

SAN MIGUEL COUNTY

ORDINANCE NO. SMC-05-10-11-SOLAR, RELATING TO AND REGULATING THE PERMITTING, PLACEMENT, CONSTRUCTION, AND MODIFICATION OF RENEWABLE ENERGY FACILITIES THAT PRODUCE ELECTRICITY OF GENERATION CAPACITY AS DEFINED IN THIS ORDINANCE BY MEANS OF ZERO-EMISSIONS GENERATION TECHNOLOGY USING THE SUN AS AN ENERGY SOURCE; SUCH GENERATION TECHNOLOGY COMMONLY KNOWN AS SOLAR ENERGY; IMPOSING PENALTIES FOR VIOLATION AND PROVIDING AN EFFECTIVE DATE.

ADOPTED MAY 10, 2011, BY THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO.

COUNTY OF SAN MIGUEL)
STATE OF NEW MEXICO) ss

SAN MIGUEL COUNTY
PAGES: 19

I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of May, 2011 at 10:45:44 AM
And Was Duly Recorded as Instrument #201101706
Of The Records Of San Miguel

Witness My Hand And Seal Of Office
Melanie Y. Rivera

Deputy M. Rivera County Clerk, San Miguel, NM

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SAN MIGUEL COUNTY ORDINANCE NO. SMC-05-10-11-SOLAR,
SOLAR ENERGY FACILITY ORDINANCE

WHEREAS, pursuant to Sections 3-21-1, 3-21-13, 4-37-7 and 4-38-1, NMSA 1978, as amended, the Board of County Commissioners of San Miguel County, New Mexico, is vested with and granted those powers necessary and proper to protect and promote the public health and safety, and advance the general welfare of the citizens of San Miguel County, New Mexico; and

WHEREAS, the State of New Mexico Executive Order 2007-053 provides for reducing dependence on imported fuel sources; reducing water consumption by power plants; increasing the efficiency of energy use will benefit all consumers, including low income populations; and energy efficiency will increase disposable income, jobs and stimulate the economy; and

WHEREAS, the State of New Mexico Solar Rights Act, Sections 47-3-1 through 47-3-5, NMSA 1978, as amended, provides in part that permitting of systems for the use and application of solar energy shall reside with county and municipal zoning authorities; and

WHEREAS, this Ordinance is enacted pursuant to the foregoing grant of power and authority vested in the Board of County Commissioners of San Miguel County, New Mexico; now, therefore, be it

ORDAINED, by the Board of County Commissioners of San Miguel County, New Mexico, that Ordinance No. SMC-05-10-11-SOLAR, Solar Energy Facility Ordinance, is hereby adopted.

SECTION 1. TITLE: This Ordinance relates to and regulates the permitting, placement, construction and modification of renewable energy facilities that generate electricity for commercial use by using the sun as a means of solar energy source within the unincorporated areas and boundaries of San Miguel County, imposes penalties for violation, provides an effective date and shall be known and cited as the "Solar Energy Facility Ordinance" of San Miguel County, New Mexico.

SECTION 2. AUTHORITY: This Ordinance is adopted pursuant to and in accordance with the enabling provisions of Sections 3-21-1, 3-21-13, 4-37-7 and 4-38-1, NMSA 1978, as amended.

SECTION 3. PURPOSE: The purpose of this Ordinance is to:

3.1. Recognize that new electric power generation facilities will be needed to support the demand for power generated from renewable energy resources such as solar power and it is necessary to develop a permitting process for such electric power generation facilities

that utilize solar energy while protecting the health, safety and welfare of the citizens of San Miguel County while at the same time providing for jobs and business development via solar generated electric power as provided in the San Miguel County Comprehensive Plan.

3.2. Provide for an application process and review of proposed electric generating projects utilizing solar energy.

3.3. Provide for solar energy facilities to be located in appropriate areas sufficient to provide for the infrastructure necessary to distribute such solar generated energy.

3.4. Provide that such appropriate areas should be analyzed in such a manner as to protect the private property rights of residential property owners adjacent to proposed solar energy facilities while also protecting the private property rights of property owners to develop their properties commercially.

3.5. Further the goals of the San Miguel County Comprehensive Plan and promote orderly economic development within the County with minimal impact on existing uses.

