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El Paso County, CO



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RESOLUTION NO. 19-111

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

APPROVE GRAZING YAK SOLAR ARRAY WIND AND/OR SOLAR ENERGY
GENERATION PLAN OVERLAY DISTRICT REZONE (WSEO-18-002)

WHEREAS, Grazing Yak Solar, LLC, and NextEra Resources, LLC, did file a petition with the Planning and Community Development Department of El Paso County to rezone the herein described property in El Paso County from the A-35 (Agricultural) zone district to the WSEO (Wind/Solar Energy Overlay) zone district; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on March 5, 2019, upon which date the Planning Commission did by formal resolution recommend approval of the subject Zone change petition with; and

WHEREAS, a public hearing was held by this Board on April 9, 2019; and

WHEREAS, based on the evidence, testimony, exhibits, study of the master plan for the unincorporated area of the county, recommendations of the El Paso County Planning Commission, comments of the El Paso County Development Services Department, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

Proper posting, publication, and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners of El Paso County.

The hearings before the Planning Commission and the Board of County Commissioners were extensive and complete, all pertinent facts, matters and issues were submitted and reviewed, and all interested parties were heard at those hearings.

The proposed zoning is in compliance with the recommendations set forth in the Master Plan for the unincorporated area of the county.

The proposed land use will be compatible with existing and permitted land uses in the area.

The proposed land use does not permit the use of any area containing a commercial mineral deposit in a manner, which would interfere with the present or future extraction of such deposit by an extractor.

For the above-stated and other reasons, the proposed Zoning is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED that the petition of Grazing Yak Array – Wind and/or Solar Energy Generation Plan Overlay District Rezone for a zone change from the A-35 (Agricultural) zone district to the WSEO (Wind/Solar Energy Overlay) zone district for the following described unincorporated area of El Paso County be approved as described in Exhibit A, which is attached hereto and incorporated by reference;

BE IT FURTHER RESOLVED the following conditions/notation shall be placed upon this approval:

CONDITIONS OF APPROVAL

1. Prior to excavation or construction, approval of a site development plan by El Paso County for the solar energy generation facility is required. Site development plan applications shall include, but are not limited to the following information:
 - a. Site development plan drawings;
 - b. Final drainage report;
 - c. Stormwater Management Plan (SWMP);
 - d. Erosion and Stormwater Quality Control Permit (ESQCP);
 - e. Any permits required by the Colorado Department of Public Health and Environment, if needed;
 - f. Detailed reseeding plan;
 - g. Lighting plans and detailed specifications, including plans and specifications for temporary lighting, as applicable;
 - h. Sign plans, if signage is proposed;
 - i. Elevations of any above ground structures;
 - j. Emergency response plan, to be prepared in coordination with and acceptable to the El Paso County Office of Emergency Management;
 - k. Noxious weed management plan, to be prepared in coordination with and acceptable to El Paso County Environmental Services; and
 - l. Colorado Department of Health and Environment (CDPHE)-accepted surface and groundwater quality monitoring plans, if required;
2. The applicant shall provide copies of all required State and County air quality permits prior to approval of a site development plan application.

3. The applicant shall comply with all applicable local, State, and Federal laws and regulations regarding the use, disposal, storage, and transportation of solid and/or hazardous materials on and off site.
4. A County Erosion and Stormwater Quality Control Permit (ESQCP) shall be obtained prior to construction. All disturbed areas shall be promptly stabilized and re-vegetated in accordance with Best Management Practices (BMPs) as outlined in the Drainage Criteria Manual, Volume II.
5. The Board of County Commissioners, at a public hearing, shall have the authority to require the shutdown, removal, and/or relocation of any glare-causing component or components if the Board finds that any such component or components is/are creating a health and/or safety risk. Such shutdown, removal, and/or relocation requirement by the Board shall be based upon documented inspection of the facility by a County official.
6. The hours of operation during the construction and long term maintenance of the project shall be limited to seasonal day time hours unless otherwise authorized by the Planning and Community Development Department Director prior to the proposed construction and/or maintenance. Requests to conduct nighttime construction activities shall be submitted to the Planning and Community Development Department Director at least two business days prior to the time of the proposed construction. Any failure to respond to the requests by the Planning and Community Development Department Director within two business days shall be interpreted as an approval of the request.
7. Site lighting, including temporary lighting, will be limited to that characterized in the Project Lighting Memo and Lighting Plan. The detailed specifications shall be provided at the site development plan stage. All light fixtures shall be directional and positioned so that the light sources are concealed and fully shielded from adjacent properties and roadways, unless otherwise specifically authorized under the regulations of the Occupational Safety and Health Administration (OSHA) of the United States Environmental Protection Agency.

