



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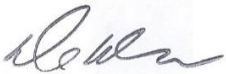
a document prepared solely for that committee as there are no Rural Fringe areas in that Planning District. Our understanding is that this is a County document used to inform Community Planning District Teams in general.

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](mailto:aladd@santafecountynm.gov)

Gregory S. Shaffer, County manager at [gshaffer@santafecountynm.gov](mailto:gshaffer@santafecountynm.gov)

Jeffrey Young, County Attorney at [jyoung@santafecountynm.gov](mailto:jyoung@santafecountynm.gov)

Doninic Sisneros, Case Manager at [djsisneros@santafecountynm.gov](mailto: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](mailto: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.

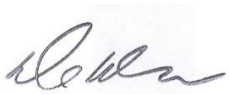


In summary, The San Marcos Association respectfully requests that the AES Rancho Viejo Solar Facility CUP application be **Denied**, on the grounds that it is not eligible for a CUP. It is not eligible because, pursuant to definitions contained within the SLDC and its supporting documents:

- 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](mailto:joselarra@santafecountynm.gov)

Penny Ellis-Green via email - [pengreen@santafecountynm.gov](mailto:pengreen@santafecountynm.gov)

Robert Griego via email - [rgriego@santafecountynm.gov](mailto: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
<b>Residential</b>													
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

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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

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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

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*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.<sup>1</sup> 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

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<sup>1</sup> 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

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*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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Secretary – Laird Graeser

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

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

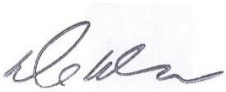
Treasurer – Gail Buono  
Secretary – Laird Graeser

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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*Vice-President – Janet McVickar*

*Treasurer – Gail Buono*  
*Secretary – Laird Graeser*

## 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.<sup>1</sup>

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

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<sup>1</sup> 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.<sup>2</sup>

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.

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<sup>2</sup> 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.

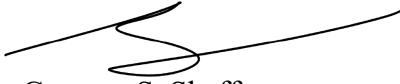
\* \* \*

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 line 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