3.6. Protect and preserve the historic, scenic, archaeological, cultural and visual character of San Miguel County.

3.7. Protect and preserve endangered or threatened species by ensuring that solar energy facilities have no adverse impact on such species.

SECTION 4. DEFINITIONS: The following definitions shall apply to and control all matters relating to solar energy facilities under this Ordinance and shall supersede any other or different definition used in San Miguel County Ordinance No. 86-2 or otherwise.

A. **APPLICANT** means any person, partnership, company or intermediary who files an application for a conditional use permit necessary to install, construct, locate, develop, maintain or operate a solar energy facility.

B. **COMMISSION or COUNTY COMMISSION** means the Board of County Commissioners of San Miguel County, New Mexico.

C. **COMPUTER SIMULATION or DRAWINGS** means one or more detailed computer drawings to scale or photographic simulation drawings showing the site fully developed with all proposed solar facility in place.

D. **CONDITIONAL USE** means those uses which have special impact or uniqueness such that their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location and, therefore, are subject to special

standards and conditions required and imposed by the Board of County Commissioners of San Miguel County. A use that would not be appropriate generally or without restriction throughout a particular zoning district that would not adversely affect the public health, safety, comfort, good order, appearance, convenience, morals or general welfare if controlled by special permitting within a particular district in regard to location, number, area, relationship to the surrounding neighborhood or other appropriate respects.

E. CONCENTRATING SOLAR POWER SYSTEM uses lenses or mirrors and tracking systems to focus sunlight into a small beam.

F. CONSTRUCTION INDUSTRIES DIVISION is the division within the New Mexico Regulation and Licensing Department responsible for issuing residential and commercial state building permits. As provided under the New Mexico Solar Collector Standards Act, one of the agencies charged with promulgating rules, standards or codes regarding installation of solar collectors.

G. COUNTY is San Miguel County, New Mexico.

H. DESIGN means the appearance, plan or layout of a solar energy facility as noted on a site plan, engineering specification sheet(s), computer simulation or drawings or any similar document.

I. FAA NOTIFICATION is a copy of written notification to the Federal Aviation Administration.

J. HISTORIC AREA or RESOURCE is an area or resource identified or designated as such by a governmental entity or agency such as the State of New Mexico Historic Preservation Division or an Indian Tribe as having significant value as a historic, cultural or archaeological resource or district and any areas identified in Goal 2.0 of the County's Comprehensive Plan.

K. HISTORIC LANDMARK is any building or structure of particular historic or architectural significance to San Miguel County and relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history which have been listed or are eligible to be listed in local, state or national register of historic places.

L. PARABOLIC DISH SYSTEM consists of a stand alone parabolic reflector that concentrates light onto a receiver positioned at the reflector's focal point.

M. PLANNING AND ZONING COMMISSION is the commission appointed by the Board of County Commissioners as provided under Section 4-57-1, NMSA 1978.

N. PLANNING AND ZONING DIVISION is the Planning and Zoning office of San Miguel County.

O. PROJECT means the entirety of the solar energy facility project, without limitation, including all solar collectors, panels, lenses, mirrors, tracking systems, solar troughs, solar power towers, dish systems, parabolic reflectors, solar ponds, transmission lines, roads, accessory structures and all other appurtenances necessary to a solar energy facility.

P. PROJECT SITE means the land used for solar energy facilities, including property owned or controlled by an applicant or owner, and property utilized for ingress or egress to a project site, or for transmission lines or other appurtenances related to a solar energy facility.

Q. REMEDIATION means that part of the decommission process which returns the property to the natural state of the same before the construction of the facility.

R. RENEWABLE ENERGY mean electrical energy generated by means of a low or zero-emissions generation technology that has substantial long-term production potential and may include solar, wind and geothermal resources, but does not include fossil fuel or nuclear energy.

S. SITING means the method and form of placement, locale, location, place, position or spot.

T. SOLAR COLLECTOR (as provided under the Solar Right Act) is a device, substance or element, or a combination of devices, substances or elements that rely upon sunshine as an energy source and that is capable of producing not less than twenty-five thousand British thermal units on a clear winter solstice day...and that collects solar energy for use in [such applications] as industrial, commercial or agricultural processes.

