



March 4, 2026

Apache County  
75 W. Cleveland  
St. Johns, AZ 85936

Re: Comments on Proposed Renewable Energy Ordinance (Article 4, Sections 436–446) (Draft 5v10)

Commissioners and Staff,

The Arizona Solar Energy Industries Association (AriSEIA) appreciates the opportunity to continue working with Apache County on the development of a renewable energy ordinance. AriSEIA previously submitted a detailed comment letter on December 3, 2025, addressing definitions, applicability, setbacks, agency coordination, decommissioning, and other foundational provisions. AriSEIA also submitted supplemental comments on January 12, 2026 responding to revisions in Draft 5v8 and identifying several remaining technical and administrative concerns.

County staff has clearly engaged with stakeholder feedback in several areas. In particular, the revision allowing removal of subsurface infrastructure to approximately three (3) feet during decommissioning represents a practical and environmentally responsible improvement. AriSEIA appreciates this change and the County’s willingness to incorporate input.

After reviewing the most recent draft ordinance, several additional issues remain that warrant clarification or revision prior to adoption. The most significant remaining issues are outlined below.

### **1. Applicability and Definition of Utility-Scale Projects**

The ordinance currently defines a “utility-scale solar energy project” as a facility with the actual or planned ability to generate at least one (1) megawatt of electricity. This threshold is far too low for purposes of a land use ordinance designed to regulate major infrastructure. A one-megawatt trigger would capture numerous smaller commercial and agricultural systems that are not functionally equivalent to large utility generation facilities. Schools, farms, warehouses, and community-scale solar installations frequently fall within this size range and should not be subject to a regulatory framework intended for large-scale generation projects.

In addition, the definition excludes systems that do not feed residual power into the electrical grid. This phrasing does not align with the Arizona Corporation Commission’s treatment of distributed generation and could unintentionally capture projects that primarily serve on-site load but export occasional excess energy.

If Apache County intends to regulate major infrastructure differently from smaller commercial or community-scale systems, the distinction should be meaningful and administrable. **AriSEIA strongly recommends increasing the applicability threshold to at least twenty (20) megawatts and removing language tied to whether a project exports residual power to the grid.** Size and primary project purpose provide a clearer and more workable distinction.

## **2. Section 439 – Fire Protection and Emergency Response**

The current language requires approval of a fire protection plan “prior to construction” while the following sentence requires that a copy of the approval be submitted with the Conditional Use Permit application. These two provisions are inconsistent with one another. If approval must be submitted with the Conditional Use Permit application, the approval would necessarily occur much earlier than construction.

Fire protection plans are typically developed during the engineering phase of a project and submitted during the building permit process when final layouts, equipment specifications, and access plans are known. Requiring full approval at the Conditional Use Permit stage may be premature and could require repeated revisions as project design evolves. **The ordinance should clarify that fire protection plans will be submitted and approved at the building permit stage rather than as a prerequisite to the Conditional Use Permit application.**

## **3. Section 439 – Wildlife Protection and Agency Coordination**

AriSEIA understands the County’s interest in ensuring coordination with state and federal agencies. However, the current language creates the possibility that a single non-responsive outside agency could prevent a Conditional Use Permit from being scheduled for hearing. Under the ordinance as drafted, the absence of a response from an outside agency could indefinitely delay County consideration of an application. This would create a situation where third-party inaction effectively prevents a hearing from occurring, raising due process concerns. A more workable approach would allow the County to proceed with scheduling a hearing if an agency does not respond within a defined period. **AriSEIA recommends that if an agency has not responded within thirty (30) days of a request for review, staff may schedule the item for a hearing with a note in the staff report indicating that the agency response was not received.** Any agency concerns can then be addressed during the public hearing process.

## **4. Section 439 – Permits and Agency Coordination**

The ordinance also states that building permits may not be issued until the Planning and Zoning Commission and Board of Supervisors concur that all outside agency conditions have been satisfied. Building permits and grading permits are administrative approvals issued by County staff based on compliance with established technical criteria. These approvals do not typically return to the Planning and Zoning Commission or Board of Supervisors for review.

