STAFF REPORT DATE: February 5, 2018
PLANNING COMMISSION HEARING DATE: February 20, 2018
TO: Elbert County Planning Commission
FROM: Jaxon Fagan, Associate Planner
APPROVED: Vince Harris, Interim Community and Development Services Director

RE: SU-17-0036 and 10-17-0037 SUNDANCE SOLAR
A request for Special Use Review and 1041 Permit for Site Selection and Construction of a Major Facility of a Public Utility as an Area and Activity of State Interest for a proposed solar energy generating development located on approximately 1,050 acres in northwest Elbert County.

APPLICANT: Michelle Zimmerman
Sundance Solar, LLC
3250 Ocean Park Blvd, Suite 355
Santa Monica, CA, 90405

SUMMARY OF REQUEST
The applicant, Sundance Solar, LLC has submitted applications requesting two actions: Approval of a Special Use Review (SUR) and Approval of a 1041 Permit for Site Selection and Construction of a Major Facility of a Public Utility under the Elbert County Areas and Activities of State Interest (1041). The SUR and 1041 requests will permit the installation and operation of a proposed solar energy conversion project (the Project). Site improvements would include 650 acres of solar panels; access roads; electrical transformers; electrical inverters; an electrical substation; and fencing; collectively referred to as “Facilities”. At full capacity, and the Project will produce up to 75 megawatts of energy.

All of the facilities will be located on privately owned land whose owner has entered into a contractual agreement (lease) with the applicant to allow for the placement of such facilities.

The Project will be accessed via private roads connected to County Roads and State Highways by permitted access points. No new public roads or rights-of-way are proposed to be dedicated to Elbert County, but a Master Road Use Agreement between the applicant and Elbert County will be executed to assure that the Elbert County roads will be maintained at their current conditions or improved at no cost to Elbert County.

The SUR and 1041 Permit requests, while related, are considered separate applications. The SUR request cannot be approved without prior approval of the 1041 Permit.
PERTINENT DATA

Site Description: The Project Area (Site) is composed of approximately 1,050 acres located in northwest Elbert County approximately 4 miles north of Kiowa. The Facilities will occupy approximately 58% of the total Project area when construction is complete.

Topography: The Project is located on a slight east-west incline, with an overall elevation gain of 70 feet from west to east. Minor drainages throughout the site form some minor topography.

Floodplain: There are no mapped floodplains in the Project area. The Project does not propose any construction within the 100-year floodplains.

Project Area Zoning and Land Use: The project area is zoned Agriculture (A), and is used exclusively for agricultural uses. Some minor agricultural structures are located on the Site.

Adjacent Zoning and Land Use: The Adjacent land is zoned is exclusively Agriculture (A), and the land use is similar to the land use on the Site, with the additional land use of 6 single family residences, one of which is owned by the property owners leasing land for the Project.
BACKGROUND
A pre-application meeting was held on June 12, 2017. Before the pre-application meeting, the applicant sent letters to all landowners within a quarter mile of the original project boundaries, which included land north of County Road 154. (See Preliminary Site Plan Below) Two property owners who live north of CR 154 contacted the applicant with concerns about visual impacts of panels, and drainage impacts. In response, the applicant moved all proposed solar panels south of CR 154, and provided the property owners concerned with drainage with the Final Drainage Report. One additional property owner contacted the applicants with general questions about project timing and location.

Preliminary Site Plan

The formal 1041 and Special Use applications for the Project were received on August 29, 2017. Once the applications were reviewed the referral packets were sent out to referral agencies and comments were received. The applications had an initial 45-day referral period, and a second 14 day referral period. After the third submittal was received, staff requested minor changes to the materials and the following public hearing dates were set.

- Planning Commission: February 20, 2018
- Board of County Commissioners: February 28, 2018

The goal of the applicant is to obtain a Power Purchase Agreement (PPA) with the Intermountain Rural Electric Association (IREA). The Federal Public Utilities Regulatory Policy Act requires that electric utilities purchase electricity from renewable sources if their systems have sufficient capacity. IREA currently has 100 Megawatts of excess capacity. Because of this limited capacity, IREA will only be able to execute a PPA with one renewable power generation project, and the Sundance Solar project is one of three projects competing for a PPA that would fill this capacity. IREA will only sign an agreement for projects with regulatory approval, and whichever projects get regulatory approval first will likely get the PPA.
PUBLIC NOTICE
Proper notice of the hearings was given per Elbert County regulations.