U. SOLAR COLLECTOR STANDARDS ACT includes Sections 71-6-4 to 71-6-10, NMSA 1978.

V. SOLAR ENERGY DEVELOPMENT ACT includes Sections 71-6-1 to 71-6-3, NMSA 1978.

W. SOLAR RIGHTS ACT includes Sections 47-3-1 through 47-3-5 NMSA 1978.

X. SOLAR RIGHT as declared by the legislature of the State of New Mexico is the right to use the natural resource of solar energy which is encouraged and regulated by the laws of the State of New Mexico and is a property right.

Y. SOLAR TROUGH is a system that consists of a linear parabolic reflector that concentrates light onto a receiver positioned along the reflector's focal line, which system then uses the reflector to follow the sun during daylight hours by tracking.

Z. STATE HISTORIC PRESERVATION is the New Mexico Office of Cultural Affairs State Historic Preservation Division.

AA. STIRLING SOLAR DISH is a system that combines a parabolic concentrating dish with a stirling heat engine which drives an electric generator.

BB.VARIANCE is a permitted departure from one or more requirements of this Ordinance.

SECTION 5. EXEMPTIONS: The following solar energy facilities shall be exempt from the provisions of this ordinance.

5.1. Solar panels or equipment intended primarily for residential or agricultural use that has a generating capacity of less than fifty (50) kilowatts.

5.2. Photovoltaic panels mounted on a single residential, commercial or industrial structure for the purpose of generating electricity for that specific structure.

5.3. Photovoltaic panels mounted on a pole or on the ground that do not exceed 300 square feet in area; a single parabolic dish; a single concentrating solar power system using a lens or mirror; a single solar trough using parabolic reflector and are used to generate electric power for an adjacent residential or a specific commercial or industrial use. Such photovoltaic panels shall be subject to the zoning development application procedure of the County.

SECTION 6. APPLICATION FEES: The following non-refundable fees shall apply to and control all applications for conditional use permits for solar electric energy generating facilities, and any notice, hearing or other provision relating to conditional use permits as may be contained in Ordinance No. 86-2, inclusive of Article 7 shall not apply and is hereby expressly superseded.

6.1. The following fees shall apply. Fees are non-refundable and shall be paid with certified funds or attorney trust account check.

A. Application Fee: \$ 5,000.00 which is imposed and shall be used by the County to defray administrative costs incurred in reviewing and passing upon the application.

B. Technical Review Application Fee: A fee in such amount as shall be determined by the Planning and Zoning Supervisor to defray the County's expense in

securing professional and technical independent review of the application, which fee shall be paid in the manner noted above for the application fee, within such time as shall be determined by the Planning and Zoning Supervisor.

C. Publication and Notification: \$ 246.00 (P and Z Commission)

D. Publication and Notification: \$ 246.00 (County Commission)

SECTION 7. APPLICATION REQUIREMENTS: Each application for conditional use permit for a solar energy facility shall include, at a minimum, the following documents and information:

7.1. Conditional use permit application form with a letter of intent including application fee, technical review fee, publication and notification fee for P and Z Commission meeting and publication and notification fee for County Commission meeting.

7.2. A detailed written statement explaining in full the proposed project.

7.3. A site plan drawn in sufficient detail to scale clearly describing the following:

A. General description of the proposed site, including a legal description of the property.

B. Map(s) showing the project location within San Miguel County.

C. Dimensions of the proposed site also showing existing structures and proposed structures.

D. Location of existing and/or proposed electrical transmission lines and facilities on the proposed location.

E. Existing topographic features.

F. Setback in feet from the site property boundaries of each proposed solar facility and each proposed structure.

G. Existing or proposed access, to include ingress and egress, to site from county road, state or federal highway.

H. Location and distance to nearest village or town.

I. Location and distance to nearest school, church and hospital.

J. Location and distance to all known cultural, historical or archaeological features.

K. Location and distance of proposed site to nearest watercourse (such as river, creek, acequia, drainage channel, wetlands, pond or lake).

L. Location of state and federal resource lands and other protected areas near proposed project site.

M. Location of proposed temporary and permanent on site roads within the project site.

N. A list of owners of adjoining properties of the proposed site, to include mailing addresses as shown on records of the San Miguel County Assessor's Office.

