

**SPECIAL MEETING OF THE
ARAPAHOE COUNTY PLANNING COMMISSION
TUESDAY, SEPTEMBER 27, 2016 @ 6:30 P.M.**

REGULAR ITEMS

ITEM 1:	CASE NO. W16-001, LAND DEVELOPMENT CODE REVISIONS RE: SOLAR		
LOCATION:	Unincorporated Arapahoe County	VOTE:	
ACREAGE:	N/A	5	IN FAVOR
EXISTING ZONING:	N/A	0	OPPOSED
PROPOSED USE:	Amendment would create an administrative process for Small Scale Solar Facilities	2	ABSENT
APPLICANT:	Arapahoe County		ABSTAIN
CASE MANAGERS:	Planner, Diane Kocis; Engineer, Spencer Smith		
REQUEST:	Request a positive referral for a Land Use Code amendment	<input checked="" type="checkbox"/> CONTINUED TO:	
MOTION SUMMARY:	Motion to continue to a date certain.	DATE: 10-18-2016	

STUDY SESSION AGENDA ITEMS

ITEM 1	COMPREHENSIVE PLAN AMENDMENT	DIRECTION/ACTION
CASE MANAGER:	Julio Iturreria, Long Range Planner	INFORMATIONAL
REQUEST:	Discussions concerning: <ul style="list-style-type: none"> Proposed Uinta Way Comprehensive Plan Amendment 	

ANNOUNCEMENTS:

- The next regular Planning Commission meeting is scheduled for October 18, 2016 at CSU Extension.
- Planning Commission agendas, Board of County Commissioner agendas, and other important Arapahoe County information may be viewed online at www.arapahoegov.com or you may contact the Planning Division at 720-874-6650.

PLANNING COMMISSION MEMBERS:

Mark Brummel - Present	Richard Rader - Absent	Paul Rosenberg, Chair - Present
Diane Chaffin - Present	Jane Rieck - Absent	Richard Sall - Present
Brian Weiss, Chair Pro-Tem - Present		



ARAPAHOE COUNTY
COLORADO'S FIRST

Public Works and Development

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Centennial, Colorado 80112-3853
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DAVID M. SCHMIT, P.E.
Director

MEMORANDUM

TO: Planning Commission

FROM: Diane Kocis, Oil & Gas Specialist/
Case Planner

DATE: September 27, 2016

SUBJECT: REQUEST FOR CONTINUANCE
W16-001 – Land Development Code Revisions to Section 12-1900
(Oil & Gas Facilities and Solar Facilities)

As part of the referral process for the proposed amendments to the county's energy facilities regulations, staff received additional information and comments requesting changes to the draft code. While the individual changes are relatively minor in nature, they would affect enough sections of the draft code that staff recommends continuing the public hearing to October 18, 2016. This will allow enough time to make needed adjustments and present a revised and complete version of the code to Planning Commission.

Draft Motion:

I move to continue case number W16-001, the Land Development Code amendment to section 12-1900, to October 18, 2016 at 6:30 p.m. The continued case will be heard in the CSU Extension, located at 6934 South Lima Street, Suite #B, Centennial, Colorado, 80112.

MISSION

Enhancing your quality of life through exceptional delivery of services and efficient use of public funds.

**ARAPAHOE COUNTY PLANNING COMMISSIONERS
PUBLIC HEARING
27 September 2016
6:30 PM**

**W16-001 Land Development Code Amendment of Section 12-1900
From Oil and Gas Facilities to Energy Facilities**

Diane Kocis, Oil & Gas Specialist

September 19, 2016

PROPOSAL:

Planning Staff proposes to modify the Land Development Code in order to provide an administrative process for the review and approval of other types of energy facilities, specifically small scale solar facilities.

Staff has prepared proposed changes to the Land Development Code, so that section 12-1900, formerly reserved for Oil & Gas Facilities, will be re-named as “Energy Facilities” and provide rules for both oil and gas facilities and solar facilities with a capacity of 2 MW or less.

STAFF RECOMMENDATION:

Staff recommends approval of Case Number W16-001 based on the findings outlined in this staff report and with the conditions as noted.

I. BACKGROUND INFORMATION

This County-initiated application is to modify the existing Section 12-1900 of the Land Development Code (LDC), Oil and Gas Facilities, to a new section entitled “Energy Facilities”, in order to provide an expeditious application and review process for small scale solar facilities, where an applicant has executed an acceptable Memorandum of Understanding (MOU). Just as the existing code provides an administrative review process for oil and gas operators who sign an MOU, the proposed code changes would allow a similar administrative process for small scale solar facilities. Historically review and approval of small scale solar facilities through the Use by Special Review (USR) and dual hearing process have taken approximately 5 months of staff time, at an estimated cost to the County of \$15,000 in staff time. According to the solar companies, Arapahoe County’s land use review process currently takes much longer than comparable communities.

The intent of the Solar MOU is to provide the conditions under which an operator will develop and operate future community solar projects or newly expanded Facilities in the County, in order to foster the efficient and economic production of renewable energy resources, to protect health, safety and welfare and to protect the environment and wildlife resources, while at the same time providing an expeditious administrative process for obtaining County land use approvals and permits for solar energy facilities. The terms Solar Energy “Facility” or “Facilities” are defined as including solar panels,

racking structures, inverters, transformers, overhead or underground wiring, and associated roads for projects up to 2 MW in capacity.

