SU-17-0036 & 10-17-0037
SUNDANCE SOLAR PROJECT
PLANNING COMMISSION
STAFF REPORT ADDENDUM

1: CPW Comments
2: Kiowa Fire Comments
3: IREA Setback Letter
4: Public Utilities Regulatory Policies Act
5: Development Agreement
### 1: CPW Comments

**Feb 13, 2018:** Colorado Parks and Wildlife (CPW) sent comments to CDS about the project.

**Feb 14, 2018:**
- CDS forwarded the comments to the Planning Commissioners.
- CDS discussed the comments with CPW and with Michelle Zimmerman of Cypress Creek Renewables (applicant). CPW said that they are generally satisfied with the applicant’s efforts to incorporate wildlife mitigation strategies into the project. CPW’s main concern is for adequate wildlife corridors, specifically wider corridors. The applicant was amenable to this concern, and said that they would revise the site plan to provide an additional wildlife corridor and to widen one of the existing corridors.
- Applicant provided draft revisions to the site plan with a new wildlife corridor and a widening to existing corridor.
- CDS discussed the proposed changes with CPW. CPW indicated their satisfaction with the proposed changes, and stated that together with the originally proposed wildlife related conditions of approval, CPW is satisfied with the project from a wildlife perspective.

**Feb 15, 2018:** CDS emailed CPW and the applicant summarizing the conversation so far, and requested revised site plan documents from the applicant, and a formal statement from CPW stating their satisfaction with the proposed changes.

**Feb 17, 2018:** CPW emailed CDS stating that their concerns have been adequately addressed.

**Feb 19, 2018:** Applicant sent the revised site plan documents to CDS.

**OUTCOME:** The revised site plans with the additional wildlife corridor and the widened corridor have been incorporated into the proposal.
Mr. Fagan,

I am sending you this email in lieu of attending the upcoming County Commissioner's meeting. I meet with the applicant's representative and received an updated plan set on Jan 24. I recognize the previous comment period for Sundance Solar closed on Jan 8 but I will not be able to attend the Commissioner's meeting on February 20 due to a scheduling conflict. While previous comments from CPW remain relevant and applicable my intent is to clarify efforts to mitigate wildlife impacts from this proposed large scale solar development.

The National Electric Code (NEC) required fencing of the project is of primary concern to CPW regarding local wildlife as it has great potential to fragment wildlife habitat. In a meeting with the applicant's representative in January the applicant was asked to examine and implement, where possible, fence design changes which include providing a corridor for wildlife movement west to east across the project, a minimum fence spacing of 13 inches above the ground and/or one way egress devices (i.e. gates or animal jump out ramps), and the removal or minimization of slats in the fence. CPW recognizes that fence design alterations are dependent upon the NEC but have asked the applicant to look into and attempt to negotiate or request design changes with those regulators.

The plan set received January 24th includes a movement corridor across Section 28. This corridor will aid most species of wildlife in moving across the property away from the Kiowa-Bennett roadway corridor. The designation of this corridor also includes several mapped wetland areas that provide water for wildlife in this arid region. The corridor as proposed is not wide enough on its west end for use by pronghorn as this species is susceptible to disturbance from long distances due to their excellent vision and their behavioral predisposition as prey animals. Given the topography of this specific proposed corridor a minimum width of 600 to 800 feet on either end with no less than a 400 foot width at any point in the corridor would likely accommodate pronghorn movement. There is no known width minimum for pronghorn use of corridors so this recommendation is based upon features associated with this specific site. The proposed wildlife corridor adds value to wildlife mitigation efforts and is appreciated.

A recent solar project approval decision in Arapaho County addressed the presence of slats in fencing around large scale solar projects. These slats have the potential to act as snow fences which may impede wildlife movement around the facility and negatively affect the usefulness of other wildlife mitigation efforts. As with pronghorn many species in the area of the Sundance project have adapted to open areas with rolling terrain. The placement of slats along a fence will create an unnatural landscape element that may cause wildlife to avoid use of mitigation efforts such as the wildlife corridor. Where appropriate and practicable low earthen berms should be examined as an alternative to fencing slats for visual separation of the facility from the surrounding area. Care should be taken to not allow the berms to become entry points for wildlife into the facility by jumping over the fencing.

In addition to fencing concerns the need for mowing within the project area may impact wildlife unless regulated. While mowing will benefit the reduction of noxious weeds and maintain the health of the grassland habitat, timing is important. The grasslands of this site provide for the nesting of many bird species. Mowing annually or biannually only during the time of July through September would best protect ground nesting birds and limit the seeding of noxious weeds. Targeted removal of specific plants affecting energy production panels could still occur on an as needed basis.

This large scale project in Elbert County brings with it unknown impacts to wildlife, specifically song bird and raptor species. The Hunter Solar project approved in adjacent Arapaho County is required to conduct pre and post construction monitoring of bird interactions at that project. The post construction monitoring will be a 3 year requirement. CPW is not asking for this with Sundance Solar, however, as Elbert County continues to explore the potential for future solar development CPW will use information from Hunter Solar to improve and recommend future mitigation to solar development practices in Elbert County.

The applicant should be commended for their efforts to take wildlife and habitat concerns into consideration in their application. They have worked proactively to ensure this project is well mitigated based upon current knowledge and expected impacts to wildlife. As new science and information becomes available regrading wildlife and solar development in Colorado CPW recommendations may evolve but at this time Sundance Solar is a good example of energy development with wildlife in mind.

Thank you for the opportunity to provide this additional information to you and the commissioners of Elbert County. I apologize for not being able to attend the public meeting in person. Please contact me via email or phone if you have any further questions regarding this or other comments provided by CPW.

Sincerely,
Casey Westbrook  
(303)810-3141 cell  
Colorado Parks and Wildlife  
District Wildlife Manager
Tracey: Please forward this email to the Planning Commissioners ASAP.

Commissioners: Yesterday, I received the below email from Colorado Parks and Wildlife (CPW) regarding the Sundance Solar project. In response, I am in contact with CPW and the applicant to these concerns are addressed. This will likely include revisions to the conditions of approval, and to the fencing location and details on the site plan.

I will keep you updated as this discussion evolves, and I will be prepared to speak to anything that has changed at next Tuesday’s hearing.

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The applicant should be commended for their efforts to take wildlife and habitat concerns into consideration in their application. They have worked proactively to ensure this project is well mitigated based upon current knowledge and expected impacts to wildlife. As new science and information becomes available regrading wildlife and solar development in Colorado CPW recommendations may evolve but at this time Sundance Solar is a good example of energy development with wildlife in mind.

Thank you for the opportunity to provide this additional information to you and the commissioners of Elbert County. I apologize for not being able to attend the public meeting in person. Please contact me via email or phone if you have any further questions regarding this or other comments provided by CPW.

Sincerely,

Casey Westbrook
(303)810-3141cell
Colorado Parks and Wildlife
District Wildlife Manager
Casey,

Thank you for the letter, I appreciate it. I am planning to propose the below wildlife related conditions of approval for the project:

- 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.