7.4. Terrain Management and Transportation Plan:

A. Grading and removal of existing vegetation.

B. Dust control plan.

C. Excavation plan if site is not level and excavation or removal of earth material is required in order to make site level and adequate for facility developed by a registered engineer licensed to do business in New Mexico and San Miguel County.

D. Re-vegetation plan for restoring areas within the site that are temporary disturbed during construction.

E. Drainage and erosion control plan for construction and operation developed by a registered engineer licensed to do business in New Mexico and San Miguel County.

F. List of all required equipment needed for the construction of the facility, to include equipment such as cranes, trucks, bulldozers, loaders, dump trucks, backhoes, pile driver and all similar heavy equipment.

G. Specifications for road construction to and within the property site.

H. Specifications for lighting, signage, speed limits and appropriate traffic controls.

7.5. Site Protection and Restoration Plan:

A. Fire protection plan for construction and operation of facility.

B. Plan to protect and remediate any archaeological, cultural or historical sites or artifacts found at the site during and after construction.

C. Decommission plan the applicant and/or facility operator will use to remove the energy facility and appurtenant structures to restore the site to a useful, non-hazardous condition upon project termination. Plan must include a detailed cost estimate in current-year dollars with explanation of cost estimates.

D. Inventory and remediation plan for San Miguel County roads that will be utilized during the construction phase, which plan shall: (a) indicate the condition and use of such County roads prior to construction; (b) how the same shall be restored to the condition existing prior to construction of the facility; (c) indicate the frequency of restoration and repair that will occur during construction activity in the event such construction activity damages such roads or renders them impassable as determined by the San Miguel County Public Works Supervisor.

7.6. Facility Specifications and Plans:

A. A complete set of facility specifications and plans as applies to the type of energy facility to be constructed and should be engineer stamped and of sufficient detail for review by New Mexico Construction Industries Division. Facility plans and specifications can be labeled “preliminary” or “not for construction”.

B. Solar panel information to include size, type, height from ground level, rated power, performance safety, and electrical transmission equipment.

C. Computer simulation or drawings showing the site fully developed with all proposed solar panels, accessory structures and roads.

D. Projected useful life of the facility.

E. Decommission and Removal Plan for the facility, which shall:

(i). Include a provision indicating who shall be responsible for the decommission and removal, whether applicant, landowner, operator or other persons, as described in said Plan, and include the proposed agreement which will be executed between such parties for decommission and removal, and which shall provide that the rights and responsibilities thereunder shall be binding upon the successors and assigns of the parties.

(ii). Include a financial assurance in the form of a surety bond or other financial assurance acceptable to the Board of County Commissioners for the life of the facility, that ensures decommission and removal will be undertaken and completed, without regard to the then existing ownership of or title to the land and facility, and that the same shall be binding on all successors and assigns of the owner of the project and premises.

(iii). The aforesaid bond shall be subject to review and approval by the County at least every five (5) years for a determination as to its adequacy for removal and site restoration.

F. Soils Report which shall include:

(i). An overlay map of the natural features showing the location and description of each soil type.

(ii). A soil analysis concerning the limitations for each soil type for the intended land use common to the facility, which analysis shall conform with the standards set forth by the USDA Natural Resources Conservation Service.

G. Cultural Resources Protection Plan for the protection and preservation of cultural properties, national registered historic districts, archaeological sites and unmarked burials as defined in the Cultural Properties Act, Section 18-6-1, *et seq.*, NMSA 1978, as amended, which plan shall be subject to review by the Historic Preservation Division of the New Mexico Office of Cultural Affairs.

H. Construction Schedule which shall include:

(i). The proposed beginning and completion dates for all clearing and grading activity.

(ii). The expected duration of all disturbed areas.

(iii). The expected date for stabilization of all disturbed areas.

(iv). Plans and specifications for the construction and maintenance of any proposed or required road system.

(v). Proposed commencement and completion dates for the solar facility.

I. San Miguel County Assessor's property tax identification code map of the property where the solar facility is to be located.

SECTION 8. REQUEST FOR AGENCY REVIEW AND COMMENT:

8.1. For each agency review required hereunder, applicant shall submit, with copy to the Planning and Zoning Division, a request for review to each agency by certified mail, return receipt requested, on such form as is prescribed by the Planning and Zoning Division. The request for review shall be the sole responsibility of applicant who shall allow the agency not less than thirty (30) calendar days for review and comment.