The administrative process for oil and gas development applications, combined with an MOU, has been a success for both the oil and gas operators and staff. Under an administrative permitting process for oil and gas development, the oil and gas operators have agreed to some stricter stipulations than what the state rules provide, in exchange for a quicker permitting process. In the case of a Solar MOU and administrative permitting process, where staff would process small solar facility applications in 6 weeks or less, the County would save approximately \$15,000 in staff time because the applicant would not have a hearing with the Planning Commission or the BoCC; however, it's important to note two things: 1) that the administratively-processed applications would still receive the same level of scrutiny as applications for a full USR; and 2) the PWD Director would retain the option of requiring a full USR for any administrative applications submitted that might have heightened impacts due to unique site conditions.

Funding decisions for solar projects typically need to be made in a timely manner. Going through a 5-6 month USR process removes the predictability of funding out of the solar company's project planning process. Both Sunshare and Clean Energy Collective have presented applications to the Planning Commission in the past year. These companies are planning to submit 4-5 applications in the next 6-12 months. Additionally, several other sites in Arapahoe County are in lease negotiation for additional potential projects.

II. DISCUSSION AND FINDINGS

While the solar companies would get an expedited permit review process under the proposed Solar MOU, similar to the Oil and Gas MOU, the County could require increased buffering for aesthetics and might be able to modestly increase its typical application and permit fees because the Solar MOU would be a private contract. The actual fee structure would be developed during an amendment to the LDC and would apply to the Land Development application, GESC permit, Access permits, and Fence permits.

1. Comprehensive Plan and Align Arapahoe:

The revisions proposed are consistent with the purpose and direction of the existing Section 12-1900 of the LDC in that these revisions provide additional language to guide small scale solar development within the County,

Providing Community Solar Gardens fits with the Arapahoe County Comprehensive Plan strategy NCR 4.2(a): the County will support programs and education to reduce energy consumption, solar energy research and other clean energy programs, and energy efficient building design and solar-oriented site planning.

The proposed amendment promotes the "quality of life" Align Arapahoe goal by addressing uses that may be appropriate within the unincorporated county and by providing renewable energy options for county residents.

2. Referrals: or Public Notice

Staff published notices in both the I-70 Scout and The Villager regarding the proposed changes to the LDC and the September 27, 2016, Planning Commission hearing date and time. No comments or questions were received at the time of this staff report. Please see the attached list of referrals. Staff will summarize referrals comments at the Planning Commission hearing.

III. STAFF FINDINGS

Staff has reviewed the proposal and supporting documentation as well as referral comments, as detailed in this report. Based on review of applicable goals and policies as stated in the Comprehensive Plan, staff finds:

1. The proposed changes to Section 12-1900 within the LDC appears to be in conformance with the Arapahoe County Comprehensive Plan.
2. Arapahoe County has the authority to amend provisions of the LDC as proposed by this revision.
3. Modifications proposed comply with the applicable LDC Amendment policies and procedures as set forth in the LDC including public notification requirements. Notice was provided in both the Villager and the I-70 Scout newspapers.
4. The proposed changes promote the public health, safety, and welfare of the unincorporated county.

IV. STAFF RECOMMENDATION

In the event that the Planning Commission concurs with the Staff's findings, as stated above, and wishes to forward a recommendation for Approval of the modification of Section 12-1900, as proposed or with changes, Staff has recommended the following Conditions of Approval:

1. Minor modifications to the text identified as necessary are required prior to incorporation of this Amendment into the existing Land Development Code. Staff, in conjunction with the County Attorney's Office, is hereby authorized to make necessary modifications to the text.
2. Modifications to Section 12-1900 of the Land Development Code will be effective and integrated into the existing Code upon approval by the Board of County Commissioners following a public hearing.

V. DRAFT MOTIONS

A. Motion for Approval as Submitted:

In the case of W16-001 – Land Development Code Amendment, Chapter 12 Specific Regulations, modification of Section 12-1900, Oil and Gas Facilities, the Planning Commission has read the proposed code amendment and staff report and has considered additional information presented during the public hearing. We find ourselves in agreement with Staff findings one (1) through four (4) set forth in the Staff report dated

September 19, 2016, and recommend that the Board of County Commissioners **approve the amendment as submitted**, with the following two (2) conditions of approval:

1. Minor modifications to the text identified as necessary are required prior to incorporation of this Amendment into the existing Land Development Code. Staff, in conjunction with the County Attorney's Office, is hereby authorized to make necessary modifications to the text and may relocate definitions to Chapter 19.
2. Modifications to Section 12-1900 of the Land Development Code will be effective and integrated into the existing Code upon approval by the Board of County Commissioners following a public hearing.

B. Motion for Approval with Changes:

In the case of W16-001 – Land Development Code Amendment, Chapter 12 Specific Regulations, modification of Section 12-1900, Oil and Gas Facilities, the Planning Commission has read the proposed code amendment and staff report and has considered additional information presented during the public hearing. We find ourselves in agreement with Staff findings one (1) through four (4) set forth in the Staff report dated September 19, 2016, and recommend that the Board of County Commissioners **approve the amendment with the following changes** and with the following two (2) conditions of approval:

Changes to the proposed text:

1. *Changes to the text should be read as part of the motion to approve. The Planning Commission may note the nature of the change to be made and direct staff to finalize text prior to the hearing before the Board of County Commissioners.*
2.