- 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.

If you would like me to revise the conditions of approval to reflect the concerns in your letter please let me know. Please call me when you can to discuss. You can reach me at the office today, and the rest of the week on my cell phone (541-420-8546).

Thanks,
A recent solar project approval decision in Arapaho County addressed the presence of slats in fencing around large scale solar projects. These slats have the potential to act as snow fences which may impede wildlife movement around the facility and negatively affect the usefulness of other wildlife mitigation efforts. As with pronghorn many species in the area of the Sundance project have adapted to open areas with rolling terrain. The placement of slats along a fence will create an unnatural landscape element that may cause wildlife to avoid use of mitigation efforts such as the wildlife corridor. Where appropriate and practicable low earthen berms should be examined as an alternative to fencing slats for visual separation of the facility from the surrounding area. Care should be taken to not allow the berms to become entry points for wildlife into the facility by jumping over the fencing.

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Thank you for the opportunity to provide this additional information to you and the commissioners of Elbert County. I apologize for not being able to attend the public meeting in person. Please contact me via email or phone if you have any further questions regarding this or other comments provided by CPW.

Sincerely,

Casey Westbrook
(303)810-3141cell
Colorado Parks and Wildlife
District Wildlife Manager
Hi Casey and Jaxon,

This is what I just got back from my engineer on the wildlife corridor options. Let me know what you think.

Thanks!

Michelle
303-881-3087

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From: Kevin Klug [mailto:Kevin.Klug@rina.org]
Sent: Wednesday, February 14, 2018 9:20 AM
To: Michelle Zimmerman <michelle.zimmerman@ccrenew.com>; Kevin Klug <Kevin.Klug@rina.org>
Cc: Andrey Pihourov <andrey.pihourov@ccrenew.com>; Jared Hicks <Jared.Hicks@rina.org>
Subject: RE: Sundance wildlife corridor

Michelle,

See attached for 2 fence options to enlarge the west side of the southerly wildlife corridor and adding fencing in the north area to create another wildlife corridor. Hopefully I understood correctly. We still have a pinch point of 301’ in the middle of the south corridor and the easterly opening of the new northerly corridor is only 417’. Let me know if you want us to look at some additional panel removals and fence adjustments to meet their desired 600’-800’ range throughout the entirety of both corridors.

A quick system summary is below for the current system and then for the 2 fence options to enlarge the southerly wildlife corridor. Using the same system parameters as Hunter. All well above the desired 75MW using the module rating of 390 and dc:ac ratio at 1.4.
Jaxon Fagan

From: Westbrook - DNR, Casey <casey.westbrook@state.co.us>
Sent: Wednesday, February 14, 2018 6:11 PM
To: Jaxon Fagan
Subject: Re: Sundance Solar BOCC Mtg

Jaxon,
Per our phone conversation the 2 stipulations you have prepared seem appropriate. Looking at the revisions provided by Michelle today the North corridor looks very good as presented and is very appreciated.

The preference for the south corridor would be option B (767 feet) as labeled on their plans. While I was looking for the 400' at the pinch point I feel the relatively short length of that narrow area will be ok and the 301 feet as proposed is ok. I don't see a need to fall on sword in this case.

Thank you again for your work on this. I believe this is important to wildlife and your help along with Sundance Solar working with us is very valuable. Please let me know if you need anything else.

Casey

On Wed, Feb 14, 2018 at 8:34 AM, Jaxon Fagan <jaxon.fagan@baselinecorp.com> wrote:

Casey,

Thank you for the letter, I appreciate it. I am planning to propose the below wildlife related conditions of approval for the project:

- 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.

- 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.

If you would like me to revise the conditions of approval to reflect the concerns in your letter please let me know. Please call me when you can to discuss. You can reach me at the office today, and the rest of the week on my cell phone (541-420-8546).

Thanks,
Mr. Fagan,

I am sending you this email in lieu of attending the upcoming County Commissioner's meeting. I meet with the applicant's representative and received an updated plan set on Jan 24. I recognize the previous comment period for Sundance Solar closed on Jan 8 but I will not be able to attend the Commissioner's meeting on February 20 due to a scheduling conflict. While previous comments from CPW remain relevant and applicable my intent is to clarify efforts to mitigate wildlife impacts from this proposed large scale solar development.

The National Electric Code (NEC) required fencing of the project is of primary concern to CPW regarding local wildlife as it has great potential to fragment wildlife habitat. In a meeting with the applicant's representative in January the applicant was asked to examine and implement, where possible, fence design changes which include providing a corridor for wildlife movement west to east across the project, a minimum fence spacing of 13 inches above the ground and/or one way egress devices (i.e. gates or animal jump out ramps), and the removal or minimization of slats in the fence. CPW recognizes that fence design alterations are dependent upon the NEC but have asked the applicant to look into and attempt to negotiate or request design changes with those regulators.

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Casey and Michelle,

I appreciate your responsiveness in sorting out the wildlife implications of this project. I spoke with both of you yesterday, and I think that we have a solution that will work for everyone.

**Conditions of Approval:** The wildlife related conditions of approval will stay the same.

- 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.

- 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.

**Site Plan:** Casey indicated that he likes the new wildlife corridor created by fencing the array areas individually, and that he prefers fencing option B with the 767’ opening on the existing corridor. Michelle, please revise the relevant site plan sheets based on the attached redlines, and email me the new SUR set.

You will also need to eventually revise the GESC and drainage reports to show the changes. If you can get these done before hearing, great, but if you can’t we can take care of it post-hearing.

**Letter from CPW:** Casey, please send me a email stating that following your Feb 13 letter, you have been in contact with both Cypress Creek and Elbert County CDS, and that we arrived at a solution that addresses your concerns. It doesn’t need to be long, just something formal to forward to the planning commissioners.

If either of you have questions feel free to call my cell phone today (541-420-8546)

Thanks,

SUNDANCE SOLAR, LLC
SPECIAL USE BY REVIEW


APPLICANT/OWNER
SUNDANCE SOLAR, LLC
3250 OCEAN PARK BLVD
SUITE 355
SANTA MONICA, CA 90405

ENGINEER
RINA CONSULTING
705 S MAIN ST
SUITE 260
PLYMOUTH, MI 48170

LEGAL DESCRIPTION
7 28 63

SCALE = 1" = 800'

Please include the changes noted above.