8.2. The application submitted by applicant to the Planning and Zoning Division shall include copies of each request for agency review and copies of comments received from the agency or, if no such comments were received, a verified statement executed by applicant that; (i) request for review was submitted to the agency by certified mail, return receipt requested; (ii) that more than thirty (30) calendar days have passed since the request was received by the agency; (iii) that applicant did not receive comments or other correspondence from the agency; and (iv) that after the exercise of reasonable diligence, applicant is unaware of any such comments or review issued by agency.

8.3. Review and comment shall be requested from the following state agencies for the reasons noted for each:

(A). The Historic Preservation Division of the New Mexico Department of Cultural Affairs to determine if the project site will affect or impact cultural properties, national registered historic districts, archaeological sites and unmarked burials, as defined in the Cultural Properties Act, Section 18-6-1, NMSA 1978, as amended.

(B). The Soil and Water Conservation District located within San Miguel County, to determine whether the applicant can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion.

(C). The New Mexico Game and Fish Department to determine whether the project will adversely affect any endangered or threatened species or the habitat of such species.

(D). The Board of Trustees of any Land Grant if the proposed facility is within the boundaries of such Grant to determine whether the project will affect or impact any Land Grant.

(E). The United States Forest Service to determine whether the proposed facility will affect or impact forest service lands.

(F). The New Mexico Department of Transportation District Four Office to determine whether the project will have any impact and affect on traffic conditions and safety on any state highways from which there is access to or from the project site.

(G) The San Miguel County Public Works Division for the same determination as noted in above subparagraph F as concerns County roads.

(H). Any affected Indian Tribes having affiliation with San Miguel County as determined by the listing maintained by the Historic Preservation Division of the New Mexico Department of Cultural Affairs of such Indian Tribes.

(I). The Federal Aviation Administration to determine if the proposed facility site

is within a FAA designated civilian airport runway clear zone or runway protection zone, or a military airfield clear zone or accident potential zone.

(J). Any other agency or entity that San Miguel County determines should review such application.

SECTION 9. SETBACKS FOR PROJECT SITES: The following minimum setbacks are required for all project sites.

9.1. Project buildings, accessory structures, solar panels and all appurtenances shall be at least thirty (30) feet distant from any adjacent property line. Setbacks for solar concentration systems, solar trough systems, parabolic dish and stirling engine systems shall be at least one hundred (100) feet distant from any adjacent property line.

SECTION 10. PROCEDURE FOR NOTICE AND HEARING BEFORE THE PLANNING AND ZONING COMMISSION:

10.1. Upon receipt of a project application and after the Planning and Zoning Division deems the project application complete, the Planning and Zoning Commission shall, at a public hearing, consider and act upon the application for conditional use permit, in accordance with the following procedures and requirements:

10.2. A public hearing before the Planning and Zoning Commission shall be held within sixty (60) days from the date the application is deemed complete by the Planning and Zoning Division.

10.3. Notice of the time, place and purpose of the hearing shall be given by the County as follows:

(A). By publication not less than twenty (20) calendar days before the public hearing in a newspaper published and of general circulation in San Miguel County; and

(B). By posting notice of public hearing not less than twenty (20) calendar days before the public hearing upon the premises where the project is proposed to be located and upon any perimeter fence of said premises, and adjacent to any public road or right-of-way nearest said premises; and

(C). By certified mail, return receipt requested, to all adjoining landowners identified in the San Miguel County Assessor's tax map submitted under Section 7, Subsection 7.3 (N) of this Ordinance, which certified mail shall be postmarked not less than twenty (20) calendar days before the date of the public hearing.

(D). By certified mail to all agencies identified for agency review under Section 8.3 of this Ordinance.

(E). By ordinary first class mail to all interested persons who have requested notice of the public hearing before the Planning and Zoning Commission.

10.4. After providing notice as specified in Subsection 10.3 above, the Planning and Zoning Commission shall:

(A). Hold and conduct a public hearing on the application for conditional use permit for the solar facility project, and entertain any evidence and testimony under oath, and upon the conclusion of the public hearing, take action on the application for conditional use permit by making its recommendation(s) to the Board of County Commissioners for approval or denial of the application, which recommendation shall include the findings of fact supporting the recommendation, and if the recommendation is to grant the conditional use permit, such conditions as should be imposed, if any.