Conditions of Approval:

1. Minor modifications to the text identified as necessary are required prior to incorporation of this Amendment into the existing LDC. Staff, in conjunction with the County Attorney's Office, is hereby authorized to make necessary modifications to the text.
2. Modifications to Section 12-1900 of the LDC will be effective and integrated into the existing Code upon approval by the Board of County Commissioners following a public hearing.

C. Motion for Denial:

In the case of W16-001 – Land Development Code Amendment, Chapter 12 Specific Regulations, modification of Section 12-1900, Oil and Gas Facilities, the Planning Commission has read the proposed code amendment and staff report and has considered additional information presented during the public hearing. We do not find ourselves in agreement with Staff findings set forth in the Staff report dated September 19, 2016, and therefore recommend the Board of County Commissioners **deny** the application **based on the following findings:**

1. *State new or amended findings to support a motion for denial as part of the motion.*

D. Motion to Continue:

In the case of W16-001 – Land Development Code Amendment, Chapter 12 Specific Regulations, modification of Section 12-1900 Oil and Gas Facilities, I move to **continue** the [public hearing for] [action on] this item to [Date, 2016], date certain, 6:30 p.m., at this same location [to obtain additional information] [to further consider information presented during the public hearing].

Attachments

- Proposed text revisions to the Arapahoe County Land Development Code, Section 12-1900
- List of referral agencies contacted.
- Letter of Support from the Clean Energy Collective.

SECTION 12-1900 ENERGY FACILITIES

12-1901 INTENT and APPLICABILITY

- A. The intent of this Section 12-1900 is to describe the Use by Special Review process and approval criteria for Energy Facilities. Notwithstanding any other language in the Land Development Code to the contrary, an Energy Facility or related site preparation or development, including any such Facility that requires a Colorado Oil and Gas Conservation Commission (“COGCC”) permit, may not commence without first obtaining Use by Special Review approval, regardless of the zone district or category in which the operation will be located. Energy Facilities are specifically allowed in all zone districts, including Planned Unit Developments, subject to Use by Special Review approval and subject to obtaining other required permits and approvals, unless and to the extent otherwise stated in these regulations.
- B. The administrative Use by Special Review and the Memorandum of Understanding process available as provided under this Section of the Land Development Code shall apply only to an Oil and Gas Facility or Facilities as defined in Chapter 19 of this Land Development Code and to Solar Facility or Facilities as defined in Chapter 19 of this land Development Code.
- C. Nothing in this Section of the Land Development Code is intended to waive or modify any applicable provision of the Arapahoe County Regulations Governing Areas and Activities of State Interest (1041 Regulations).

12-1902 RELATIONSHIP TO SECTION 13-900

This Section provides an Administrative Use by Special Review approval process for Energy Facilities where an applicant has executed an acceptable Memorandum of Understanding (“MOU”) with the County and meets other administrative approval criteria, as set forth in further detail below. An Administrative USR is not available for any Solar Facility or Facilities that exceed two megawatts (2 MW) in power generation or twenty (20) acres in size. In the event that an applicant has executed an MOU and obtains approval for an Administrative Use by Special Review for a particular Energy Facility, compliance with the procedures and criteria in Section 13-900 (Use by Special Review) is not required. In other situations, in order to obtain Use by Special Review approval, the applicant must comply with the provisions of Section 13-900 (Use by Special Review), except to the extent modified in 12-1912 of this Section or waived by the Public Works and Development Department (“PWD”) Director or the Board of County Commissioners (“Board”) in accordance with the authority provided in this Land Development Code.

12-1903 ADMINSTRATIVE APPROVAL CRITERIA

In order to obtain Administrative Use by Special Review approval, an Energy Facility shall first satisfy the following criteria, except to the extent waived by the PWD Director or by the Board:

12-1903.01 Memorandum of Understanding

An MOU acceptable to the County must have been executed by the applicant and the County and currently be in full force and effect, and the Energy Facility as proposed must be in compliance with the provisions of the MOU.

12-1903.02 Satisfy Submittal Requirements

The application and exhibits for the Administrative Use by Special Review must satisfy all applicable submittal requirements in this Section.

12-1903.03 Environmental/Public Health and Safety Impacts

The Energy Facility as proposed for approval shall not involve any site specific conditions that present significant and material impacts to public health, safety or welfare, or the environment, that cannot be adequately mitigated through conditions agreed to by the applicant in the MOU or by conditions imposed upon the Administrative Use by Special Review approval.

12-1903.04 Emergency Service Providers

The Energy Facility applicant must provide a commitment to serve (“will serve”) letter from the authority having jurisdiction for providing emergency services (fire protection and emergency medical services) for that facility, or, where no authority has jurisdiction, from an emergency services provider with the ability to provide such emergency services.

12-1904 ADMINISTRATIVE PROCESS

12-1904.01 Pre-Submittal Meeting

Prior to submitting an application for an Administrative Use by Special Review for an Energy Facility, the applicant is required to attend a pre-submittal meeting with representatives of the PWD, unless waived. At the pre-submittal meeting the applicant will receive direction from County staff that will assist in preparing a complete application for submittal to the County. The applicant will need to obtain a list of applicable referral entities that will be sent a referral packet.

12-1904.02 Review for Completeness

Upon receipt of an Energy Use by Special Review application and fee, referral packets and associated application materials, the Planning Division staff of the PWD shall review the materials submitted to determine if the application is complete and consistent with the standards set forth in this Section.