SIGHT TRIANGLE

WITH OPAQUE SLATS

PROPERTY BOUNDARY

SECTION CORNER

LEND LEGEND

G

OTHER THAN ELBERT COUNTY IS RESPONSIBLE FOR MAINTENANCE AND UPKEEP OF PERIMETER FENCE 'OPTION A'

PARCEL A

PARCEL B

SHOWN ON THIS PLAT/PLAN WILL NOT BE MAINTAINED BY THE COUNTY UNTIL AND UNLESS THE STREETS STARTED WITHIN ONE YEAR OF THE CONSTRUCTION PLAN APPROVAL. THE OWNERS, DEVELOPERS AND/OR SUBDIVIDERS(S) OF THE USE BY SPECIAL REVIEW PLAN KNOWN AS "SUNDANCE" MAY JOIN IN DESIGNING AND CONSTRUCTING CONNECTION SYSTEMS. ALSO, THE COUNTY MAY PROVIDE NECESSARY MAINTENANCE AND ASSESS THE MAINTENANCE COST TO THE OWNERS, DEVELOPERS AND/OR SUBDIVIDERS(S) OF THE USE BY SPECIAL REVIEW PLAN KNOWN AS "SUNDANCE".

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Dear Mr. Fagan,

Subsequent to the email sent to you on February 13, 2018 I have been in contact with both the applicant and Elbert County CDS. Changes made to the plan address the concerns raised by Colorado Parks and Wildlife. I appreciate your helpfulness in working through these issues. Please contact me if you have further questions.

Sincerely,

Casey Westbrook
SUNDANCE SOLAR, LLC
SPECIAL USE BY REVIEW


OVERALL SITE DATA

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**2: Kiowa Fire Comments**

**June 13, 2017:** Kiowa Fire Protection District (KFPD) attended a pre-application meeting with the applicant and CDS staff.

**Sep 7, 2017:** CDS sent a referral request to KFPD.

**Oct 23, 2017:** The CDS director received paper referral comments from KFPD, but did not forward them to the Baseline case manager.

**Feb 15, 2018**
- Planning Commission requested additional information about Kiowa Fire comments from CDS
- CDS searched for comments in Kiowa and in Baseline case manager files, but did not find any.
- CDS contacted Chief Lamansky of KFPD to inquire about comments. The Chief indicated that he has been in regular contact with the applicant, and that his fire safety related concerns have been addressed. His only remaining concern is the negotiation of impact fees.
- KFPD sent an email stating that fire safety concerns have been addressed.
- KFPD sent past correspondence about impact fees, and sent new referral comments dated February 15, 2018.
- CDS emailed the Planning Commissioners with a summary of comments received and the discussion so far.

**Feb 18, 2018:** The applicant sent an email to CDS regarding impact fees.

**OUTCOME:** Impact fee agreements are not within the purview of the Elbert County Special Use Review and the 1041 permit applications, and County does not need to be involved in the negotiation or execution of agreements.
Hello,

On behalf of the Elbert County Community & Development Services Department, I am sending you a land use application referral packet. The packet includes Special Use Review and 1041 Permit applications for a solar energy generating facility approximately 3 miles north of Kiowa. The referral period is open until 5 pm on October 23, 2017. Please use the attached referral comment form if you wish to comment on the project. You can download the referral packet at this Dropbox link: https://www.dropbox.com/sh/t7py5j8fsf1nnvt/AABl5GQxgztD6D2yx5Jtvra?dl=0. Please let me know if your organization does not allow Dropbox, and I will send you the referral packet by email or mailed CD.

Thank you,

Hi Chief Lamansky –

We just received your referral comment sheet back for Sundance Solar. In your comments you say that you just received the request on the 20th of October? We sent it out way back on the 7th of September and you were on the distribution list. Maybe it went to your spam folder? I just re-checked it and you were indeed sent the request for referral comments email on 9/9/17. How did you get the referral sheet that you returned to me? We have to figure out what happened so it doesn’t happen again! We rely on your comments and involvement.

What sort of impact fees will the fire district have for a project like this?

In most cases these days, files are so large that we send it in a DropBox link in an email as opposed to attaching files. Your server would have rejected it and mine wouldn’t have let me send it as an attachment. So when you get these from us, what you do is click on that DropBox link and you find all the referral documents.

On 9/7/17 we sent out the following:

Hello,

On behalf of the Elbert County Community & Development Services Department, I am sending you a land use application referral packet. The packet includes Special Use Review and 1041 Permit applications for a solar energy generating facility approximately 3 miles north of Kiowa. The referral period is open until 5 pm on October 23, 2017. Please use the attached referral comment form if you wish to comment on the project. You can download the referral packet at this Dropbox link: https://www.dropbox.com/sh/t7py5j8fsf1nnvt/AABl5GQxgztD6D2yx5Jtvra?dl=0. Please let me know if your organization does not allow Dropbox, and I will send you the referral packet by email or mailed CD.

Thank you,

Kyle Fenner
Mr. Fagan,

Attached are the comments from the Kiowa Fire Protection District regarding the Sundance Solar Project. Keep in mind I have sent them 3 previous times. Please confirm that you received them via this e-mail. Thank you.

Gerry Lamansky
Fire Chief
Kiowa Fire District
REFERRAL REQUEST

DATE: 9/7/2017  COMMENTS DUE BY: 10/23/2017
RE: PROJECT NAME: Sundance Solar
PROJECT NUMBER: SU-17-0036 and 1041
PROJECT TYPE: Special Use Review and 1041 Permit

Dear Referral Organization:

Information on the proposal in Elbert County referenced above is enclosed for your review and comments. Please check one of the following:

☐ We have no objections to this proposal.

☐ Please note the following concerns this organization has with this proposal:

☐ See the attached letter for detailed comments regarding this proposal.

Date: 2-15-18
Agency Name: Kiowa Fire Protection District
Your name (Please Print Clearly): Gerald L. Lamansky- Fire Chief
Signature: ____________________________

We invite you to attend the meeting/hearing, if you wish, to express your specific comments/concerns regarding this project. Hearing dates may be obtained by calling the Elbert County Planning Department at 303-621-3136. If you are unable to submit written comments by the above date or need additional materials of information, please contact this office as soon as possible.

Please note that the Planning Department considers failure to respond as approval of the proposal by all identified agencies. This consideration is based upon the language in the Colorado Revised Statues 30-28-136(2).

Sincerely,

Project Planner
February 15, 2018

Project Name: Sundance Solar
Project Number: SU-17-0036 and 1041
Project Address: Kiowa, CO 80117
Plan Reviewer: Gerry Lamansky / Fire Chief, Kiowa Fire Protection District

The Kiowa Fire Protection District has reviewed the submitted plans for Sundance Solar. The plans were reviewed for compliance with 2006 International Fire Code (IFC) as adopted by the Kiowa Fire Protection District and Elbert County. The plans are approved with the following specific and general requirements and conditions.

**Specific Requirements**

1. Site access and perimeter roads shall be required for the project to ensure adequate access by the Fire Department. Costs shall be borne by the Project Developer. Roads shall be made of an all weather surface in accordance to Elbert County standards. The new fire apparatus access road(driveway) shall be designed and maintained to support the imposed loads of fire apparatus (56,000 pounds) and shall be surfaced so as to provide all-weather driving capabilities (e.g. gravel, road base or recycled asphalt). 2006 IFC Section 503.2.3.