SUR
- Notices of public hearing mailed to all property owners within the project and within 1,320 feet of the project boundaries on January 17, 2018.
- Notices of public hearing in the Ranchland News on January 18, 2018
- Notice of public hearing posted on property on January 21, 2018

1041
- Notices of public hearing mailed to all property owners within the project and within 1,320 feet of the project boundaries, state and federal agencies on January 12, 2018.
- Emailed notice of public hearing to those who wish to be notified (BOCC Sunshine List) on January 17, 2018
- Notice of public hearing in the Ranchland News on January 18, 2018
- Notices of application ("referral notices") to all property owners within the project, within 1,320 feet of the project boundaries, and interest owners.
WRITTEN RESTRICTIONS

The SUR application contains Written Restrictions (WR) that will govern the Special Use activities on the subject properties, and will be enforceable if the SUR is approved. The WR place limits on the types, quantities, dimensions, locations and materials of facilities allowed. The complete written restrictions are included in the SUR application documents. Some of the written restrictions are summarized below:

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solar Modules</td>
<td>268,888</td>
</tr>
<tr>
<td>Transformers</td>
<td>32</td>
</tr>
<tr>
<td>Inverters</td>
<td>32</td>
</tr>
<tr>
<td>Substation</td>
<td>1</td>
</tr>
<tr>
<td>Access Road</td>
<td>3</td>
</tr>
<tr>
<td>Equipment Pad</td>
<td>32</td>
</tr>
<tr>
<td>Tracker Racking System</td>
<td>1 Single Axis Tracker</td>
</tr>
<tr>
<td>Access Gate</td>
<td>3</td>
</tr>
<tr>
<td>Fence</td>
<td>Project Perimeter</td>
</tr>
</tbody>
</table>

Facility Dimensional Standards

Maximum Allowable Height

- a. Solar Arrays: 12’ maximum (typically in the 8’-10’ range)
- b. Electrical Equipment: 12’ maximum

Facility Locations

1. The construction of Facilities shall be restricted to the setback standards defined below. Enforcement of setbacks will rely on these written restrictions, and the graphic representations of the setbacks in the SUR site plan shall be considered a guide.

2. Setbacks: 50’ side and 100’ front setbacks are incorporated into the design. 50' setbacks for "side" are from property lines while 100' setback for "front" of the project refers to areas near public right-of-ways.
   - a. See Exhibit A – SUR Plan Set.
   - b. The one substation allowed by this SUR approval is not restricted by setback standards when located adjacent to existing substations, and when the owners of said existing substations have given explicit written permission agreeing to the location of the new substation.

3. No Facilities shall be constructed in the following areas:
   - a. 100 year floodplains (except as approved by a Floodplain Development Permit).
   - b. On slopes over 20%

Fencing/Screening/Retaining Walls

1. Safety Fences
   - a. Perimeter fencing of 8’ tall, no wires, opaque with natural colored privacy slats where visible from public Right of Way.

2. Screening
   - a. Privacy slats if required where visible from public right of way.
REFERRAL
Elbert County Zoning Regulations Part II, Sec. 17,C,3 and Elbert County Guidelines and Regulations for Areas and Activities of State Interest, Article 2, Sec. 206 require that Community & Development Services refer Special Use Review and 1041 Permit applications to referral agencies and certain property owners (1041 specific) for comment. The original SUR and 1041 application materials were both sent on initial 45-day referrals, and referral comments were compiled and provided to the applicant. The applicant revised and resubmitted the SUR and 1041 applications, which were sent to referral agencies for a second 14 day referral period. Based on referral agency and internal County responses, some revisions were necessary. The applicant again resubmitted revised materials, which were reviewed internally by CDS. Following minor changes to the application materials, public hearing dates were set. Below is a summary of comments received. Complete comments are attached.

RESPONDING REFERRAL AGENCIES
Colorado Parks and Wildlife (CPW)
- 1st Referral: Requested that the design of the perimeter fence consider deer safety, recommended a variety of wildlife surveys, provided the location of a known hawk nesting location, and requested minimal grading disturbance and a noxious weed management plan.
- 2nd Referral: Requested that CPW be present at time of perimeter fence installation.

Intermountain Rural Electric Association
- 1st Referral: Reminded applicant that IREA has existing facilities and easements on and near the subject property. Requested a 150’ setback to the west of the existing Kiowa Substation. Requested a grading profile for any work that could affect clearances or access to the transmission line.
- 2nd Referral: Requested that the applicant move proposed solar panels from below an existing power line, or pay to relocate the power line.