12-1904.03 Concurrent Referral and Review

County staff will refer the complete application for a fourteen (14) working day review by the various divisions of the PWD and the County Attorney's Office, as deemed appropriate. An application may require review by outside agencies such as the U. S. Army Corps of Engineers, if the project impacts a floodplain, and may also be referred to any life-safety providers, adjacent jurisdictions, local public health department, and others as may be deemed appropriate.

12-1904.04 Address Deficiencies

The applicant will be notified of any outstanding issues in connection with application materials upon completion of this review and will be required to address any issues or deficiencies in connection with the application materials. If necessary, a meeting will be held to discuss any issues that need to be resolved. If necessary, the applicant will then submit an amended application, plan or other submittals, as appropriate, to the County for verification that deficiencies have been addressed by the

applicant. If the above described outstanding issues cannot be resolved, the PWD Director may refer the case to the Board for its consideration.

12-1904.05 Final Review

Upon acceptance of the final copy of the application and exhibits by the PWD, the application materials will be forwarded for final review by the PWD Director.

12-1905 ADMINISTRATIVE SUBMITTAL REQUIREMENTS

A Submittal Requirements Matrix is available from the Planning Division outlining the complete list of submittal items and the proper number of documents. Other submittal requirements may be required based on Planning Division review. The following items are required as part of an Energy Facility application submittal:

12-1905.01 Pre-Submittal Notes or Waiver

Notes from the pre-submittal meeting pertaining to the application, or signed waiver of pre-submittal meeting form.

12-1905.02 Application Form

A completed Energy Facility application form. Application forms are available from the PWD.

12-1905.03 Application Fees

Application Fee Schedules are available from the PWD.

12-1905.04 Plan

An Energy Facility Plan drafted in accordance with 12-1906 of this Section.

12-1905.05 Engineering Documents

The following Technical Engineering documents are required by the Engineering Services Division of the PWD unless otherwise waived by the Engineering Services Division staff:

12-1905.05.01 Construction Plans

If applicable, Construction Plans for the proposed Energy Facility public improvements including road plan and profile sheets, storm drainage improvements plans and other public improvements, prepared in accordance with the latest version of the Arapahoe County Infrastructure Design and Construction Standards and Stormwater Management Manual.

12-1905.05.02 Pavement Design Report

If applicable, a Pavement Design Report prepared in accordance with the latest version of the Arapahoe County Infrastructure Design and Construction Standards.

12-1905.05.03 Grading Erosion and Sediment Control

If applicable, a Grading, Erosion, Sediment Control Report and Plan as defined in the latest version of the Arapahoe County Grading, Erosion, and Sediment Control (“GESCC”) Manual.

12-1905.05.04 Truck Traffic Report

A Truck Traffic Report prepared in accordance with the latest version of the Arapahoe County Infrastructure Design and Construction Standards for Traffic Impact Studies. Such report shall also identify the source and location of any water to be used by the Energy Facility.

12-1905.05.05 Drainage Study/Technical Drainage Letter/Plan

If applicable, a Drainage Study/Technical Drainage Letter/Plan prepared in accordance with the latest version of the Arapahoe County Stormwater Management Manual.

12-1905.05.06 Floodplain Modification Study

A Floodplain Modification Study prepared in accordance with the latest version of the Arapahoe County Stormwater Management Manual, if the proposed Energy Facility construction disturbance or operation encroaches into the 100-year floodplain, or the access is crossing a major drainageway as defined by the latest version of the Arapahoe County Stormwater Management Manual.

12-1905.06 Surface Owner Documentation

Documentation, if any, as to whether the surface owner has authorized the proposed Energy Facility. Applicants for a Solar Facility or Facilities where the owner of the proposed facility or facilities is not the owner of the underlying real estate shall provide a copy of the lease or other legal documentation from the owner authorizing the Facility or Facilities on the property.

12-1905.07 Additional Information

Additional information may be requested by the PWD Department as deemed appropriate to process the application and the PWD Director may also waive the submittal of any information required above as deemed appropriate.

12-1906 ENERGY OPERATIONS PLAN

12-1906.01 Plan Format

All plans will be 11" x 17" (for areas less than one acre) or 24" x 36" (for areas greater than one acre) format. No plans shall contain copyright restrictions or public use restrictions.

12-1906.02 Cover Sheet

The cover sheet shall have a title block with the reference to an Administrative Use by Special Review, project name, and location by section, township and range. The cover sheet shall also include a legal description of the area, date of the drawing, existing zoning of the site, a sheet key, a vicinity map with north arrow (scale of 1" = 2,000' preferred) with an emphasis on the major roadway network within two (2) miles of the proposal, and all applicable County notes, an approval signature block and a block to insert the State of Colorado permit number when approved and when applicable. Upon approval, the first sheet will be signed by the PWD Director.

12-1906.03 Impact Area Map

The second sheet shall contain an Impact Area Map that shows the proposed location of the Energy Facility, locations of all existing energy facilities or equipment within the one-mile impact area, locations of all water wells within ½ mile of the proposed Energy Facility, and all existing and proposed roads within the one-mile impact area. For purposes of this paragraph, energy facilities or equipment shall include, but not be limited to, other oil and gas facilities, other solar facilities, power transmission lines, electric substations, natural gas transmission lines, and other similar such energy facility equipment or energy production sites.