2. Fencing and gate access shall surround the perimeter of the project:
   - The minimum gate width shall be 20 feet.
   - Gates shall be of the swinging or sliding type.
   - Construction of the gates shall be of materials that allow manual operation by one person.
   - Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be approved by the fire code official.
   - Manual opening gates shall not be locked with a padlock or chain and padlock unless they are capable of being opened by means of forcible entry tools or when a key box containing the key(s) to the lock is installed at the gate location.
   - Locking device specifications shall be submitted for approval by the fire code official.
   - Electric gate operators, where provided, shall be listed in accordance with UL325.
   - Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.
   - A light shall be installed at the gate for illumination. 2006 IFC Appendix D Section D103.5

3. Before the emergency gate is operational, a Knox box shall be installed at the gate in an area approved by the Kiowa Fire Protection District. The Knox box will either hold a combination code or key that will allow the Fire District to access the property in an emergency. 2006 IFC Section 506.1
4. The Knox box shall be a Model 3261 or 3262 and can be ordered at http://www.knoxbox.com/store.

5. Clearly mark all direct-current conduits, conductors, enclosures, etc., as well as leaving a clear area (brush free) of at least 10 feet around the array is sufficient.

6. Impact Fees will be due to the Kiowa Fire Protection District. See attached letter.

Respectfully submitted,

Gerry Lamansky
Fire Chief
Kiowa Fire Protection District
g.lamansky@kiowafire.com
September 18, 2017

Ms. Michelle Zimmerman
Senior Project Manager
Cypress Creek Renewables
400 N. Park Avenue, Suite 10-B
Breckenridge, CO 80424

RE: Kiowa Fire Protection District Impact Fees for the Sundance Solar Project,
Elbert County, Colorado

Dear Ms. Zimmerman:

Thank you for meeting with Kiowa Fire Protection District Board members Jim Jerrold and Deb Ullom, Chief Gerry Lamansky and me on August 30, 2017, regarding the Kiowa Fire Protection District’s (the “District”) imposition of impact fees on the proposed Sundance Solar project (the “Project”) in Elbert County, Colorado.

As discussed, the District has a long-standing policy of collecting impact fees upon new developments proposed for areas within the boundaries of the District. The purpose of these fees is to offset the impacts of such developments upon the District’s ongoing ability to provide emergency response services to all areas within the District. The fees are designed to maintain the existing level of such services by shifting the costs of such impacts to those persons or entities responsible for such impacts.

As further discussed, these fees are segregated from operational funds and used exclusively for capital facilities or equipment, again, with the object solely of maintaining the existing level of service. The District does not seek operating funds nor funds to expand the existing level of services. (I have attached an analysis of impact fees prepared by the economic consultant used by the District in determining the level of impact fees assessed under usual and regular circumstances. You will note the emphasis on capital facilities as the primary basis for establishing the level of fees.)
Ms. Michelle Zimmerman  
September 18, 2017  
Page 2

The District’s original proposal of imposing fees in the amount of $591,094.70, was related to a percentage of standard impact fees to be collected from your Company’s proposed Project, based upon an impact fee collected on commercial projects on a square footage basis. Using a strict application of the impact fee formula would have resulted in a fee in excess of $5.9 million. The District recognized that this level of impact fee was inequitable for application to the Project.

Instead, after consultation with various parties and research into aspects of the impact of such Project, as well as the nature of the District’s fee structure for construction review, the District Board of Director’s initial proposal was grounded upon the original proposed size of the Project and certain equitable adjustments made, based upon service demands created by the Project, as well as the duplicative nature of regular construction review of substantially-identical Project components.

After considering your Company’s position and arguments in favor of an impact fee reduction, the reduction in Project size, as well as your Company’s request for what the District is seeking to accomplish from imposition of such impact fees, after engaging in considerable review and discussion at its regular Board meeting of September 13, 2017, the Board of Directors has arrived at the following proposal for an impact fee amount, which is both equitable to the District and its base of existing taxpayers and to your Company, considering the overall impact created by the sizeable solar electric generation development, as currently proposed:

1. Payment to the District of the sum of $360,000 for impact fees, pursuant to an impact fee agreement between the District and Cypress Creek Renewables.

2. Said impact fee amount to be payable in three (3) equal, annual installments of $120,000, with the first installment due at the time Cypress Creek Renewables files its application for the initial building permits for the Project. Each subsequent payment of $120,000 would be due, without interest, upon the anniversary date of the first payment.

If you have any questions, please contact this office. Thank you.

Sincerely,

[Signature]

Robert L. Tibbals, Jr.

Attachment
Impact Fee Design Considerations

This report presents the analysis underlying calculation of proportional development impact fees for the Kiowa Fire Protection District (KFPD or the District). This section describes fee design requirements and various implementation considerations.

Background and Objectives

The Kiowa Fire Protection District first hired BBC Research & Consulting in 2004 to determine if the District had a defensible basis for adopting impact fees and, if so, to suggest potential fee amounts.

Consequently, the objectives of this are to:

(1) review the District’s current level of infrastructure;

(2) describe current mechanisms for financing new growth-related infrastructure; and

(3) set forth calculations of proposed impact fees as required to ensure that infrastructure is available to accommodate new growth.

It is recognized that the District may choose not to adopt fees as high as the maximum defensible amounts calculated in this report.

Impact Fee Design Requirements

There is no universally accepted definition of impact fees, but most studies emphasize the fee’s one time use; application to new development; design requirements for proportionality; and restricted use for infrastructure expansion purposes only:

"Fees collected through a set schedule or formula, spelled out in a local ordinance... fees are levied only against new development projects as a condition of permit approval to fund infrastructure needed to serve the proposed development. Impact fees are calculated to cover the proportionate share of the capital costs for that infrastructure..." 1

The key requirements of impact fee design are set by Colorado Statute and a series of United States Supreme Court rulings.

Colorado requirements. Colorado statutes enable the use of impact fees and dictate the following fee requirements:

- Impact fees are a one-time payment levied on new development;

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Funds can only be used for growth-related capital infrastructure projects;

➤ Applicable infrastructure must have at least a five year life;
➤ No funds can be diverted for operations, maintenance, repair or facility replacement purposes;

Fee revenues must be segregated from other general revenues and used for the purposes for which they were collected;

Fees must be imposed on all forms of development and cannot be limited to one type of land use;

Impact fee revenues must be used for capital infrastructure expansion. No funds can be used for correction of existing system deficiencies; and

There must be a reasonable expectation of benefit by the fee payer.

U.S. Supreme Court decisions. Impact fee design must also respect broad guidance offered by a series of United States Supreme Court rulings. The two most notable court decisions that speak to impact fee design and constraints on fee use are often referred to as Nollan2 and Dolan3.

Guidance from these decisions requires that there be an "essential nexus" between the exaction/fee and the state interest being advanced by that exaction. In the more recent Dolan v. City of Tigard (1994) decision, the U.S. Supreme Court held that in addition to an essential nexus, there must be a "rough proportionality" between the proposed exactions and the project impacts that the exactions are intended to mitigate. In Dolan, the court further states that rough proportionality need not be derived with mathematical exactitude but must demonstrate some relationship to the specific impact of the subject project:

"We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirements of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."