Requiring additional Board or Commission concurrence for routine administrative permits would create unnecessary procedural complexity and could delay project construction even after land use approvals have been granted. **This provision should be revised to clarify that building**

**and grading permits are administrative determinations handled through standard County permitting procedures.**

#### **5. Section 441 – Solar Project Setbacks**

The most recent draft does not incorporate earlier recommendations to align solar setbacks with those used in other Arizona jurisdictions. In fact, the setback requirement adjacent to Agricultural-General zoning appears to have increased.

It is unclear what objective this larger setback is intended to achieve. Setbacks adjacent to residential zoning districts can provide meaningful protection for nearby homes. However, extensive setbacks adjacent to undeveloped Agricultural-General land provide little public benefit while significantly reducing the amount of land available for project development. If the County wishes to maintain an Agricultural-General setback, **AriSEIA recommends limiting the requirement to situations where the adjacent Agricultural-General parcel contains a permitted residential structure at the time the renewable project obtains building permits.** This approach would protect occupied residences without unnecessarily restricting development adjacent to vacant agricultural land.

#### **6. Section 443.C – Complaint-Triggered Board of Supervisors Hearings**

The ordinance continues to allow any individual complaint during project operations to trigger a hearing before the Board of Supervisors. This threshold is extremely low and would likely result in repeated hearings triggered by individual complaints, regardless of whether a violation has occurred. As drafted, the ordinance provides no opportunity for County staff to evaluate the validity of a complaint before scheduling a Board hearing.

County development services staff should be allowed to review and investigate complaints in the first instance. **Only if staff determines that a violation may exist or that the issue cannot be resolved administratively should the matter be elevated to the Board of Supervisors.** Without such a review process, opponents of a project could repeatedly trigger hearings and place ongoing operational matters on Board agendas indefinitely, effectively turning the Board into a day-to-day zoning enforcement body.

#### **7. Section 439 – FAA and FCC Compliance**

The new FAA and FCC compliance provisions generally move in a constructive direction. However, the complaint provisions associated with this section again place significant weight on a single reported incident. The primary focus should be on technical studies submitted during the application process demonstrating compliance with Federal Aviation Administration and Federal Communications Commission requirements. Once a project is operational, it can be extremely difficult to isolate the cause of a single interference incident, particularly in areas where multiple potential sources exist. **The ordinance should focus on pre-construction studies and compliance certifications rather than complaint-driven enforcement tied to individual reported events.**

## 8. Section 448 – Development Agreements

The ordinance introduces a new section referencing development agreements. Arizona law already authorizes counties to enter development agreements, and Apache County code already provides the authority necessary to use those tools where appropriate.

It is therefore unclear what purpose this section is intended to serve or what additional authority it creates. If the intent is simply to acknowledge that development agreements may be used in certain circumstances, the section may be unnecessary. **If the County intends to require development agreements for certain projects, that requirement should be clearly explained so that applicants understand when such agreements may apply.**

## 9. Additional Observations

In reviewing the most recent draft, AriSEIA also notes several areas where the language may inadvertently extend beyond the scope of renewable energy facilities. For example, certain provisions appear broad enough to capture transmission infrastructure or interconnection facilities that are typically regulated through separate state and federal processes. Ensuring that the ordinance clearly distinguishes between generation facilities and transmission infrastructure will help avoid regulatory overlap and jurisdictional confusion.

## 10. Conclusion

AriSEIA appreciates the County's continued engagement and the improvements already incorporated into the draft ordinance. The revisions to the decommissioning provisions demonstrate that productive dialogue is occurring and that stakeholder input is being carefully considered.

The remaining issues identified above primarily involve procedural clarity, administrative feasibility, and alignment with established renewable energy development practices. Addressing these concerns will help ensure that the ordinance protects County interests while remaining workable for projects that can bring economic development and tax revenue to Apache County. AriSEIA welcomes continued dialogue with County staff and the Board of Supervisors and remains available to provide examples from other Arizona jurisdictions or to assist in refining ordinance language where helpful.

Respectfully,  
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