12-1906.04a Operation Plan for Oil & Gas Facilities

The third sheet shall provide a site plan of drilling) operations and drilling equipment with existing and proposed finished-grade topography at two-foot (2') contours or less tied to a datum acceptable to the County. The applicant shall verify current information regarding what datum is acceptable to the

County, prior to submitting the application for the Administrative Use by Special Review. The layout of the equipment may be shown as a typical plan, if the County deems it appropriate for the extent of development of the proposed Oil and Gas Facility.

12-1906.04b Operation Plan for Solar Facilities

The third sheet shall provide a site plan of operations and equipment with existing and proposed finished-grade topography at two-foot (2') contours or less tied to a datum acceptable to the County. The applicant shall verify current information regarding what datum is acceptable to the County, prior to submitting the application for the Administrative Use by Special Review. The layout of the equipment may be shown as a typical plan, if the County deems it appropriate for the extent of development of the proposed Solar Facility.

12-1906.05a Production Plan for Oil & Gas Facilities

The fourth sheet shall provide a site plan of production operations with production equipment (stays in) with existing and proposed finished-grade topography at two-foot (2') contours or less tied to a datum acceptable to the County. A seed mix shall be provided for reseeding the project area. Equipment layout may be a typical plan appropriate to the degree of development for the Energy Facility submitted for approval.

12-1906.05b Production Plan for Solar Facilities

A production plan for Solar Facilities is not applicable; however, a seed mix shall be provided on the Operation Plan for reseeding the project area upon decommissioning the facility.

12-1906.06 Signage Plan/Sign Detail

A dimensioned Signage Plan or Sign Detail shall be included on one of the sheets describing and illustrating the appearance, size, location, type, color, material, and illumination of all signs. Directional signs for emergency responders and inspectors shall be included, along with a 24-hour, 7-days per week contact information to deal with all noise, traffic, or other complaints.

12-1906.07 Approved Plan

Once the review process is complete and staff has determined that all outstanding issues have been resolved, staff will request a final copy of the Energy Operations Plan for the Oil and Gas Facility or Solar Facility, as applicable. The final copy of the Approved Energy Operations Plan shall be on paper (as opposed to Mylar). The drawing shall contain the information listed above unless otherwise specified by the County staff.

12-1907 NOTICE OF APPLICATION REQUIREMENTS

The applicant shall provide written notification by U.S. Mail to owners of parcels adjacent to the parcel on which the Energy Facility is proposed that an application for an Administrative Use by Special Review for an Energy Facility has been filed with the County. The Notice of Application shall meet the format prescribed by the County and shall be mailed at or no more than 30 days before the time of filing the application with the County. The property owner of record, as identified in the County Assessor's property records, shall provide the basis for notifications.

12-1908 APPROVAL/DENIAL OF ADMINISTRATIVE USE BY SPECIAL REVIEW

12-1908.01 Action to Approve, Conditionally Approve or Deny

Unless there are any issues that have not been resolved by the applicant, the County will exercise its best efforts to process the Administrative Use by Special Review for an Energy Facility within thirty (30) working days from the date of complete submittal by the applicant, or at such time as proof of any applicable State of Colorado permit approval is provided, whichever is later. The Administrative Use by Special Review can be administratively approved, approved with conditions or denied. Written notice of the decision shall promptly be provided to the applicant, and, if denied, the notice shall include a statement of the reason(s) for denial. The thirty (30) working day timeframe counts only as the County's processing time and does not include the applicant's response time.

12-1908.02 PWD Director's Discretion to Refer to the Board

In lieu of the PWD Director making a decision on an application, the Director has the discretion to refer any application for Administrative Use by Special Review or amendment thereto to the Board for its consideration and decision at a public hearing. In such event, the Board shall make its determination based upon the requirements of this Section; however, unless waived by the Board, compliance with the notice requirements set forth in Sections 13-905.02 A. and 13-905.03 B. is required prior to the Board hearing. At such public hearing, the Board may approve, approve with conditions, or deny the application.

12-1908.03 Expiration of Approval

An approval of the Administrative Use by Special Review for Energy Facilities shall only be valid for five (5) years unless the Energy Facility is substantially commenced prior to the expiration of such timeframe.

12-1908.04 Permits Required Prior to Commencement of Operations

If applicable, an Access Permit, GESC Permit, and Oversize/Overweight Vehicle Permit shall be required prior to the development of an Energy Facility. A Floodplain Development Permit shall be required prior to any work within a floodplain. A Building Permit may be required prior to construction of certain structures within the Energy Facility.

12-1909 APPEAL OF DECISION ON APPLICATION FOR ADMINISTRATIVE USE BY SPECIAL REVIEW

An applicant may appeal the PWD Director's denial of an application for an Administrative Use by Special Review for an Energy Facility, or any conditions of approval, to the Board of County Commissioners for a *de novo* hearing. The applicant must file the appeal within fourteen (14) calendar days of the date of the Director's decision by submitting a letter of appeal to the Planning Division Manager. Thereafter, the matter will be scheduled on the next available agenda of the Board. At such hearing, the Board may affirm, reverse or modify the decision of the PWD Director, based upon the criteria set forth in Section 12-1903.

12-1910 MOU PROVISIONS AS CONDITIONS OF APPROVAL

An approval of an Administrative Use by Special Review for an Energy Facility shall automatically include as conditions of approval all provisions of the MOU executed by the applicant, except to the extent waived by the PWD Director or the Board.