8. The Board of County Commissioners may elect at an open and public hearing, following full published notice, to approve a rezoning of the properties included within the WSE-O boundary for the purpose of removing the overlay zoning if the applicant has not initiated construction within two (2) years of the date of Board of County Commissioners approval.
9. Any approval of the WSE-O rezoning request is only valid with the additional approval of a 1041 permit. Failure to submit and receive approval of the 1041 permit shall render approval of the WSE-O rezoning null and void.
10. The Applicants shall provide notice to the Planning and Community Development Department of the date of initial delivery of power to the existing utility distribution system within 30 days following such date.
11. At least six (6) months prior to the initiation of decommissioning activities, Developer shall prepare a Project Decommissioning and Site Restoration Plan ("PDSRP") prepared in sufficient detail to identify, evaluate, and resolve all major deconstruction, environmental, hauling, and public health and safety issues reasonably anticipated by the Developer on the date thereof and submit the same to the County for review and approval. The PDSRP shall describe the process that will be used to evaluate the options and select the measures that will be taken to restore, reclaim, or preserve the project site and to otherwise ensure the protection of the public against risks or dangers resulting from the project decommissioning. The PDSRP shall address provision for funding or bonding arrangements to meet the project site restoration or management costs and it shall include an estimate of market value of the equipment and salvage value of all other equipment and materials that do not have value at resale.
12. The Applications, their successors or assigns, as the case may be, shall provide financial assurances sufficient for decommissioning costs in the form of a performance bond, guaranty or letter of credit, or cash to ensure the availability of funds for such costs to El Paso County no later than five (5) years prior to the termination of the delivery of power as identified in the power purchase agreement. An updated engineering estimate of the amount of the decommissioning costs shall be provided by the Developer to the County at least sixty (60) days and

no sooner than ninety days prior to providing financial assurances to the County. If decommissioning should occur prior to the termination of delivery of power identified in the power purchase agreement, an updated engineering estimate of the amount of the decommissioning costs shall be provided by the Applicants to the County at least 60 days and no sooner than 90 days prior to the start of decommissioning activities.

13. Any expansion, enlargement, or modification of the WSE-O Plan shall be subject to the provisions of Sections 4.3.5.E and F, as amended, of the El Paso County Land Development Code.
14. Development of the project shall be conducted in accordance with the regulations of El Paso County, conditions of approval and notations of the Board of County Commissioners and the accompanying documents/reports in the Planning and Community Development Department file for the rezoning application (WSEO-18-002).

NOTATION

1. If a zone or rezone petition has been disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the BoCC may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.

WAIVER

The applicants are requesting approval of a waiver of the application of Section 4.3.5.D.2 of the Land Development Code. Section 4.3.5.D.2 of the Land Development Code states that, "A development impact mitigation agreement shall be required with all wind and/or solar energy generation plan overlay district applications." Impacts to County infrastructure are anticipated to be minimal with the construction of a solar energy generation facility. Minimal, if any, impacts to adjacent property are

anticipated. Staff is not requiring impact mitigation with this application due to the minimal impacts, if any, anticipated with the project.

The applicants are requesting approval of a waiver of the application of Section 4.3.5.C.2 of the Land Development Code, which states that, "A decommissioning plan and agreement shall be required with all wind and/or solar energy generation plan overlay district applications." The applicant has provided a decommissioning agreement, which provides a decommissioning scope of work and timing. The applicants have agreed to provide a detailed decommissioning and site restoration plan, a minimum of six (6) months prior to decommissioning activities. In addition, the applicants agree to provide financial assurances at least five (5) years prior to decommissioning the facility. Staff does not have an objection to the request if Recommended Condition of Approval Nos. 11 and 12 are approved.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted.