Over the past two decades since Dolan, many communities have imposed impact fees; thus, there now is a broad set of common practices when considering how best to reflect these judicial and statutory requirements in fee design efforts.

Fee Applicability

As noted above, impact fee revenues can only be used to cover the expansion costs of public infrastructure needed to serve new development and fee amounts can only be set to recover the cost infrastructure expansion that is proportional to the needs of the new project.

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3 Dolan v. City of Tigard (1994) 114S.Ct. 2309
Public infrastructure. Public or capital infrastructure is the physical component of public services, generally including buildings, facilities and related improvements, such as parking, lighting, ball fields or other support facilities. Capital infrastructure includes streets, parks, administrative facilities, specialized fire or police buildings, and developed recreation facilities. Under Colorado statute infrastructure can include all equipment that has at least a five-year lifetime. It does not include personnel or any element of service costs even in circumstances where new staff is required to operate the new facilities.

Nature of infrastructure investments. In considering fee requirements, it should be noted that not all capital infrastructure costs are associated with community growth or with the expansion of facility capacity. Most communities make frequent infrastructure investments regardless of growth pressures for repair and replacement of facilities. Communities considering impact fees must recognize three elements of infrastructure needs:

- **Repair and replacement of facilities.** The expense of maintaining current facilities, such as annual building maintenance, or replacing a roof.
- **Betterment of facilities.** Implementation of new services or improvement of existing facilities (e.g., adding better training equipment at a recreation center) without increasing service capacity.
- **Expansion of facilities.** E.g., expanding an existing city hall to accommodate growing personnel requirements occurring in association with community growth.

Impact fees can only cover those infrastructure costs associated with the expansion of facilities to serve the needs of new growth.

Other Fee Design Considerations

Over time a reasonable consensus has emerged as to how best to assure fee compliance with state statute and federal court dictates. In order to develop fees, there are three basic components: definition of community standards; calculation of proportional attribution to new growth and attribution of infrastructure needs across all major land uses. These issues and their resolution for this analysis are discussed below.

Setting community standards. The first fee design issue involves determining appropriate capital standards for each category of infrastructure. Some states’ enabling legislation describes capital standard criteria with specificity; for instance, Idaho requires that a city use an endorsed capital improvements schedule and then a process of attribution between growth related and other investments—Colorado does not have this same detailed guidance. Facility standards, such as library space per household or recreation facilities per household, can vary widely between communities; thus, it is not appropriate to use standards developed for other towns, or standards applied nationally.

Calculation methodology. There are two common methodologies employed in order to meet the standards described above, the current service standard (capital buy-in) and the capital improvement (plan-based):

- Typically, the buy-in fee design process involves documenting the replacement value of specific capital facilities and qualified equipment used for each category of infrastructure, and then defining
that level of investment as the city's capital standard. For instance, a city of 2,500 homes with a 20,000 square foot recreation center (capital replacement value of $5.0 million) would have a recreation center standard of 8 square feet per housing unit (20,000 sq. ft./2,500 homes = 8 sq. ft. per home). At $250/square foot (replacement value of equivalent space), each existing residence would have an embedded recreational investment of $2,000 per home. This would be the community’s present facility standard and this is what each new unit could be charged as a “buy-in” amount for a recreational impact fee.

- In the plan-based fee methodology, the cost of new infrastructure is allocated to new growth in proportion to that growth's anticipated demand of the infrastructure. This forward looking approach requires forecasts of households and commercial growth and detailed data on capital expansion plans. For infrastructure to be eligible for inclusion in the impact fee calculation, it must meet the requirement that only items with a useful life of five years or more are designated a fee-eligible capital asset, per CRS 29-20-104.5.4 Any improvements used to address current service deficiencies or increase the level of service cannot be included in the fee calculation—in other words, the fee calculations must take into account the current level of service and exclude any elements of the plan that would result in a higher level of service.

BBC used the capital buy-in approach to calculate the impact fees presented in this report. This decision was mutually agreed upon by BBC and the KFPD as it provides the most accurate and robust fee calculation methodology given all available information.

Adjustments for debt. Since facility standards are defined by a community’s demonstrated investment in infrastructure, calculations of community standards must recognize, and net out, any applicable debt. Debt service will be paid by all future residents—new and old; it’s not appropriate to charge new development a front end impact fee and then charge the same development again, after becoming residents or property owners, requiring them to also pay the remaining equity and interest costs. All capital infrastructure amounts used in the fee calculations are free of any debt financed components.

Fee design cost-recovery. The cost of this study can be recovered through fees and used to reimburse the general fund. Fee design costs have been included in the District’s infrastructure valuation.

Proportionality. As part of the fee design process it is necessary to ensure that fees only cover the proportional expansion costs caused by new development. The state statutes and aforementioned court decisions require a demonstration of proportionality. In this instance, by using existing infrastructure and service population, then requiring new development to pay fees at an amount scaled by the current level of service, proportionality is reasonably and fairly derived.

Allocation by land use. The courts have indicated that all forms of development that have facility impacts (residential, industrial and commercial) must pay their fair share of expansion costs. If one land use is exempted from fees all other land uses have no reasonable expectation of seeing facility expansion

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4 Impact Fee Enabling Statute: CRS 29-20-104.5. Local Government Regulation of Land Use.
completed. Quantification of current residential, commercial, industrial and related non-residential land uses is obtained from the county assessor’s data.

**Use specificity.** Impact fee systems vary in how precisely they differentiate between varying forms and size of residential development and varying uses of commercial buildings. Detailed non-residential use or other specificity is merited when there is compelling evidence that use or size variations reflect substantive difference in the demand for public services. The proposed fee structure in this report is consistent with KFPD’s existing fee system and differentiates between a residential fee category assessed per unit and a non-residential (i.e., commercial/industrial) fee category assessed by the square foot.

**Redevelopment/Credits.** Application of impact fees raises a series of questions about how to approve redevelopment of existing properties and the circumstances under which fees can be waived or adjusted. The redevelopment of a residence, even a complete demolition and home reconstruction, does not mean an increase in public service costs—it is still one residential unit with little or no implications for service delivery costs or capital needs. Redevelopment of larger lots with multiple homes would be assessed a fee based on the number of net new residences. Similarly, non-residential redevelopment will only be charged on the basis of net new space.

**Waivers.** The District should not waive impact fees unless the fund is reimbursed from other sources such as the general fund or the developer/owner is making other contributions to system expansion by other mechanisms that meet or exceed the calculated requirements.

**Timing.** Generally impact fees are collected either at the time of building permit or at the issuance of a certificate of occupancy. BBC recommends the District collect impact fees at the time of building permit, which allows the District more time to extend service.
Jaxon Fagan

From: Gerry Lamansky <g.lamansky@kiowafire.com>
Sent: Thursday, February 15, 2018 4:23 PM
To: Jaxon Fagan
Cc: Austin Garza; Don Ogborn
Subject: Sundance Solar

Jaxon,

This is to confirm that we have spoken and addressed the fire safety concerns regarding the Sundance Solar project. Our safety concerns have been outlined in our Project Comments which you have received today.