12-1911 ADMINISTRATIVE AMENDMENT

If the applicant or operator proposes changes from the plans approved through the Administrative Use by Special Review, including and not limited to any changes in the source or location of water to be used by

the Energy Facility, the applicant or operator is required to submit an amendment to the application showing the changes, unless such requirement has been waived by the PWD Director. The proposed amendment will be reviewed by PWD staff and, if applicable, PWD Staff may require additional information. The amended application will need to meet all requirements of this Section and be approved in writing by the PWD Director, or the Board (if the Board approved the original application), prior to implementation.

12-1912 NON-ADMINISTRATIVE APPROVAL PROCESS

Use by Special Review approval for an Energy Facility may also be requested through the process described in Section 13-900 of this Code, subject to the following modifications:

12-1912.01 Plan Format

The site plan shall comply with the requirements of Section 12-1904 above in lieu of the provisions of Section 13-904. In addition, the final document shall be submitted in paper form instead of Mylar, notwithstanding the language of Section 13-905.06.

12-1912.02 Other

The applicant shall not be required to submit a letter from a water and sanitation district, notwithstanding the language of Section 13-903.07, and shall not be required to comply with Section 13-903.08.

12-1912.03 Expiration of Approval An approval of a Use by Special Review shall only be valid for five (5) years unless the Energy Facility is substantially commenced prior to the expiration of such timeframe.

12-1913 STATE AND COUNTY APPROVALS REQUIRED

Development of the Energy Facility shall not commence until and unless any required permits from the state, and a Use by Special Review (administrative or non-administrative) from the County, have both been approved.

September 16, 2016

Ms. Diane Kocis
Arapahoe County Planning Division
6924 South Lima Street
Centennial, CO 80112

Re: Administrative Review and Approval for Solar Energy Production Facilities

Dear Ms. Kocis,

I recently processed a Use by Special Review application for a 2 MW solar power generation facility in Arapahoe County. While the process went smoothly, Clean Energy Collective would certainly support an administrative process for review and approval for solar facilities.

Having worked with the Arapahoe County Planners on various land use applications through the years, I can attest to their professionalism and attention to detail that would be required for such an administrative process for reviewing and approving solar facilities. Several counties along the Front Range had gone to such a process and it seems to be working very well for both the counties and the solar industry. I was recently involved in assisting Weld County review and modify their land use process for solar installations. After Weld County approved their new land use process, I filed an application for a 2 MW solar installation and found their new processes and procedures to work quite well. Jefferson County has also recently modified their land use regulations to be an administrative process and a permitted use in most zone districts.

Clean Energy Collective is fully supportive of your efforts and I would like to offer to help the Arapahoe County Planning staff with the modifications to their land use regulations, if such assistance is desired. I am also available to speak at any Planning Commission or Board of County Commissioners' public hearings, if you think that would be helpful. Please keep me updated on your progress and let me know if I can be of any assistance with this effort.

Best regards,



Richard L. Miller, AICP
Land Manager
e-mail: richard.miller@easycleanenergy.com
Phone: 303.809.2128



The Clean Energy Collective is a new idea in power generation. A member-owned cooperative venture that builds and operates centralized clean power-generation facilities at the community level.

go ahead. power up.

List of Referral Agencies Case Number W16-001

Land Development Code Amendment Section 12-1900 from Oil and Gas Facilities to Energy Facilities

Arapahoe County Agencies

Assessor's Office
Building
Engineering
Mapping
Oil and Gas
Open Space
Sheriff
Zoning

Referral Agencies

City of Aurora
Town of Bennett
City of Centennial
City of Cherry Hills Village
Town of Columbine Valley
Town of Foxfield
City of Glendale
City of Greenwood Village
Town of Deer Trail
City of Denver
City of Englewood
City of Littleton
City of Lone Tree
Town of Parker
City of Sheridan

Colorado Parks and Wildlife

Adams County
Douglas County
Elbert County
Jefferson County
Weld County

Regional Economic Advancement Partnership

State Land Board

Tri-County Health Department

Utilities

Centurylink
IREA
XCEL Energy

Water/Sanitation/Stormwater/Wetlands

US Army Corps of Engineers

Urban Drainage

Other

East End Advisory Committee

MEMORANDUM OF UNDERSTANDING

For Solar Energy Facilities

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of _____, 2016, by and between Arapahoe County, a Colorado County (“County”) with an address of 5334 S. Prince St., Littleton, Colorado 80120 and _____ (“Operator”), with an address of _____ . The Operator and the County may be referred to individually as a “Party” or collectively as the “Parties.”

BACKGROUND

A. Operator is the owner and/or developer of Solar Energy Facilities (“Facilities”) within unincorporated parts of the County, and, as of the time of the execution of this MOU, has the right and intent to further develop its community solar projects within unincorporated portions of the County.

B. The intent of this MOU is to provide the conditions under which Operator will develop and operate future community solar projects or newly expanded Facilities in the unincorporated portions of the County, in order to foster the efficient and economic production of renewable energy resources, to protect human health, safety and welfare and to protect the environment and wildlife resources, while at the same time providing for a predictable and expeditious administrative process for obtaining County land use approvals and permits for Solar Energy Facilities. The terms Solar Energy “Facility” or “Facilities” are defined here as including solar panels, racking structures, inverters, transformers, overhead or underground wiring, and associated roads for electrical energy production of up to two (2) megawatts (MW). The construction of any new transmission lines or the relocation of existing lines required for connection to the Facility is not authorized by this MOU or the administrative USR process, and will be subject to review under County 1041 and/or other applicable laws and regulations.