DONE THIS 9th day of April 2019, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO


BY: Charles Broerman
County Clerk & Recorder

By: _____ ATTEST:
Chair

EXHIBIT A

PARCEL CONTAINING THE SOLAR ARRAY:

TAX ASSESSOR SCHEDULE NO. 1200000040

A PARCEL OF LAND BEING THE WEST HALF OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 61 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, LESS AND EXCEPT ANY EXISTING RIGHTS OF WAY AND ALSO EXCLUDING THE FOLLOWING PARCEL OF LAND:

THE NORTH 820 FEET OF THE WEST 2450 FEET OF THE WEST HALF OF SAID SECTION 29.

CONTAINING 271.850 ACRES, MORE OR LESS

PARCELS CONTAINING UNDERGROUND COLLECTION LINE:

TAX ASSESSOR SCHEDULE NO. 1200000040, 1200000388, 1200000387, 1200000276, 1200000056

A PARCEL OF LAND LYING WITHIN SECTION 20 AND THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 61 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, LESS AND EXCEPT ANY EXISTING RIGHTS OF WAY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS FOR THIS DESCRIPTION ARE BASED UPON THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 12 SOUTH, RANGE 61 WEST, OF THE 6TH PRINCIPAL MERIDIAN, BEING ASSUMED TO BEAR N 00°29'26" W, FROM THE SOUTH QUARTER CORNER OF SAID SECTION 20, BEING MONUMENTED BY A REBAR WITH A 2 INCH ALUMINUM CAP STAMPED PLS 38222, TO THE CENTER QUARTER CORNER OF SAID SECTION 20, BEING MONUMENTED BY A REBAR WITH A 2 INCH ALUMINUM CAP STAMPED PLS 38222, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 20, THENCE S 00°30'49" E, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 61 WEST, A DISTANCE OF 820.28 FEET;

THENCE S 89°27'20" W, A DISTANCE OF 300.00 FEET;

THENCE N 00°30'49" W, ALONG A LINE BEING 300.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 820.00 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 20;

THENCE N 00°29'26" W, ALONG A LINE BEING 300.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 20, A DISTANCE OF 2,300.49 FEET;

THENCE N 67°10'11" E, A DISTANCE OF 324.12 FEET;

THENCE S 00°29'19" E, A DISTANCE OF 31.13 FEET;

THENCE N 89°34'13" E, A DISTANCE OF 225.00 FEET;

THENCE N 00°29'19" W, A DISTANCE OF 225.00 FEET;

THENCE S 89°34'13" W, A DISTANCE OF 40.41 FEET TO A POINT OF NON-TANGENT CURVATURE;
THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 07°34'33" AND AN ARC LENGTH OF 28.43 FEET, THE CHORD OF WHICH BEARS N 02°55'53"E, A DISTANCE OF 28.41 FEET;
THENCE N 00°51'23" W, A DISTANCE OF 1,640.33 FEET TO A POINT OF CURVATURE;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 54°24'57" AND AN ARC LENGTH OF 204.19 FEET;
THENCE N 00°41'08" W, A DISTANCE OF 429.86 FEET;
THENCE S 89°18'52" W, A DISTANCE OF 150.74 FEET;
THENCE N 00°21'17" W, A DISTANCE OF 246.93 FEET;
THENCE N 90°00'00" E, A DISTANCE OF 449.34 FEET;
THENCE S 00°41'08"E, A DISTANCE OF 546.38 FEET;
THENCE S 28°46'27"E, A DISTANCE OF 191.20 FEET;
THENCE S 00°51'23"E, A DISTANCE OF 1,770.37 FEET;
THENCE S 52°25'08"E, A DISTANCE OF 49.18 FEET;
THENCE S 00°29'19"E, A DISTANCE OF 525.31 FEET;
THENCE S 89°34'13"W, A DISTANCE OF 524.78 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 20;
THENCE S 00°29'26"E, ALONG SAID EAST LINE, A DISTANCE OF 2,091.99 FEET TO THE POINT OF BEGINNING.
CONTAINING 1,980,529 SQUARE FEET OR 45.467 ACRES, MORE OR LESS.