US Fish and Wildlife (USFWS)
- 1st Referral: Reminded applicant of federal regulations that prohibit the take of migratory birds, bald eagles, and golden eagles. Recommend consultation with USFWS, and Best Management Practices to minimize sediment and erosion impacts to riparian areas.

Elbert County CDS, Planning
- 1st Referral: Requested changes to 1041 and SUR narratives, SUR site plan, SUR written restrictions, and adjacent property owners list.
- 2nd Referral: Requested minor changes to 1041 application, SUR application, and written restrictions.

Elbert County CDS, Engineering
- 2nd Referral: Requested minor change to GESC plan.
Elbert County CDS, Environmental:
- 1st Referral: Requested minor changes to Wetland Delineation Report and Phase 1 Environmental Site Assessment.

Colorado Division of Water Resources: No objections.

Elbert County Health and Human Services: No objections.

Elbert County Road and Bridge: Requested that the applicants complete a Master Road Use Agreement.

Xcel Energy: No Objections
Section V - General Policies

9. The County shall require adequate land use buffers between potentially incompatible land uses. Environmentally and visually significant areas may serve as buffers between municipalities, economic development areas, rural town centers, and rural areas.

The adjacent properties are zoned Agriculture and are used almost exclusively for agriculture, with the exception of three single family residences on large lots. The proposed setbacks and perimeter fences will adequately buffer the project from adjacent land uses, including passing vehicles on Kiowa-Bennett Road and County Road 154. The roads themselves also serve as buffers.

13. Development which generates positive economic impacts to the County and minimize the extension of roads and services are encouraged.

The Project will provide income to landowners, tax revenue to Elbert County, and employment opportunities.

Construction of the Project will temporarily increase traffic and wear on local roads, and a Master Road Use Agreement between Elbert County and the Project Developer will be executed prior to the issuance of building permits. The agreement will ensure that County roads impacted by the construction process will be restored to their previous condition or better. No new County roads will need to be extended to access the project. The Project includes private access roads to be constructed and maintained by the project developer, and which will require County Road access permits. The traffic impacts of the project will be limited to the construction phase. When the Project is completed and operational, traffic for regular maintenance will be minimal.

17. The County encourages energy conservation strategies, energy efficient design and renewable energy resources to be incorporated at all levels of development.

The project will generate electricity from solar energy, a renewable energy source. The wind energy generation process does not emit air pollution or deteriorate air quality. The project will offset the need to generate electricity using coal, oil, or natural gas, which do emit air pollution and deteriorate air quality.

Section VI – Land Use
Environmental Constraints

Goal: All development, including residential, industrial, commercial, and public utilities, shall be designed and constructed in a manner that is sensitive to the environment.
**Policies: Environmental Suitability**

4. Developments shall be planned in a manner that minimizes disturbances to the environment. Disturbance to woodlands, slopes, and natural drainages shall be kept to a minimum to ensure that erosion, sedimentation, runoff, and loss of cover are minimized.

The potential environmental impacts of the Project include soil erosion from stormwater runoff, vegetation disturbance, changes to wildlife habitat. The project proposes the following to mitigate these potentials:

- **Erosion/Stormwater:** The Project will not construct structures on slopes over 20%. No construction will be located within the 100 year floodplains. Erosion, sedimentation, and runoff will be mitigated through stormwater Best Management Practices.

- **Revegetation:** Disturbed land will be reclaimed and revegetated to pre-existing conditions.

- **Wildlife:** Best practices in siting and facility design from Colorado Parks and Wildlife and the US Fish and Wildlife Service have been incorporated into the project.

**Policies: Floodplain and Riparian Areas**

6. The County shall discourage development within the 100-year flood-plain unless associated with wildlife management, non-polluting recreational uses, or agricultural uses.

The Project does not propose construction with the 100-year floodplain.

**Section VII. Community Resources**

**Community Services**

**Goal:** Ensure that an adequate level of community services is maintained to support all existing and future residents of the County.

**Policies:**

3. All development proposals shall be submitted to the appropriate regional agencies which may provide services to the residents of that development for review and comment.

The SUR and 1041 Permit applications were referred to Local, Special District, State and Federal referral agencies for review and comment.