NOW, THEREFORE, the Parties agree as follows:

1. Intent to Supplement County Rules and Regulations. The Parties recognize that pursuant to the Arapahoe County Land Development Code Section 13-900 as well as criteria set forth in the 1041 Regulations (“Code”) the County regulates the development of Solar Energy Facilities. The provisions of this MOU are intended to supplement and add to the County’s rules and regulations. To the extent that any of the provisions of this MOU are in conflict with the Code rules and regulations, the stricter standards shall govern.

2. Land Rights, Permits and Approvals. Prior to any commencement of construction, Operator will obtain all necessary property rights and obtain utility award and interconnection agreement, in addition to any Arapahoe County Planning Division and/or Engineering Division approvals.

3. Regular Meetings to Monitor and Discuss MOU Issues. The County and Operator agree to meet as necessary, or at least once a year, to monitor and discuss any pertinent issues associated with Solar Energy Facilities within the County.

4. Water Quality. Operator will consider all relevant Federal and State water quality plans in Facility design and operation.

5. Weed Control and Management. Operator will be responsible for noxious weed control on any Facility, or disturbed area, from the construction phase to the decommissioning of the Facility. Operator will observe and enforce all applicable County noxious weed control ordinances throughout the operational cycle of the Facility.

6. Noise. The operator will follow all applicable State laws, County noise ordinances or resolutions during construction and operation of the Facility.

7. Emergency Response Plan. Operator will provide the County with an Emergency Response Plan (ERP) to address all potential emergencies that may be associated with a solar Facility. Operator shall also provide a copy of such plan to all emergency service providers that would respond to such emergencies. A “will-serve” letter must be obtained from the appropriate emergency provider(s).

8. Engineering Services Division Requirements. All Engineering Services Division requirements must be fully met. This MOU does not eliminate any Engineering Services requirements including but not limited to all of the following, as applicable:

- a. Drainage – Arapahoe County Stormwater Management Manual (SWMM)
- b. Stormwater Detention – SWMM Chapter 13
- c. Stormwater Quality – SWMM Chapter 14
- d. Floodplain – SWMM Chapter 5
- e. Public Roads – Arapahoe County Infrastructure Design & Construction Standards (IDCS) Chapter 4
- f. Private Roads – IDCS Section 4.11
- g. Grading, Erosion and Sediment Control (GESCC) – Arapahoe County Grading, Erosion and Sediment Control Manual
- h. Traffic Impact Study (TIS) IDCS Appendix B
- i. Right of Way Access – IDCS Chapter 11
- j. Rural Roadways – Arapahoe County Rural Engineering Standards
- k. Pavement Design – IDCS Chapter 5

9. Height. Solar equipment required for the project will not exceed twelve (12) feet above surface grade. This does not include electrical interconnection equipment and pole lines that may be required by the public utility to interconnect to the electrical grid.

10. Screening and Buffering. The Operator must choose one of the following four screening or buffering options when the facility abuts a residentially zoned district, residential property, rural residential zoned property or County arterial roadway or collector.

1. Setback from the property line to the edge of the solar modules. The minimum distance of the any required setback from the property line shall be determined on a case by case

basis as appropriate and shall approved by the Director of Public Works and Development.

2. Screen fence such as cedar fence, chain link fence with interwoven slats, or other fence solution approved by the Director of Public Works and Development that will screen visual impact of solar equipment.
3. A landscape buffer to mitigate visual impact of solar equipment.
4. A raised berm, with xeriscape features, that is a minimum of fifty (50) percent of the height of solar equipment.

If the facility is located in a rural area that does not abut a residential zoned district, arterial roadway or collector, or any other land use that may be impacted, screening will not be required.

11. Biological Resources. The operator shall avoid any Federal and/or State Threatened and Endangered Species habitat, as well as State Species of Concern that exist in areas where the Facility will be constructed. If any Federal and/or State Threatened and Endangered Species or any State Species of Concern, is found to exist in areas where the Facility will be constructed, then the operator will collaborate with Colorado Parks and Wildlife (CPW) to mitigate and minimize any potential impact to these species. Arrangements with CPW will be completed prior to application with the County.

12. Wetlands, Army Corps of Engineers and 404 Requirements. The operator will adhere to all permits and obligations required by the Army Corps of Engineers for wetlands and Waters of the United States if applicable.

13. Historical and Cultural Resources. The operator will avoid any areas identified as being of paleontological, historic, or archaeological importance. If avoidance is not possible, further testing will be conducted with landowner's permission to determine the site's eligibility for historic status and a treatment plan will be developed that will be followed to protect eligible sites.

14. Lighting. All permanent lighting of shall be directed downward and internally.

15. Fencing. Standard fencing around the Facility will be a maximum of eight (8) foot, meet the safety requirements of the National Electric Code, and will comply with Arapahoe County Fence Regulations.

16. Decommissioning. Once the Facility is no longer operational, the operator will remove all ground equipment and foundations, at the operator's expense, and leave the site in a similar condition that it was prior to the installation of the Facility. Removal will be complete within one year of ceasing operations. Reestablishment of all disturbed areas, including the construction access, shall maintain the historic drainage patterns and ground cover. The County will determine if decommissioning, including revegetation, has been completed sufficiently.

