism of using the LBCS Structure Code to call out one of the many sub-uses contained under LBCS Code 6400, and they did so for geothermal energy facilities. They could have done so, but did NOT do so for Solar [LBCS Code 6460] despite being fully aware that they had that option. Thus, it is reasonable to conclude, as SMA asserts, that those writing the SLDC did not intend solar electric power generation facilities such as the Rancho Viejo Solar Facility to be treated differently than other types of power plants not excepted, and that the "Commercial solar" use was not intended to apply to such projects.

h. In the Confidential memo, staff state that there "is no record to explain why the BCC" "elected to treat solar facilities differently than other types of energy production facilities" when adopting the SLDC in 2016. The memo also asserts that "the BCC's reasoning is not germane." These statements are very misleading. First, the San Marcos Association believes that, in general, for any action one takes understanding one's reasoning is essential. Understanding the reasoning behind any policy or legislative decision – especially when those decisions directly affect our communities is fundamental. Second, there is no factual evidence, i.e. "no record," to indicate that solar facilities on the scale of power plants were ever intended to be treated differently. That may very well NOT have been the intent and SMA's arguments may well be correct – different opinions from County staff – but still possibly correct.

i. For all of the arguments presented above, SMA believes that those who wrote the SLDC did not intend the "Commercial Solar Facility" use to apply to large solar power plants, but to 'non-Residential' uses where a property owner installs solar panels to improve commercial operations such as home businesses, ranches or other commercial operations that already exist and are compatible with the Rural-Fringe zoning district. It is separate from the LBCS 6400 "Gas or Electric Power Generating Facility," not a "sub-set" of that use, and does not apply to this project. The "Commercial" modifier should not be used to 'game the Use Matrix' in order to sidestep the factual prohibition. This interpretation is compatible with the vaguely written definition of "commercial solar facility" in SLDC Appendix A.

j. Staff's insistence that the facility be treated as "commercial," and be permitted because it is providing energy for sale lead to the conclusion that, were the project somehow NOT commercial, it would not be permitted. SMA believes that it is not reasonable to argue that those who wrote the SLDC intended that solar energy production facilities of this size would be permitted **only** if they were for profit. Geothermal and wind facilities, also types of LBCS 6400 "Gas or Electric Power Generating Facilities," do not have this restriction.

k. The arguments presented above are supported by facts and lead to a reasonable conclusion. That conclusion is not a fact. It is an opinion, and the purpose of this testimony is to substantiate that alternative interpretations of the intended application of the "Commercial Solar Energy Production Facility" Use are possible. That interpretation was affirmed by the SLDC Hearing Officer. County staff's opinion concerning this commercial use are of no greater validity than that presented by SMA.

The CPC ignored undeniable fundamental, objective facts in making its decision and instead relied upon the loosely substantiated, and secret, opinion of staff. Staff state in the concluding paragraph of the Confidential memo to CPC Commissioners that "It is our ***opinion*** [emphasis added] that staff's determination in this regard is accurate," and that the "San Marcos Association has presented no legitimate basis for concluding that [this] project…should not be treated as a commercial solar energy production facility." Commissioners were specifically given these opinions in the Confidential memo two or three days before the CPC Hearing where SMA was explicitly identified as a legal adversary worthy of Attorney-Client privilege. SMA was never given the opportunity to present a "legitimate basis" for our conclusions as we were unaware of the secret memorandum. Whether or not this memo adversely affected the objectivity of CPC Commissioners is a matter of concern, but not the subject of discourse here.

Using the arguments above, the San Marcos Association has presented an alternate, reasonable opinion on this matter. This demonstrates that staff are not in possession of a unique

interpretation that rises to the level of overturning undeniable facts, and their opinion should not have done so.

The CPC should not have relied upon Opinion when in possession of irrefutable Facts to render its decision. SMA feels that that action was Incorrect, Wrong and Not in the Public Interest.

The San Marcos Association Appeals the CPC Decision in Case #24-5200 and Recommends Dismissing the CUP application for the Rancho Viejo Solar Project.

3. Lastly, The San Marcos Association Appeals the CPC Decision as Incorrect, Wrong and Not in the Public Interest in that the CPC Ignored a Commonsense Request that the County Conduct an Independent Fiscal Analysis in Order to Grant the CUP Application in Case #24-5200.

A. In January 2023, before the Applicant had submitted any CUP application, SMA suggested that large renewable energy projects like this one be designated as Developments of County-wide Impact (DCIs). We did so in the public interest because we believed, and still do, that a DCI designation would promote regional public discourse, enable public involvement in assessing the costs and benefits of such projects, and subject those projects to the additional public protections afforded by a DCI designation. County staff and leadership declined. [Exhibits 8b – 8e]
B. In particular, one important requirement of any project designated as a DCI would be a competent Fiscal Analysis assessing the financial pros and cons of such projects. SMA still believes that Santa Fe County should conduct such an analysis, preferably made by an independent agency with experience in assessing large scale power production facilities and their impacts on the surrounding region. We suggested that to the CPC and that suggestion was ignored, despite the County requiring such analyses for another similar project elsewhere in the County.
C. To date, the only publicly available fiscal estimates have been produced by the Applicant. It is not reasonable, given all the considerations involved in a project of this magnitude - hundreds of millions of dollars, hundreds of acres, decades of planned operation, proximity to residential neighborhoods, undeniable BESS risks - that the County rely on financial data or estimates provided by an Applicant who stands to profit from those analyses.
D. It is only prudent, given the size of this project, that County staff and leadership attempt to quantify the answers to such "tabletop" considerations as:
    a. Future utility bills.
    b. Changes in property values.
    c. Increases or decreases in property taxes.
    d. Effects on Homeowners' Insurance.
    e. Financial effects on County services such as Emergency Response, Law Enforcement, Public Works, etc.
E. Additionally, the public deserves to know how such a project might affect larger scale financial considerations such as:
    a. Impacts and potential liabilities of any Industrial Revenue Bond the County might underwrite.
    b. Potential costs to taxpayers of any agreement to accept Payments in Lieu of Taxes by the Applicant instead of taxing the facility directly, and of possible effects on overlapping jurisdictions that also rely on this same tax base such as public schools and the Santa Fe Community College.

c. Whether or not the County is being offered a comparable deal to other municipalities where the Applicant has operations.
d. How the Applicant has behaved as a corporate citizen in other places.
e. Impacts on Santa Fe County's bond rating which determines the County's (and the taxpayers') cost of borrowing money.

F. County staff could communicate with credit rating agencies at any time to ascertain the potential impacts of the Rancho Viejo Solar Project, and what criteria might be used to determine a municipality's bond rating. Such criteria might include:
   a. Project alignment with planning and zoning regulations.
   b. Project risks related to hazmat mitigation measures that may or may not be in place.
   c. Water usage.
   d. Visual impacts.
   e. Public sentiment for or against the project.
   f. Potential for, and financial implications of, lawsuits against the County stemming from industrial accidents, or disagreements with the corporation operating the facility.
   g. Future liabilities should the Applicant corporation be sold or sell the facility.

The CPC should have insisted upon a publicly available, competent Fiscal Analysis of this project prior to rendering its decision. SMA feels that that action was Incorrect, Wrong and Not in the Public Interest.

For all the Reasons Argued, The San Marcos Association Appeals the CPC Decision in Case #24-5200 and Recommends Dismissing the CUP application for the Rancho Viejo Solar Project.