Prior to today our comments were sent to Kyle Fenner at least three other times.

Contact me with questions.

Gerry Lamansky
Fire Chief
Kiowa Fire District
Good morning Ron. And I am cc’ing all the Planning Commissioners on this email to update you on the question Ron provided Wednesday that is below.

This is to update you all with the question and answer about the referrals to the Kiowa Fire District. Jaxon Fagan is our project Planner on this case and we have the following information to provide.

Chief Gerry Lamansky of Kiowa Fire was present at the June 13, 2017 pre-application meeting and he provided the following comments:

- Access roads must have all-weather surfaces for emergency vehicles
- Locked gates must have a lock box accessible by Kiowa Fire Protection District.
- Kiowa Fire Protection district may require on-site water for fire protection. The District will contact the applicant once making a decision in this regard.

Chief Lamansky had followed up directly with the applicant on his comments. He had also asked Jaxon to send him additional documents about the project after the pre-application meeting, which he did.

Chief Lamanasky was sent a referral on Sept 7, 2017. We (Baseline) never actually received his response (unfortunately). Jaxon did pour thru old emails and did find an email from Kyle Fenner saying that Kiowa Fire submitted a paper comment letter, but it was never sent to Jaxon from Kyle. Jaxon worked yesterday with Tracey to try and track that letter down, but in the meantime Chief Lamansky provided the attached relevant doc’s he had (attached) in his file to Jaxon yesterday. They are now part of the PC packet for this case.

As you will see – communication between the applicant and the Fire District have continued throughout the process as we were aware of such, but we never actually had the letters they had sent out. Sorry for the confusion and delay, but we are ironing out communication delays as we move forward with each review process in the office at Elbert County. The good part of the story is that Fire District and applicant communications have been ongoing.

I will bcc Chief Lamansky as well as the applicant on this email so they are updated with the information provide to you as the Planning Commission.

Hope this helps, we will print these sheets for you for the PC meeting.

Best regards,
From: Ron Turner [mailto:countyoil@hotmail.com]
Sent: Wednesday, February 14, 2018 12:03 PM
To: Vince Harris
Subject: SU-17-0036 and 10-17-0037

Vince,
I have been reviewing the referenced Special Use and the referrals. The review of the Overlay Districts, on February 6th, had a discussion from the Elbert County Fire Dept. about no referral sent and we were close to voting a continuance.

Why is there NO referral to the fire department for the Solar Application? I would refer you to present Part II, Section 17, B.7.g., safety is important and one of the things that the Elbert Fire Department is involved with.

Ron Turner
Hi Sam and Jaxon,

I wanted to let you know that my team was able to run the numbers through our financial project modeling with regard to their request for a $360,000 impact fee from the Kiowa Fire District. I sent the email below and attachments to the Fire District Chief and will follow up with him via phone on Monday. I realize this is just the beginnings of discussions with them, but wanted to keep you in the loop. I’m hopeful we can meet with the Fire District after the Feb 20th meeting and come to an agreement prior to the Feb 28th meeting with the BOCC. I also contacted neighboring counties and their local fire protection districts have not required any impact fees on solar projects of any size that they are aware of at this time. Please let me know if you have any feedback or suggestions on this or a different approach.

Thank you,
Michelle

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Hi Gerry,

I apologize for the delay in getting back to you regarding the letter that was sent on the impact fee request.

While I recognize the Fire Protection District reduced the requested fee to $360,000 over the course of 3 years (per the letter from Mr. Tibbals dated 9-19-17), I’m unable to make that amount work in our project financials. I have reviewed the letter, had our counsel review the letter and the Impact Fee Design Considerations, and we appreciate that the fee has been reduced from its original amount, but the project still cannot manage that amount over its first 3 years.

However, we can pay approximately $46,000 per year for 20 years via our Personal Property Taxes plus an additional $50,000 for the first year of construction. The property taxes for this project are estimated amount is directly from the assessment made by the Division of Property Taxation. The personal property taxes associated with the project are levelized over 20 years so the county and taxing authorities can expect about the same amount each year (it will fluctuate +/-5% annually per the DPT). This amount over the course of the 20 years will exceed the $360,000.

There are a few things that I think may help provide clarification:

1. The Kiowa Fire District will be receiving approximately $46,000 per year from Personal Property taxes from the Sundance Solar Project (the total for the County is over $308,000 per year). This is based on the 2016 mill levy numbers and will most likely be higher than this amount upon project construction (planned for 2020). The property tax estimate numbers are provided by the State Division of Property Taxation which is the entity that will provide the assessment for the County on renewable energy projects greater than 2MW in size.
2. The needs this project may have from Kiowa Fire District are minimal. Cypress Creek Renewables has over 2 GW of solar power in the ground (that is approximately 15,000 to 20,000 acres in solar) throughout the nation and have had zero emergency response calls. There will be 1-3 workers on the premise on a weekly basis so there
will not be a significant amount of employee activity. The project does not add people to the land as a housing or real estate development might and there are not people on site before or after dark.

3. I have attached a DRAFT Safety Plan. Please note, this is DRAFT as a number of details will be added once we hear from the Planning Commission, BOCC, and go through out development permit process. The Emergency Response Plan is Appendix D.

4. I have attached a Vegetation Management Plan for your review.

5. The fire response, from our experience with other solar projects, is minimal. There are no increased fire risks associated with the project, in fact, the vegetation management plan calls for a short-growth ecosystem to both reduce shading on the panels and for fire mitigation. In the case of a fire, the recommendation is to turn off the power at the source and then fight the perimeter of the project. There has not been any increased fire danger due to solar facilities and no fires have occurred on any of our projects or projects throughout the nation.

6. The only time increased activity will occur on the site is during construction. We can offer to pay an impact fee to help cover any potential emergency response calls during the time of construction as I recognize there will not be property tax income until the project is up and running (after construction). The project can afford to pay a $50,000 impact fee in year one (construction) and then will be paying property taxes annually, approximately $46,000 per year of which will go to the Kiowa Fire General Fund.

Please let me know if you will accept $50,000 for the first year of construction and approximately $46,000 per year for 20 years via the project’s Personal Property Taxes. If so, I suggest we formalize this agreement in a written document. I am available to meet in person the week of February 26th if that is helpful.

