

**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

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.

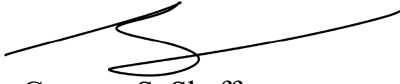
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Again, thank you for your initial letter and August 17, 2023, follow-up letter. While we respectfully disagree on the advisability of regulating Utility-Scale Renewable Energy Projects as DCIs, I trust that this letter reinforces that County staff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