(B). The recommendation by the Planning and Zoning Commission shall be rendered by written resolution to be filed in the office of the San Miguel County Clerk, which shall be reviewed *de novo* by the Board of County Commissioners as hereafter provided, which resolution shall be delivered to the applicant and to any person requesting notice thereof.

(C). Any continuances of such public hearing shall be in accordance with the requirements of the Open Meetings Act, section 10-15-1, *et seq.*, NMSA 1978, as amended.

SECTION 11. PROCEDURE FOR NOTICE AND HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS:

11.1. Not later than sixty (60) calendar days after the resolution of the recommendation rendered by the Planning and Zoning Commission is filed in the office of the San Miguel County Clerk, said resolution of recommendation on the project application shall come on for a *de novo* public hearing before the Board of County Commissioners, pursuant to and in accordance with the notice and hearing requirements set forth in Section 10 hereinabove.

11.2. Upon conclusion of said public hearing, the Board of County Commissioners shall:

(A). Make and render its decision granting or denying the project application for conditional use permit, which decision shall include findings of fact supporting the decision, and if the decision is to grant the conditional use permit, the conditions

imposed for the granting of the same, if any, and the effective date of said conditional use permit.

(B). Not later than thirty (30) calendar days from the conclusion of the public hearing, render its aforesaid decision by written resolution which shall be filed forthwith in the office of the San Miguel County Clerk and deliver copy of said resolution to the applicant and to any person who has requested notice.

SECTION 12. APPEAL: Any person who is aggrieved by the decision of the Board of County Commissioners may appeal the same to the District Court of the Fourth Judicial District in and for San Miguel County, as provided by law.

SECTION 13. SUSPENSION AND REVOCATION OF CONDITIONAL USE PERMIT; INJUNCTIVE RELIEF:

13.1. If the project owner fails to comply with any term, condition or requirement set forth in the conditional use permit by which the project is granted, said permit is subject to suspension and revocation as herein provided.

13.2. The County shall give written notice of non-compliance to the owner specifying which conditions are in default, and upon the owner's failure to cure the default within thirty (30) calendar days from receipt of said notice, the County may seek suspension or revocation of the conditional use permit, in whole or in part.

13.3. Written notice to suspend or revoke the conditional use permit, specifying the reasons therefore, shall be delivered to the owner, and the Board of County Commissioners shall hold and conduct a hearing on said notice and issue a decision of suspension or revocation, under the notice and hearing requirements set forth in Section 10 of this Ordinance.

13.4. Any person aggrieved by the decision of suspension or revocation made by the Board of County Commissioners may appeal the same to the District Court of the Fourth Judicial District in and for San Miguel County, as provided by law.

13.5. Nothing contained herein shall preclude the County from seeking injunctive relief or other equitable or legal remedy from the District Court for any violation by the project owner of the terms, conditions and requirements of the conditional use permit granted for a project.

SECTION 14. INDEMNIFICATION:

San Miguel County shall not grant a conditional use permit for a project until applicant submits to the County an indemnity bond or other assurance approved by the County

which shall:

14.1. Indemnify and hold harmless San Miguel County, its elected and appointed officers, agents and employees, from and against any and all claims, demands or causes of action, of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys fees, liabilities, damages, orders, judgments or decrees sustained by San Miguel County or any third party, arising out of or by reason of equipment failure, or arising from the negligent acts, errors or omissions of any and all project owners, officers, employees or agents; and

14.2. Provide that the assurances, covenants and representations relating to the indemnification shall survive the term of any agreement and continue in full force and effect for the life of the project, and that the same will be binding upon all successors and assigns of the applicant.

SECTION 15. LIABILITY INSURANCE:

A conditional use permit of a project shall not be granted until the applicant or owner provides proof that it has secured and maintains for the project and project site, general liability insurance, as follows:

15.1. Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence; \$2,000,000 aggregate. Coverage shall specifically include the County and its officers, employees, agents and assigns as additional named insured.