**Section VIII. Natural Resources**

**Natural Conditions**

**Goal:** Maintain and enhance the natural environment through adequate safeguards in the development process.

**Policies: Wildlife**

4. The County shall evaluate the effect of proposed development upon wildlife and wildlife habitat areas. If critical habitat loss is unavoidable, development is prohibited.

The Colorado Department of Parks and Wildlife and the US Fish and Wildlife Service provided recommendations to mitigate impacts to wildlife and wildlife habitat which the project developer
has considered in incorporating wildlife corridors, noxious weed management, and perimeter
fencing design. The KSCD and CSGS did not comment on the application.

5. The County shall encourage the preservation of significant vegetation through weed control,
reseeding, and other revegetation practices.

The applicant is required to reseed and revegetate any disturbed lands with an approved seed
mix per the Reclamation and Noxious Weed Control Plans approved by the Elbert County CSU
Extension Office, the Natural Resource Conservation Service, or the Farm Service Agency.

Section IX. Economic Development
Economic Growth
Goal: Encourage economic development that will promote economic diversity while ensuring
the preservation of the agricultural resources and rural character of the County.

The Project is a form of economic development that is not common in the County, and adds to
overall economic diversity. Though the land where the project will be developed will not be
available for agriculture use during the lifecycle of the project, it will be remediated to pre-
exisiting conditions once the Project facilities are removed. The Project is compatible with
neighboring agricultural uses.
1041 PERMIT EVALUATION

Approval of the 1041 Permit application requires compliance with the adopted Elbert County Guidelines and Regulations for Areas and Activities of State Interest (1041 Regulations). The 1041 Regulations contain specific review criteria, and also refer to the additional criteria from the Master Plan. To differentiate regulations and plans from staff comments in the following sections, Regulatory and Master Plan text are in italics, and Staff comments are in regular text.

The Elbert County Board of County Commissioners adopted the 1041 Regulations on April 19, 1995 and last amended the regulations on December 7, 2005.

The purpose of the 1041 Guidelines is to:

1-102 Purpose and Findings

(1) The purpose and intent of the regulations in this Chapter 1, is to facilitate identification, designation, and administration of matters of State interest, consistent with the statutory requirements and criteria set fourth [sic] in Section 24-65, 1-101, et seg., [sic] C.R.S.; and the Guidelines for Identification and Designation of Areas and Activities of State Interest, approved by the Colorado Land Use Commission. …

(d) …These Regulations apply to the entire unincorporated territory of Elbert County;

(e) These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest, which have been, or may be, designated by the Board of County Commissioners of Elbert County.

The 1041 Guidelines establish a process for designating areas and Activities of State Interest. The proposed solar energy project is a form of land use that is already designated as an activity of State Interest in Elbert County. Chapter 3 of the 1041 Regulations is titled “Site Selection and Construction of Major Facilities of a Public Utility.”

3-102 Definitions

(2) “Major facilities of a public utility” means:

(a) Transmission lines, power plants, and substations of electrical utilities;

(4) “Power Plant” means any electrical energy generating facility with a generating capacity of fifty (50) megawatts or more, and any facilities appurtenant thereto, or any addition thereto, increasing the existing design capacity of the facility by fifty (50) megawatts or more.

(5) “Public Utilities”, as used in these regulations, means the term as defined by Section 40-1-103, C.R.S.¹

(6) “Site Selection” means the process for determining the location of major facilities of a public utility, or the expansion of existing major facilities of a utility.

The generating capacity of the Project is approximately 75 megawatts, meeting the definition of a Major Facilities of a Public Utility, and its site selection and construction requires a 1041 permit.

¹ C.R.S. 40-1-103 (1) (a) (I) The term "public utility", when used in articles 1 to 7 of this title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, water corporation, person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest, and each of the preceding is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

(2) (a) Every cooperative electric association, or nonprofit electric corporation or association, and every other supplier of electric energy, whether supplying electric energy for the use of the public or for the use of its own members, is hereby declared to be affected with a public interest and to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.
3-201 Designation of Site Selection and Construction of Major Facilities of a Public Utility

It is the order of [the BOCC] that the designation of site selection and construction of major facilities of a public utility, as a [matter] of state interest, throughout Elbert County ... is hereby ratified and confirmed, and that this activity shall be regulated, pursuant to the provisions of this Chapter.

The Elbert County Board of County Commissioners has designated the site selection and construction of major facilities of a public utility as an activity of state interest. There is no need for a separate designation hearing.