17. County Inspections. Operator agrees to allow County access to all Facilities for inspection, provided County personnel are equipped with all appropriate personal protection equipment (PPE), the personnel comply with the Operator's other and customary safety rules, and, except to the extent allowed by law, the County is responsible for all costs and expenses of such inspections. The County shall use its best efforts to provide advance notice to the Operator prior

to an inspection; however, the County reserves the right in its discretion to make spot inspections or to inspect without notice in the event of an issue potentially involving an immediate risk to public safety, health or welfare or damage to the property of another.

18. County Land Use Approvals. The Operator understands and agrees that prior to the development or operation of any solar Facility in unincorporated portions of the County, that Operator must first obtain approval from the County pursuant to any validly adopted provisions in the Land Development Code. As part of the process and approval, Operator will request a pre-application meeting with the County and notify neighboring property owners within one-quarter (1/4) mile of the boundary of the parcel on which the Facility is located by letter, before or within five (5) days of having submitted a land use application with Arapahoe County. The Operator agrees and consents that the provisions of this MOU are to be included among any conditions for the issuance of any land use approval or permit issued by the County under its Land Use Development Code (LDC), unless, and to the extent, waived or modified in writing by the Director of the Arapahoe County Public Works and Development Department, or waived or modified on the record at a public hearing before the Arapahoe County Board of County Commissioners; further, the Operator understands and agrees that the provisions of this MOU shall remain conditions of such land use approval or permit regardless of the subsequent sale or other transfer of any solar Facilities, or interest therein, by the Operator.

19. Applicability. This MOU shall only apply to Solar Energy Facilities under two (2) megawatts (MW) alternating current. This MOU shall not be construed to apply to solar Facilities for which another operator applies for a permit even though the Operator may have an interest but is not the Operator. Additional Facilities may be exempted from some or all of the terms of this MOU, but only if approved in writing by the Director of the Arapahoe County Public Works and Development Department or approved on the record at a public hearing before the Arapahoe County Board of County Commissioners.

20. Compliance with Applicable Federal, State, and Local Laws and Regulations. The Operator shall operate the Facility in compliance with all applicable federal, state, and local laws and regulations.

21. Term. This MOU is effective upon the execution by both Parties and shall remain in effect so long as Operator, its subsidiaries, successors or assigns, are engaged in the development or operation of solar Facilities within the unincorporated portions of the County; provided, however, this MOU may be terminated by either Party with thirty (30) days prior written notice to the other Party. If there is a new development in state law, rules or judicial decisions that substantially affect any provision of this MOU, the Parties agree to negotiate in an attempt to update this MOU in light of same by a written amendment executed by both Parties. In the event this MOU expires or is otherwise terminated, the substantive requirements stated in this MOU shall survive and remain enforceable against the owner or operator of any solar Facilities that were permitted or otherwise approved during the term of this MOU, except to the extent waived or modified pursuant to the provisions of this MOU.

22. Obligation of Funds. Nothing in this MOU shall commit either Party to obligate or transfer any funds to the other.

23. Force Majeure. Neither Party will be liable for any delay or failure in performing under this MOU in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, or any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

24. Authority to Execute MOU. Each Party represents that it has the full right and authority to enter into this MOU.

25. Governing Law. This MOU shall be governed and construed in accordance with the laws of the State of Colorado and the Arapahoe County Land Development Code without reference to its conflict of law provisions.

26. Entire Agreement. Except as expressly set forth herein, this MOU embodies the complete agreement between the Parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements, or representations by or between the Parties, written or oral, which may have related to the subject matter hereof. No amendment to this MOU shall be effective unless in writing, signed by the Parties.

27. Third Party Beneficiaries. Except as specifically stated herein, this MOU is not intended to, and does not, create any right, benefit, responsibility or obligation that may be enforced by any non-party.

28. Notices. All notices and other correspondence related to this MOU shall be in writing and shall be delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), (iii) fax transmission if verification of receipt is obtained, or (iv) email with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

County:

County:

Operator:

29. Subsidiaries/Successors. The provisions of this MOU shall apply to all subsidiaries and successors-in-interest of the Operator with respect to any solar Facilities permitted or otherwise approved during the term of this MOU.

30. Default. If a Party defaults in the performance of an obligation under this MOU, the defaulting Party shall have ten (10) days to cure the default after receipt of written notice of such default from the non-defaulting Party, provided the defaulting Party shall be entitled to a longer cure period if the default cannot reasonably be cured within thirty (30) days and the defaulting Party commences the cure within such ten (10) day period and diligently pursues its completion; however, in the event that the default involves an issue that could have an immediate impact on public health, safety or welfare, or cause damage to property of another, the defaulting party shall immediately begin action to cure the default. Each alleged default shall be treated separately under this paragraph and notice of an alleged default shall not affect the processing of permit applications while the notice is being evaluated, contested or corrected. In the event of a default, the Parties shall be entitled to seek specific performance as well as any other available remedies.

31. Jurisdiction: Waiver of Rights. The parties acknowledge, understand and agree that this agreement shall not be used as evidence that either party has waived any rights to assert its claims concerning the validity or extent of the County's land use jurisdiction. Nothing in this agreement shall be construed as an admission regarding the existence of proper jurisdictional authority or waiver by either party of any legal right or obligation, nor shall anything be construed as a bar to either party to seek any legal remedy available to it. The Operator agrees, however, that it will not exert jurisdictional or preemption arguments with respect to the specific performance obligations contained in this MOU.