15.2. Automobile coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate.

15.3. Worker's compensation and disability: statutory amounts.

15.4. Insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

SECTION 16. COMMENCEMENT AND OPERATION; EXPIRATION, EXTENSION OF TIME: The construction of a solar project for which a conditional use permit has been issued, shall commence not later than two (2) years after the conditional use permit is issued, and shall be completed and in operation not later than three (3) years after the permit is issued, or such other time as may be determined by the County. Upon failure of project commencement or completion as aforesaid, the conditional use permit shall expire and re-application shall be required.

SECTION 17. REMOVAL OF SOLAR FACILITY AND EQUIPMENT:

17.1. Any solar project facility that is not in continuous and uninterrupted operation for twelve (12) consecutive months, shall be deemed non-operational and abandoned, and upon written notice thereof by the County to the owner, shall be removed within ninety (90) days of said notice and thereupon decommissioned.

17.2. Removal of the solar facility project shall include removal of the entire facility, including all poles, foundations, buildings, accessory structures, fences, transmission lines and all other appurtenances of and relating to the facility.

17.3. Decommission of the project site shall be in accordance with the Decommission and Removal Plan submitted by the applicant and approved by the County, to include remediation of the site to its natural state.

SECTION 18. VARIANCE:

An application for variance, whether part of the initial application or a subsequent submission, may be considered and may be approved at any time by the County, and shall at all times be subject to and considered under the notice and hearing requirements set forth in Sections 9 and 10 of this Ordinance.

SECTION 19. PENALTY:

Any person, firm or corporation, whether as principal, agent or employee, who violates or causes a violation of this Ordinance, or any part hereof, shall upon conviction be punished for each violation, by a fine not exceeding three hundred dollars (\$300.00) or by imprisonment not exceeding ninety (90) days in the county jail, or by both such fine and imprisonment, which penalty is the maximum allowed by Section 3-21-13, NMSA 1978. Each day the violation occurs shall constitute a separate offense and shall be punishable as provided herein.

SECTION 20. NOTIFICATION TO COUNTY OF CHANGE IN OWNERSHIP:

When a solar project facility owner conveys, transfers, assigns or otherwise divests itself of the project, written notice of such conveyance, transfer, assignment or other divestiture shall be given to the County forthwith, and not later than thirty (30) days from the effective date of said conveyance, transfer, assignment or other divestiture.

SECTION 21. COMPLIANCE WITH ZONING DEVELOPMENT PERMIT PROCESS:

Construction of any project for which a conditional use permit is granted under this

Ordinance, shall not commence without the approval of the Planning and Zoning Division, and compliance with the zoning development application process of that Division.

SECTION 22. EFFECTIVE DATE OF ORDINANCE:

This Ordinance shall become effective thirty (30) calendar days after it is filed in the office of the San Miguel County Clerk, as by law provided.

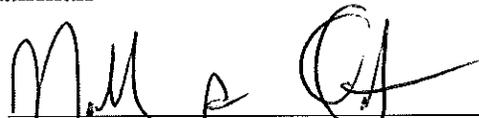
MOVED, SECONDED, ADOPTED AND ORDAINED this 10TH day of MAY, 2011, by the BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO.



David R. Salazar, Chairman



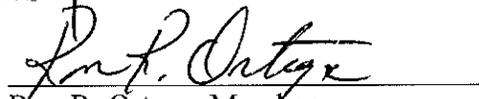
Nicolas T. Eger, Vice-Chair



Marcellino A. Ortiz, Member



Arthur J. Padilla, Member

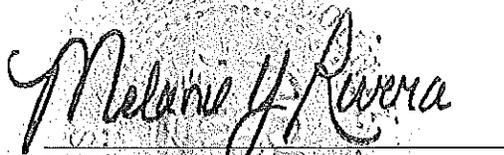


Ron R. Ortega, Member



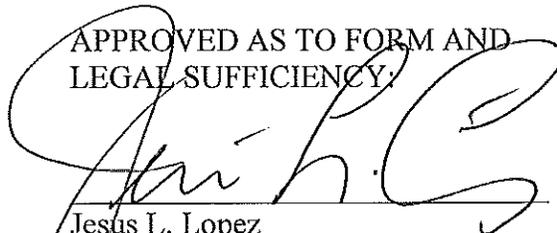
Les W. J. Montoya
San Miguel County Manager

ATTEST:



Melanie Y. Rivera
San Miguel County Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Jesus L. Lopez
San Miguel County Attorney