3-301 Prohibition on Site Selection and Construction of a Major Facility of a Public Utility Without Permit:

(1) No person may locate or construct a major facility of a public utility, wholly or partially in this County, without first obtaining a permit, pursuant to these Regulations.

(2) No local authority, including Elbert County, may issue a building permit for purposes of selecting a site for, or constructing a major facility of, a public utility, wholly or partially in this County, unless the applicant has first obtained a permit, pursuant to these regulations.

The Project may not be located or constructed without approval and issuance of a 1041 Permit from Elbert County. The applicant has submitted the necessary information to process a 1041 Permit.

3-307 Approval of Permit Application

(1) After completion of a hearing, conducted pursuant to these Regulations, the [BOCC] shall approve, consistent with these Regulations, an application for permit for site selection and construction of a major facility of a public utility (with reasonable conditions, if any, in the discretion of the [BOCC]), only if the proposed site selection and construction complies with the following criteria, to the extent applicable:

(a) The health, welfare and safety of the citizens of this County will be protected and served;

Potential impacts to public health, safety, and welfare include visual impacts of the facilities and danger from contact with electrical equipment. The proposed setbacks and perimeter fences will mitigate visual impacts and protect people from accessing and contacting electrical equipment.

(b) The natural and socio-economic environment of this County will be protected and enhanced;

The potential natural impacts of the Project include soil erosion from stormwater runoff, vegetation disturbance, and impacts to wildlife. The Project includes the following to mitigate these potentials:

Erosion/Stormwater: The Project will not construct structures on slopes over 20% or within 100 year floodplains. Permit. Erosion, sedimentation, and runoff will be mitigated through stormwater Best Management Practices.

Revegetation: Disturbed land will be reclaimed and revegetated to pre-existing conditions.
Wildlife: Best practices in siting and facility design from Colorado Parks and Wildlife and the US Fish and Wildlife Service have been incorporated into the project.

The Project will provide income to landowners, tax revenue to Elbert County, and employment opportunities.

(c) All reasonable alternatives to the proposed action, including use of existing rights-of-way and joint use of rights-of-way, wherever uses are compatible, have been adequately assessed, and the proposed action represents the best interests of the people of this County, and represents the best utilization of resources on the impact area;

The written standards of the Project as currently proposed are the result of negotiation and discussion between Elbert County Staff and the applicant. The current proposal of the Project offers the best options to mitigate potential impacts while maintaining the financial feasibility of the Project.

The applicant will utilize existing Elbert County Road rights-of-way to access the Project.

(d) A satisfactory program to mitigate, monitor and minimize adverse impacts has been presented;

A satisfactory program to avoid impacts to natural areas, wildlife, adjacent neighbors, and passing vehicles has been presented.

(e) The nature and location of the facility complies with all applicable provisions of the Master Plan of this County, and other applicable regional, metropolitan, state, and national plans;

The Project is consistent with relevant provisions of the Elbert County Master Plan. For further detail, refer to the Master Plan Compliance section of this document.

(f) The nature and location or expansion of the facility complements the existing and reasonably and foreseeable needs of the service area, and of the area immediately affected by the facility;

The Project meets the growing need for general electricity generation. As the population of the county and neighboring front-range communities grows, the demand for energy will only increase, even with conservation efforts and energy efficiency advances in place. Adding locally produced and distributed solar energy helps to support future demand without increasing the strain on local community services. Additionally, the Project will not unreasonably impact neighboring land uses.

(g) The nature and location or expansion of the facility does not unduly or unreasonably impact existing community services;

The project will not require the extension of any public services, with the exception of public safety services in the event of an emergency on the site.

Construction of the Project will temporarily increase traffic and wear on local roads. To ensure that County roads impacted by the construction process will be restored to their
previous condition or better, a Master Road Use Agreement between Elbert County and the Project Developer will be executed prior to the issuance of building permits. No new County roads will need to be extended to access the project. The Project includes private access roads to be constructed and maintained by the project developer, and which will require County Road access permits. When the Project is completed and operational, traffic for regular maintenance will be minimal.

\( (h) \) The nature and location or expansion of the facility will not create an expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services, as determined by the Board;

The project will not require the extension of any public services, with the exception of public safety services in the event of an emergency on the site.

Construction of the Project will temporarily increase traffic and wear on local roads. To ensure that County roads impacted by the construction process will be restored to their previous condition or better, a Master Road Use Agreement between Elbert County and the Project Developer will be executed prior to the issuance of building permits. No new County roads will need to be extended to access the project. The Project includes private access roads to be constructed and maintained by the project developer, and which will require County Road access permits. When the Project is completed and operational, traffic for regular maintenance will be minimal.

