

SECTION 12-1900 ENERGY FACILITIES

(Amended 11/15/2016 from 12-1900 Oil and Gas Facilities and added small solar 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 ADMINISTRATIVE 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, operation or access encroaches into a 100-year floodplain or 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.