Thank you,
Michelle

**Michelle Zimmerman**
Senior Project Manager
Cypress Creek Renewables
(c) 303-881-3087 | michelle.zimmerman@ccrenew.com
3: IREA Setback Letter

Jan 19, 2018:
- CDS and applicant discussed the applicant desire to move the new substation directly adjacent to the existing IREA substation, despite the 50’ setback in this area.
- CDS found this to be acceptable, if the applicant revised the Written Restrictions of SUR documents to allow the change, and if the applicant obtained a letter from IREA giving their permission to encroach on the setback.
- The applicant incorporated the language into the SUR Written Restrictions and altered the site plan to show the new substation directly adjacent to the existing substation. The Written Restrictions now say:

\[\text{The one substation allowed by this SUR approval is not restricted by setback standards when located adjacent to existing substations, and when the owners of said existing substations have given explicit written permission agreeing to the location of the new substation.}\]

Feb 15, 2018: IREA provided a letter allowing the setback encroachment.

OUTCOME: The new substation is now shown adjacent to the existing substation.
February 15, 2018

Tracey Aaron
Elbert County
Community & Dev. Services
P.O. Box 7
Kiowa, Colorado 80117

Re: Sundance Solar 1041 & SUR
Case No.: 10-17-0037 & SU-17-0036

Dear Ms. Aaron

The Intermountain Rural Electric Association was contacted by Cypress Creek Renewables concerning the proposed location of the Sundance Solar facility and the Elbert County review process.

The Association reviewed the proposed site diagram and does not object to a variance from the fifty-foot (50’’) setback requirement to allow the construction of the Sundance Solar facility immediately adjacent to the Association’s Kiowa substation property located at 11250 County Road 154, Kiowa, CO 80117, in Elbert County, T13S, R63W, Section 28 in the 6th P.M.

Please contact me at (720) 733-5493 with any questions.

Sincerely,

[Signature]

Brooks Kaufman
Lands and Rights-of-Way Director

Cc: Jaxon Fagan - Baseline
    Michelle Zimmerman – Cypress Creek
4: Public Utilities Regulatory Policies Act

Feb 6, 2018: CDS spoke with IREA about the Public Utilities Regulatory Policies Act of 1978 (PURPA) and its relation to the project with IREA.

Feb 7, 2018
- IREA provided CDS with a letter with further information about PURPA.
- CDS forwarded the email to the Planning Commissioners
Jaxon,

To follow up on our conversation yesterday, here are some common questions I thought you may get from the commissioners about PURPA and how it affects IREA. I am more than happy to attend the hearings to address specific questions the commissioners may have if they believe there is a benefit.

What is PURPA?
As discussed, The 1978 Public Utility Regulatory Policies Act (PURPA) was written in an effort to promote energy conservation and greater penetration of renewable energy to lessen the US dependence on fossil fuels, especially those from overseas sources. As part of that act, PURPA came up with a new generation designation known as a “Qualifying Facility” which is a non-fossil-fuel based generation system of less than 80MW total output along with some other basic conditions.

How does it apply to IREA?
Essentially, as it applies to IREA, we are required to purchase power from any Qualifying Facility that wishes to sell us power as long as our system can support it at a cost equal to what the power would cost us from a different resource. There is a complete system study process that these proposed generators must go through (refer to IREA website: https://irea.coop/rates-renewables/generation-interconnections/) before they are deemed viable and able to connect to the electric grid. This includes an agreement for the developers to fund upgrades to IREA’s system that are a direct result of the generator.

The cost at which these developers will be paid for these facilities is currently in front of the Federal Energy Regulatory Commission (FERC) for review as Xcel Energy has challenged what IREA believes is our “avoided” cost of power. It is likely that none of these proposed projects will actually begin work until FERC makes a ruling in that case.

What is the hurry?
Currently, our system can support about 100MW of total generation before we would have more generation than consumption and we have approximately 400MW of proposed solar generation currently in our queue. Therefore, these developers are in a race, so to speak, to be the first to be permitted and sign a power purchase agreement with IREA for their facilities. Without the power purchase agreement, these projects will not have anyone required to buy the energy they generate which likely means they will not be developed although they could possibly find another purchaser and still connect to IREA’s system.

Why do we not see this with Xcel Energy?
The Colorado PUC has set up rules that apply specifically to Investor Owned Utilities, like Xcel Energy, in terms of how they meet the requirements of PURPA, but the PUC has not done so for electric cooperatives and we must fall back to the federal policy for our interconnections. The system setup by the PUC for Xcel is more of a bidding system where Xcel designates an amount of renewable they can handle and the developers propose projects and pricing to meet the demand. Xcel is currently reviewing proposals from their latest bid and is expected to award those projects in the coming months.

How does this impact IREA’s proposed transmission line?
IREA is proposing a 115,000 volt transmission line between our existing Kiowa and Brick Center Substations. This line will improve reliability in Elbert County by providing multiple paths for bulk energy to reach our customers. Additionally, the line is required to help export the power from proposed Qualifying Facilities to consumers throughout IREA’s territory. In short, the transmission line drastically reduces the investment the developer(s) have to make to upgrade IREA’s system and without the line, the initial investment in IREA facilities may be too high for the solar projects to proceed. Even if the solar projects do not move forward, IREA still needs the line to reliably serve our customers in Elbert County into the future.
Who will own and operate the solar site?

The proposed developments will be owned and operated by the developers and their partners. IREA does not plan to own or operate any of the currently proposed facilities although may choose to own a small development in the future. This is in part due to the fact that IREA is a not for profit organization and does not have the ability to claim the federal tax credits related to renewable energy development.

Xcel Energy, in contrast, is a for profit business, which is why they are proposing to own and operate some renewable generation sites like Rush Creek Wind.

Please let me know if anything else comes up.

MARK JURGEMEYER, P.E.
Engineering Manager

5496 North U.S. Highway 85
Sedalia, Colorado 80135
Office 720.733.5631
Cell 303.519.3751
Fax 720.733.5864
Email MJurgemeyer@IREA.coop
5: Development Agreement

**June 13, 2017:** CDS and applicant discussed how impact fees to the county at a pre-application meeting.

**Feb 13, 2018:** CDS discussed impact fees with the County Attorney, and agreed that a negotiated Development Agreement between the County and the applicant is appropriate. A similar agreement was negotiated for the Rush Creek Wind project (attached here).
DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this twenty-fifth day of May, 2017, by and between ELBERT COUNTY, a statutory county as defined by Title 30 of the Colorado Revised Statutes (the "County"), and PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation ("PSCo").

A. RECURSALS

PSCo is the perpetual easement holder or fee owner of certain real property in the County upon which PSCo desires to complete the construction of the Rush Creek 345 kV Transmission Line Project which includes approximately 41 miles of transmission line located within a 150-foot wide easement traversing land within Elbert County ("the Project").

B. STATEMENT OF INTENT

- PSCo has applied and received approval from the Elbert County Board of County Commissioners on January 25, 2017, for a 345 kV transmission line (the "Project") to deliver electricity generated by its Rush Creek Wind Farm through Elbert County (the "County"). These approvals, which are subject to the conditions described in Resolution 17-04 include both a 1041 Permit and a Special Use Review approval.

C. PERMITTED USES

- Construction, operation and maintenance of 345 kV transmission line, substation, and all associated structures, equipment and appurtenances.

