



# THE SAN MARCOS ASSOCIATION

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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.

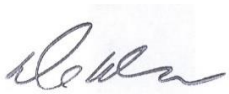
An additional distinction is scale. Utility-scale facilities are prohibited in the Rural Fringe zoning district while smaller solar facilities may be permitted. In further support of this assertion, Santa Fe County seems to regard the CUP-eligible “Commercial solar energy production” facilities noted 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

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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.