\( (i) \) The facility site or expansion area is not in an area with general meteorological and climatological conditions, which would unreasonably interfere with or obstruct normal operations and maintenance;

The Project Site was chosen specifically by the applicant because the general meteorological and climatological conditions of the area match those that are conducive for solar energy generation.

\( (j) \) The nature and location of the facility or expansion will not adversely affect the water rights of any upstream, downstream, or agricultural users, adjacent communities of the water users;

The Project will not use water or impact water rights.

\( (k) \) Adequate water supplies are available for facility needs;

The Project will not use water or impact water rights.

\( (l) \) The nature and location of the facility or expansion will not unduly interfere with any existing easements for, or rights-of-way for, other utilities, canals, mineral claims, or roads;

Project facilities will be setback from roads and powerlines. All existing rights-of-ways and easements for other major utilities are noted on the site plan and encroachment is not allowed. Mineral rights owners have been notified of the Project per state statute, and have the opportunity to comment on the project if they feel that it constitutes a taking of their property rights.
(m) *Adequate electric, gas, telephone, water, sewage, and other utilities exist, or shall be developed to service the site;*

The Project is an electrical generation facility that will be directly connected to the power distribution network. It will not utilize water, sewer, and gas services.

(n) *The nature and location for the expansion of the facility will not adversely affect any endangered or protected wildlife species, known natural resource, archaeologically significant resource, or historic landmark within the impact area;*

The Colorado Department of Parks and Wildlife (CPW), US Fish and Wildlife Service (USFWS) and Kiowa Soil Conservation District (KSCD), and the Colorado State Geological Survey (CSGS) were given opportunities to comment on the Project. CPW and USFWS provided comments which the project developer has considered in incorporating wildlife corridors, noxious weed management, and perimeter fencing design. The KSCD and CSGS did not comment on the application.

(o) *The nature and location or expansion of the facility, including expected growth and development related to the operation and provision of service, will not significantly deteriorate water or air quality in the impact area;*

Water Quality: The Project will not construct structures on slopes over 20% or within 100 year floodplains. Erosion, sedimentation, and runoff will be mitigated through stormwater Best Management Practices. These measures will ensure that the project does not deteriorate water quality.

Air Quality: The project will generate electricity using solar energy, a process source that does not emit air pollution or deteriorate air quality. The project will offset the need to generate electricity using coal, oil, or natural gas, which do emit air pollution and deteriorate air quality.

(p) *The geological and topographical features of the site are adequate for all construction, clearing, grading, drainage, vegetation, and other needs of the facility construction or expansion;*

The Project will not construct structures on slopes over 20% or within 100 year floodplains. Erosion, sedimentation, and runoff will be mitigated through stormwater Best Management Practices. These measures will ensure that the project does not deteriorate water quality.

(q) *The existing water quality of affected state waters will not be degraded below state and federal standards or established baseline levels;*

Potential water quality impacts to water bodies, including erosion, sedimentation, and runoff, will be mitigated through the implementation of stormwater Best Management Practices.

(r) *The proposed project will not have a significantly adverse net effect on the capacities or functioning of drainage basins, streams, lakes and reservoirs in the impact area, nor on the permeability, volume, recharge capability, and depth of aquifers in the impact area;*
Potential water quality impacts to water bodies, including erosion, sedimentation, and runoff, will be mitigated through the implementation of stormwater Best Management Practices. The Project will not use water or impact water rights.

(s) The benefits of the proposed development outweigh the losses of any natural resources or reduction of productivity of agricultural lands, as a result of the proposed development;

The project will provide income to landowners, tax revenue to the County, and employment opportunities.

(t) The applicant has obtained, or will obtain, all property rights, permits, and approvals necessary for the proposed project, including surface, mineral, and water rights and easements for drainage, disposal, utilities, access, etc. If the applicant has not obtained all necessary property rights, permits and approvals, applicant shall have made best efforts to have a letter of intent or option from affected property owners. The Board may, in its discretion, grant the permit, conditioned upon completion of the acquisition of such rights, prior to issuance of a building permit by the County;

The applicant has provided a signed disclosure letter from the landowner, documenting that they have the right to make an application on behalf of the property owner. The applicants have not provided a lease agreement. The applicants have provided a table showing the status of all permits and other land use approvals necessary for the project.