PARCEL CONTAINING LAYDOWN YARD 1:

TAX ASSESSOR SCHEDULE NO. 1200000339

A PARCEL OF LAND BEING APPROXIMATELY 40 ACRES LYING WITHIN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 12 SOUTH, RANGE 61 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, LESS AND EXCEPT THE FOLLOWING PARCELS OF LAND:

- GOLDEN WEST SUBSTATION

THE GOLDEN WEST SUBSTATION BEING 270.00 FEET BY 170.00 FEET, LOCATED 77 FEET SOUTH OF AND 50 FEET WEST OF THE NORTH QUARTER CORNER OF SAID SECTION 20 (CONTAINING APPROXIMATELY 1.054 ACRES)

- OPERATIONS AND MAINTENANCE BUILDING

THE OPERATIONS AND MAINTENANCE BUILDING (O & M BUILDING) BEING 100.00 FEET BY 50.00 FEET, LOCATED 150 FEET SOUTH OF AND 506 FEET WEST OF THE NORTH QUARTER CORNER OF SAID SECTION 20 (CONTAINING APPROXIMATELY 0.115 ACRES).

THE NET AREA OF LAYDOWN YARD 1 IS APPROXIMATELY 38.831 ACRES, MORE OR LESS.

PARCEL CONTAINING LAYDOWN YARD 2:
TAX ASSESSOR SCHEDULE NO. 1200000387

A PARCEL OF LAND LOCATED WITHIN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 12 SOUTH RANGE 61 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEARINGS FOR THIS DESCRIPTION ARE BASED UPON THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, BEING ASSUMED TO BEAR S 00°22'13" E, FROM THE NORTHEAST CORNER OF SAID SECTION 30 BEING MONUMENTED BY A NO. 6 REBAR WITH NO CAP, TO THE EAST QUARTER CORNER OF SAID SECTION 30, BEING MONUMENTED BY A 2 INCH ALUMINUM CAP STAMPED PLS 38222, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 30, THENCE S 00°22'13" E, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 30.00 FEET TO A POINT ON THE SOUTH LINE OF WASHINGTON ROAD RIGHT OF WAY AND THE POINT OF BEGINNING;
THENCE S 00°22'13" E, ALONG SAID EAST LINE, A DISTANCE OF 1625.01 FEET;
THENCE S 89°37'47" W, A DISTANCE OF 1044.00 FEET;
THENCE N 00°22'13" W, ALONG A LINE BEING 1044.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 830.98 FEET;
THENCE N 89°37'47" E, A DISTANCE OF 1024.00 FEET;
THENCE N 00°22'13" W, ALONG A LINE BEING 20.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 794.17 FEET TO A POINT ON THE SOUTH LINE OF SAID WASHINGTON ROAD RIGHT OF WAY;
THENCE N 90°00'00" E, ALONG SAID SOUTH LINE, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.
CONTAINING AN AREA OF 883,425 SQUARE FEET OR 20.281 ACRES, MORE OR LESS

PARCEL CONTAINING GOLDEN WEST SUBSTATION:
TAX ASSESSOR SCHEDULE NO. 1200000339

A PARCEL OF LAND BEING THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 12 SOUTH, RANGE 61 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEARINGS FOR THIS DESCRIPTION ARE BASED UPON THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20, BEING ASSUMED TO

BEAR S 00°53'03" E, FROM THE NORTH QUARTER CORNER OF SAID SECTION 20, BEING MONUMENTED BY A REBAR WITH A 2 INCH ALUMINUM CAP STAMPED PLS 38222, TO THE CENTER QUARTER CORNER OF SAID SECTION 20, BEING MONUMENTED BY A REBAR WITH A 2 INCH ALUMINUM CAP STAMPED PLS 38222, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 20, THENCE S 32°03'35" W TO THE NORTHEAST CORNER OF THE SUBSTATION AND THE POINT OF BEGINNING;
THENCE S 00°21'17" E, A DISTANCE OF 270.00 FEET;
THENCE S 89°38'43" W, A DISTANCE OF 170.00 FEET;
THENCE N 00°21'17" W, A DISTANCE OF 270.00 FEET;
THENCE N 89°38'43" E, A DISTANCE OF 170.00 FEET TO THE POINT OF BEGINNING.
CONTAINING AN AREA OF 45,900 SQUARE FEET OR 1.054 ACRES, MO