1. Accessory Uses (if any):
   - None.

2. The following uses are specifically not permitted:
   - None.

3. Temporary Uses (if any):
   --Use of approximately 20-acre temporary staging areas, as designated by PSCo, for the duration of construction.

D. REQUIREMENTS PRIOR TO CONSTRUCTION

Prior to commencement of construction of the Project within the County or May 30, 2017, whichever is earlier, PSCo will provide the following documents to the County as they relate to the Project:
1. A recordable map showing PSCo's acquired right-of-way easement along the length of the transmission line within Elbert County. The survey will also depict the following:
   - the County's right-of-way, including distances from PSCo's ROW, in order to demonstrate that there is no unpermitted encroachment by PSCo's easement into County ROW; and
   - the approximate location of the transmission line within PSCo's easement.

2. All geotechnical soils reports obtained by PSCo related to the siting of transmission line towers.

3. A written summary of PSCo's methodology for determining the locations of its transmission line towers demonstrating PSCo's efforts to avoid drainage issues and environmentally sensitive areas.

4. A list of the regulatory agencies to which the transmission line is subject.

5. A fully executed Road Use Agreement with Elbert County.

6. A Grading Permit initially approved by the Elbert County Road and Bridge Department.

7. A proposed Schedule of Construction.

8. An Engineer’s Estimate of Probable Costs of the Project.


The County will review the above-described documents within ten (10) days from the date of submission, and the parties will mutually agree on any corrections or additions to the documents with twenty (20) days from the date of submission.

E. REQUIREMENTS DURING CONSTRUCTION

Prior to commencement of construction of the Project within the County, PSCo will provide twenty-four (24) notice via telephone or e-mail to the Elbert County Engineer, Sean O’Hearn of Enertia Consulting. Such notice may also be provided at the preconstruction meeting between the parties. PSCO will allow access to the construction site upon reasonable prior notice in order for the County Engineer and/or the County Building Inspector to inspect all phases of construction activity.
F. PAYMENT OF DEVELOPMENT FEE FROM PSCo TO COUNTY

At the time of mutual approval by PSCo and the County of the Engineer’s Estimate of Probable Costs of the Project, PSCo will pay the County a one-time fee equal to one percent (1%) of the approved estimated costs of construction of the entire transmission line, substation, and all associated structures, equipment and appurtenances. The parties agree that the County will not assess any other development fee.

G. GENERAL CONDITIONS

1. PSCo will comply with the all terms and conditions of Resolution 17-04 approved by the Elbert County Board of County Commissioners on January 25, 2017.

2. The parties agree that any violation of this Development Agreement by PSCo shall constitute a violation of the Elbert County Zoning Regulations, and may be and may be enforced in accordance with the penalties provided therein.

3. PSCo will comply with all state and federal regulations regarding transmission lines, substations, and all associated structures, equipment and appurtenances, including but not limited to decommissioning and financial assurance requirements.

4. PSCo expressly agrees that it shall be solely responsible for all reasonable costs and expenses required to operate, expand, repair, maintain, transfer, sell and/or decommission the Project.

5. This Agreement shall commence on the Effective Date and remain in full force and effect until PSCo and the County mutually agree that the Project is completed in Elbert County; provided, however, if either PSCo or the County breach any of their obligations contained herein, the non-breaching party may terminate this Agreement upon providing sixty (60) day written notice to the breaching party. In the event notice is provided to the breaching party, the breaching party shall have such sixty (60) day period to cure their breach, and if such breach is cured to the satisfaction of the non-breaching party during such sixty (60) day period, this Agreement shall remain in full force and effect. Notwithstanding the termination of this Agreement, the provisions contained herein regarding the payment of fees, settlement of accounts, liability and indemnification, to the extent of liabilities may have accrued prior to the termination, shall remain in full force in accordance with their terms.

6. The County may, in emergency situations, and acting reasonably, and without giving any notice to the Company as required elsewhere in this Agreement, take immediate and all action necessary to halt construction or prevent harm that the County deems necessary for public safety.

7. Company agrees to protect, defend, indemnify and hold harmless the County, its officers, directors, managers, employees or invitees from and against all claims, demands, and causes of action of every kind and character arising from the acts of
Company in favor of third parties, on account of bodily injury, death, personal injury, or damage to property, including the loss of its use.

8. Without waiving any of the terms, conditions and protections of the Colorado Governmental Immunity Act, and only as allowed based on the exceptions to governmental immunity as described in C.R.S. 24-10-106, the County agrees to protect, defend, indemnify and hold harmless Company, its officers, directors, managers, employees or invitees from and against any excepted claims, demands, and causes of action arising from the acts of County in favor of third parties, on account of bodily injury, death, personal injury, or damage to property, including the loss of its use.

9. No party shall be deemed to be in default with respect to non-performance if due to strikes, lockouts, fire, storm, acts of God or terrorists, or any other cause (whether similar or dissimilar to those enumerated) beyond the party’s control; but lack of finances shall in no event be deemed to be a cause beyond a party’s control.

10. Except as otherwise provided herein, or except as may be hereafter determined by the parties, no party to this Agreement may sell, assign, partially assign or transfer its interest in this Agreement, or any of its rights, duties or obligations hereunder, without the prior written consent of the other party. Whenever consent or the approval of a party is require herein, such party shall not unreasonably withhold, delay, or deny such consent or approval.

11. Failure by either party to this Agreement to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

12. By entering this Agreement, the County does not waive, nor shall it be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising by third parties.

13. This Agreement shall inure to the benefit of, and be binding upon the PSCo and the County and their respective successors and permitted assigns.

14. If any provision of this Agreement shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

15. This Agreement shall be interpreted in accordance with the laws of the State of Colorado, and all obligations of the parties hereto, created by the Agreement are performable in Elbert County, Colorado. Venue of any suit or cause of action under this Agreement shall lie exclusively in Elbert County, Colorado.

16. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.
17. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

18. All notices required to be given under the terms of this Agreement shall be in writing and may be mailed or electronically transmitted, addressed to the parties as follows:

Elbert County: Ed Ehmann, County Manager/Director of Public Works
215 Comanche Street
P.O. Box 7
Kiowa, Colorado 80117
Email: ed.ehmann@elbertcounty-co.gov

With a copy to: Wade Gateley, Esq.
215 Comanche Street
P.O. Box 7
Kiowa, Colorado 80117
Email: wade.gateley@elbertcounty-co.gov

PSCo: John Lupo, Senior Manager, Siting & Land Rights
Public Service Company of Colorado
1800 Larimer Street, Suite 400
Denver, CO 80202
E-mail: john.d.lupo@xcelenergy.com

With a copy to: Carolynne C. White, Esq.
Brownstein Hyatt Farber Schreck
410 17th Street, Suite 2200
Denver, Colorado 80202
Email: cwhite@bhfs.com

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.

ELBERT COUNTY, COLORADO

By: Danny Wilcox, Chairman of the Elbert County Board of County Commissioners

Signed: [Signature]

Date: 5/24/10