(u) The proposed project will not present an unreasonable risk of exposure to, or release of, toxic or hazardous substances within the impact area. The determination of effects of the project shall include the following considerations:

(i) The means by which outdoor storage facilities for fuel, raw materials, equipment and related items are adequately enclosed by a fence or wall;

The entire Project will be protected by an 8' security fence with locked gates.

(ii) The likelihood of hazardous materials or wastes being transmitted downstream the site by natural causes or forces;

Hazardous materials are not involved in the construction or operation of the Project.

(iii) Containment of flammable or explosive liquids, solids or gases.

Flammable or explosive liquids, solids or gases are not involved in the construction or operation of the Project.

(v) The scope and nature of the project will not create duplicate services within the County; and

No similar service of this magnitude is provided in the county today.
If the purpose and need for the proposed project are to meet the needs of an increasing population within the County, area, community development and population trends demonstrate a need for such development.

The Project meets the growing need for both general electricity generation. As the population of the county and neighboring Front Range communities grows, the demand for energy will only increase, even with conservation efforts and energy efficiency advances in place. Adding locally produced and distributed solar energy helps to support future demand without increasing the strain on local community services.

The scope and nature of the project will not impose and undue financial burden on the residents of the County.

The Project will not require the extension of any County infrastructure, and will not have a financial cost for the County or its residents.

The [BOCC] shall deny the permit, if the proposed development does not comply with the applicable criteria in subsection (1) of this Section.

The project complies with all of the criteria in subsection (1) of this Section 3-307.

The Board may impose additional mitigation requirements and conditions on an applicant, as follows, if it complies with each of the following steps:

(a) The Board shall make written findings that each such requirement and condition is necessary to ensure that the proposed project will not result in significant adverse net effect on the resources, values and conditions referenced above.

(b) The Board shall also find, in writing, that each such requirement and condition is necessitated by the proposed project.

(c) All such findings shall be based on material in the administrative record.

(d) The Board shall base the additional requirements and conditions on the applicable design standards as adopted by the County, to the extent that such standards then exist.

If the Board approved the issuance of a permit, all provisions of these Regulations, in particular, Sections 2-401 (Issuance of Permits) and 2-402 (Financial Security) shall apply.

1041 PERMIT FINDINGS AND RECOMMENDATION

Staff recommends that the Planning Commission find that:

1. The proposal in general conformance with the Elbert County Master Plan; and
2. The proposal meets the criteria for approval of a permit application for site selection and construction of a major facility of a public utility per the Elbert County Guidelines and Regulations for Areas and Activities of State Interest; and
3. The proposed land uses are compatible with existing and allowable land uses in the surrounding area; and
4. The proposed land uses will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area.

Because this application has met the criteria set forth in the Elbert County Guidelines and Regulations for Areas and Activities of State Interest, and as we understand it that there are no objections from other governing bodies, the recommendation of Community & Development
Services is to recommend approval to the Board of County Commissioners of Sundance Solar 10-17-0037 1041 Permit application subject to the following conditions:

1. The 1041 Permit will not become effective until all fees are paid, conditions of approval are met, and County required documents are recorded; and

2. Record action of all appropriate documentation in Condition 1 above is to occur within 180 days after the Board of County Commissioners’ approval; and

3. Approval of the Sundance Solar Special Use Review SU-17-0036
SPECIAL USE REVIEW EVALUATION

Approval of Special Use Review applications requires compliance with the adopted Elbert County Zoning Regulations. The Zoning Regulations contain specific review criteria, and refer to the Master Plan and Subdivision Regulations. To differentiate regulations from staff comments in the following section, **regulations are found in italic text**, and staff comments are found in regular text.

**Zoning Regulations Part II, Section 17, B., 7:** The following criteria shall be considered by the Planning Commission and the Board of County Commissioners in reviewing all Special Use Review applications:

a. **Whether the proposed Special Use complies with the requirements of the Elbert County Master Plan, Elbert County Zoning Regulations, and Elbert County Subdivision Regulations.**

   1. **Master Plan:** The proposed Special Use complies with the requirements of the Elbert County Master Plan. For further detail, refer to the Master Plan Compliance section of this document.

   2. **Zoning Regulations:** All applicable review criteria from the Zoning Regulations are addressed in this document. Major Facilities of a Public Utility are listed as a Use by Special Review in the Elbert County Zoning Regulations.

