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RESOLUTION NO. 19-24

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

APPROVE PALMER-WILLIAMS CREEK SOLAR ARRAY WIND AND/OR  
SOLAR ENERGY GENERATION PLAN OVERLAY DISTRICT REZONE  
(WSEO-18-001)

WHEREAS, Colorado Springs Utilities and Palmer Solar, 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 RR-5 (Residential Rural) 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 December 18, 2018, 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 January 22, 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 Palmer-Williams Creek Solar Array – Wind and/or Solar Energy Generator Plan Overlay District Rezone for a zone change from the RR-5 (Residential Rural) 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 array 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 begun 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 the concurrently reviewed 1041 permit. Failure to receive approval of the 1041 permit shall render approval of the WSE-O rezoning null and void.
10. 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.
11. Developer 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.
12. Developer, its 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 the beginning of year twenty (20) following the date of initial delivery of power. 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 year 20, an updated engineering estimate of the amount of the decommissioning costs shall be provided by the developer 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. The approval is limited to the WSE-O plan as depicted. An amendment to the WSE-O Plan shall be required prior to development of any additional phases (No future phases are proposed at this time).
15. 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-18-001).

#### **NOTATIONS**

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 Planning Commission 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.
2. Rezoning requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action will be deemed withdrawn and will have to be resubmitted in their entirety.

**WAIVER**

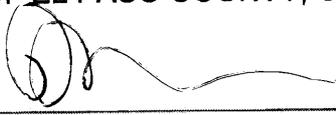
The applicant is requesting approval of a waiver of the application of Section 4.3.5.D.2 of the Land Development Code. Section 4.3.5.D.2 of the Land Development Code states that, "A development impact mitigation agreement shall be required with all wind and/or solar energy generation plan overlay district applications." Staff is not requiring impact mitigation with this application due to the minimal impacts, if any, anticipated with the project.

Rezoning requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action will be deemed withdrawn and will have to be resubmitted in their entirety.

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

DONE THIS 22<sup>nd</sup> day of January 2019, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By:  ATTEST:



**EXHIBIT A**

A parcel of land located within Sections 22, 25, 26, 27, 28, & 35, Township 16 South, Range 65 West of the 6th Principal Meridian, County of El Paso, State of Colorado, and being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 26, monumented by a 3" aluminum cap, stamped "RLS 10377," 0.5 feet above grade; thence along the East line of said Section 35, S00°45'31"E, (Basis of bearings is the West line of the Northwest 1/4 of Section 27, Township 16 South, Range 65 West of the 6th P.M., being monumented at the North end by a found 2-1/2" aluminum cap stamped "PLS 22095", flush with grade, and at the South end by a found 2-1/2" aluminum cap stamped "PLS 22095", flush with grade, and measured to bear S00°50'46"E, a distance of 2643.10 feet), a distance of 2641.45 feet, to the East 1/4 Corner of said Section 35, monumented by a 3-1/2" aluminum cap, stamped "RLS 10377," 0.5 feet above grade; thence along the South line of the Northeast 1/4 of said Section 35, S88°52'48"W, a distance of 480.69 feet; thence leaving said South line, N00°08'07"W, a distance of 1.72 feet, to the POINT OF BEGINNING; thence S88°50'09"W, a distance of 2239.08 feet; thence N06°59'54"W, a distance of 498.04 feet; thence N00°00'00"W, a distance of 1866.19 feet; thence N50°38'54"E, a distance of 475.76 feet; thence N15°31'27"E, a distance of 960.74 feet; thence N01°47'38"W, a distance of 1073.26 feet; thence N51°14'18"W, a distance of 1264.57 feet, thence N00°31'16"W, a distance of 122.37 feet; thence S89°12'01"W, a distance of 5600.78 feet; thence S32°26'06"W, a distance of 226.78 feet; thence S17°21'20"W, a distance of 138.27 feet; thence S36°31'20"W, a distance of 1212.24 feet; thence S42°41'59"W, a distance of 504.07 feet; thence S88°57'14"W, a distance of 371.36 feet; thence N00°55'13"W, a distance of 186.30 feet; thence S89°04'47"W, a distance of 768.24 feet; thence N08°32'57"W, a distance of 2499.55 feet; thence N35°16'33"W, a distance of 416.95 feet; thence N00°59'57"W, a distance of 886.83 feet; thence N90°00'00"E, a distance of 1062.83 feet; thence N78°55'28"E, a distance of 126.03 feet; thence N01°18'23"W, a distance of 1084.07 feet; thence N10°46'45"E, a distance of 780.90 feet; thence N00°00'00"W, a distance of 694.08 feet; thence N90°00'00"E, a distance of 736.94 feet; thence S48°17'37"E, a distance of 66.52 feet; thence S68°00'13"E, a distance of 316.80 feet; thence S45°52'59"E, a distance of 418.47 feet; thence S07°18'06"E, a distance of 1436.17 feet; thence S29°49'05"W, a distance of 683.40 feet; thence S56°06'29"W, a distance of 141.04 feet; thence S00°00'00"E, a distance of 141.02 feet; thence S05°11'54"E, a distance of 814.71 feet; thence S70°20'03"E, a distance of 2182.44 feet; thence S00°00'00"E, a distance of 432.68 feet; thence N89°12'01"E, a distance of 4051.24 feet; thence N00°31'16"W, a distance of 230.97 feet; thence N89°22'23"E, a distance of 460.00 feet; thence N00°37'37"W, a distance of 675.42 feet; thence N89°12'01"E, a distance of 2770.07 feet; thence S00°46'02"E, a distance of 1386.57 feet; thence

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S88°50'18"W, a distance of 554.58 feet; thence S00°08'07"E, a distance of 5281.58 feet to the POINT OF BEGINNING.

Containing 30,970,372 Square Feet or 710.982 acres, more or less.