   3. **Subdivision Regulations:** Not applicable to this project.

b. **Whether the proposed Special Use is in harmony and compatible with the surrounding area and neighborhood.**

   The adjacent properties are zoned Agriculture and are used almost exclusively for agriculture, with the exception of three single family residences on large lots. The Project is compatible with these uses. The main potential impact is visual, and the setbacks and perimeter fences will adequately buffer the project from adjacent land uses, including passing vehicles on Kiowa-Bennett Road and County Road 154.

c. **Whether the proposed Special Use will adversely impact the provision of public services.**

   The project will not require the extension of any public services, with the exception of public safety services in the event of an emergency on the site.

d. **Whether the proposed Special Use will adversely impact the environment.**

   Disturbed land will be reclaimed and revegetated according to a Reclamation and Noxious Weed Plan. Erosion, sedimentation, and runoff will be mitigated through Best Management Practices. The Project will provide a significant source of renewable energy, which offsets demand for energy generated from sources which cause air pollution.

e. **Whether the proposed Special Use will increase traffic congestion or burden the existing road system.**
Construction of the Project will temporarily increase traffic and wear on local roads, and a Master Road Use Agreement between Elbert County and the Project Developer will be executed prior to the issuance of building permits. The agreement will ensure that County roads impacted by the construction process will be restored to their previous condition or better. No new county roads will need to be extended to access the project. The Project includes private access roads to be constructed and maintained by the project developer, and which will require County Road access permits. The traffic impacts of the project will be limited to the construction phase. When the Project is completed and operational, traffic for regular maintenance will be minimal.

f. **Whether the proposed Special Use will be adequately landscaped, buffered and screened.**

The setbacks and perimeter fences will adequately buffer the Project from adjacent land uses, including passing vehicles on Kiowa-Bennett Road and County Road 154.

g. **Whether the proposed Special Use will not otherwise be detrimental to the health, safety or welfare of the present or future inhabitants of Elbert County.**

Potential impacts to public health, safety, and welfare include visual impacts of the facilities and danger from contact with electrical equipment. The proposed setbacks and perimeter fences will mitigate visual impacts and protect people from accessing and touching electrical equipment.

**SU-16-0013: SPECIAL USE REVIEW FINDINGS AND RECOMMENDATION**

Staff recommends that the Planning Commission find that:

1. The proposal in general conformance with the Elbert County Master Plan; and
2. The proposal meets the criteria for approval in the Elbert County Zoning Regulations; and
3. The Elbert County Subdivision Regulations are not applicable to this project; and
4. The proposed land uses are compatible with existing and allowable land uses in the surrounding area particularly the agricultural uses of properties within and near the project area; and
5. The proposed land uses will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area.

Because this application has met the criteria set forth in the Elbert County Zoning Regulations, and as we understand it that there are no objections from other governing bodies, the recommendation of Community & Development Services is to **recommend approval to the Board of County Commissioners of the Sundance Solar SU-17-0036 Special Use Review application subject to the following conditions:**

1. The Special Use will not become effective until a 1041 Permit for Site Selection and Construction of a Major Facility of a Public Utility is approved and any documents related to the approval are recorded; and
2. The Special Use will not become effective until all fees are paid, conditions of approval are met, and documents recorded; and

3. Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners’ approval; and

4. The applicant or project owner shall execute a Master Road Use Agreement with Elbert County prior to the issuance of building permits; and

5. The executed Master Road Use Agreement shall include measures to mitigate fugitive dust during construction; and

6. The applicant shall obtain access permits for each access point from private access roads to Elbert County Roads and State Highways, as the case may be, and

7. The applicant or project owner shall provide a vegetation management plan to the Kiowa Fire Protection District and to Elbert County CDS prior to the issuance of building permits; and

8. The applicant or project owner shall relocate the existing overhead power line as requested in the January 4, 2018 letter from the Intermountain Rural Electrical Association; and

9. Colorado Parks and Wildlife will be allowed to be present during the perimeter fence construction to give guidance on Best Practices to minimize wildlife impacts; and

10. If site disturbance is to occur within the times specified in the September 21, 2017 letter from Colorado Parks and Wildlife, that the project developer will perform the recommended wildlife surveys and adhere to the recommended buffer distances from any habitat found by surveys.

Respectfully submitted by,

Jaxon Fagan
Associate Planner
Baseline Engineering Corporation
Contract Planners for Elbert County

Reviewed by Cory Miller, AICP and Vince Harris, AICP, Baseline Corporation