

## 5-3.5 Administrative Use by Special Review – Small Solar System Facilities

### A. INTENT AND APPLICABILITY

1. The intent of this Section 5-3.5 is to describe the process and approval criteria to locate and permit a Small Solar System Facility in unincorporated Arapahoe County and to regulate the development and surface impacts of a Small Solar System Facility's operations for protection of the public health, safety, and welfare and protection of the environment. No Small Solar System shall be located, constructed, or operated within the unincorporated jurisdiction of Arapahoe County except in compliance with the approval and operational requirements set forth in the Arapahoe County Land Development Code.
2. The Administrative Use by Special Review process available as provided under this Section 5-3.5 shall apply only to a "Small Solar System Facility" as defined in Chapter 7 of this Land Development Code.

### B. RELATIONSHIP TO STATE OF COLORADO RULES

Prior to conducting any operations within unincorporated Arapahoe County, all Small Solar System facilities shall first obtain all applicable federal, state, and local permits and approvals. To the extent that there are differing standards or any conflict between an Arapahoe County's requirement and any applicable State of Colorado law, regulation or rule, the stricter standard or law, regulation or rule shall apply, unless a stricter County requirement is otherwise preempted by law.

### C. RELATIONSHIP TO SECTION 5-3.4 OF THE LAND DEVELOPMENT CODE

1. This Section provides for an Administrative Use by Special Review process for Small Solar System facilities as defined in these Regulations, so that if an applicant meets administrative approval criteria, as set forth in this Section 5-3.5, and obtains approval pursuant to the process set forth herein, then separate approval under Section 5-3.4.B (Use by Special Review) of this Land Development Code is not required.
2. As an alternative to the Administrative Use by Special Review process set forth in this Section for approval to locate a proposed Small Solar System facility in unincorporated Arapahoe County or for any solar facility that exceeds the size of a Small Solar System as defined in these regulation, an applicant may submit an application in compliance with Section 5-3.4 (Use by Special Review) utilizing the same process and regulations for approval of a Major Electric, Natural Gas, and Petroleum Derivative Facility of a Private Company (5-3.4.B.3).

### D. ADMINISTRATIVE APPROVAL CRITERIA

In order to obtain Administrative Use by Special Review approval for a Small Solar System Facility, an applicant shall first satisfy the following Administrative Review Criteria:

1. Submittal Requirements: The application and exhibits for the Administrative Use by Special Review must satisfy all applicable submittal requirements in this Section 5-3.5 and in the Development Application Manual, which shall include, but are not limited to, proof of ownership of or of the right to occupy the site location through lawful agreement.
2. Allowed Zone Districts: Small Solar System facilities may only be located in the AE, A-1, I-1 and I-2 zone districts, and where allowed by a PUD.
3. Compliance with Land Development Code Requirements: The proposed Small Solar System Facility must comply with all siting and other requirements and standards specified in this Section 5-3.5
4. Environmental/Public Health and Safety Impacts: The proposed Small Solar System Facility location or locations must meet all siting criteria set forth in these regulations. Approvals may be conditioned in accordance with these regulations to the extent necessary and reasonable to protect the public health, safety or welfare and the environment.
5. Emergency Service Providers: The Small Solar System Facility applicant must provide a commitment to serve ("will serve") letter, or evidence of commitment as is required

under the local authority's process, from the authority having jurisdiction for providing emergency services (fire protection and emergency medical services) for that facility, or if no authority has jurisdiction, provide proof of a contract for emergency services from an emergency services provider with the ability and legal authority to provide such emergency services.

## **E. ADMINISTRATIVE PROCESS**

### **1. Application Process**

- a.** Applications for an Administrative Use by Special Review for proposed Small Solar System Facilities will follow the application process outlined below and in Section 5-2.1.B of the Land Development Code, Common Procedures for an Application. To the extent that the procedures outlined in this Section 5-3.5 may conflict with any of the procedures set forth in Section 5-2.1.B of the Land Development Code, the procedures in this Section shall take precedence.
- b.** The applicant will provide a narrative describing the proposed facility including measures planned or completed for notifications, height of equipment, health and safety, decommissioning, setbacks, lightning protection and procedures and vegetation management.
- c.** Once a complete application has been submitted, County staff will refer the application for review to the various divisions of the PWD and other Arapahoe County Departments or Offices, as deemed appropriate, including the Sheriff's Office, Office of Emergency Management, and the Board of Health or other applicable local public health agency. An application will also be referred for review to outside agencies such as Colorado Parks and Wildlife (CPW), any fire district having jurisdiction in the area of the proposed facility, any adjacent governing jurisdictions, local public health department, the County Sheriff's Office, the U. S. Army Corps of Engineers, and others as may be deemed appropriate.
- d.** The applicant shall provide a written response to all staff and referral agency comments.
- e.** Upon completion of the referral process and acceptance of the final copy of the complete application and exhibits by the PWD, the application materials will be forwarded for final review to the PWD Director.
- f.** Adjacent Small Solar Facilities of the Same Operator: No more than four (4) proposed adjacent Small Solar Systems of the same operator may be processed administratively at the same time, with a separate application and fee for each Small Solar System.

### **2. Application Notice Requirements**

- a.** The applicant shall provide written notification by U.S. Mail to all property owners of record, all occupied residences if occupants are different from record owner, all registered homeowners' associations for residential subdivisions where any portion of the platted subdivision's boundary is within one-quarter (1/4) mile of the boundary of the property on which the proposed Small Solar System Facility is to be located that an application for an Administrative Use by Special Review for a Small Solar System Facility, will be filed with the County. The applicant shall also provide such written notice to all mineral owners or lessees within the property proposed for the development if the mineral owner or lessor is different from the surface owner. The Notice of Application shall meet the format prescribed by the County and shall be mailed at the time of filing the application with the County. The property owners of record shall be those identified in the County Assessor's property records. The Planning Division will provide the applicant with the names and addresses of the homeowners' associations.
- b.** For purposes of notice to someone other than the owner of a residence as provided in 2(a) above, the applicant shall send the notice to the residence address and to the address of the record owner of the property if different from the property address.

- c. Within five days of submitting its application, the applicant shall publish notice of the application, including a description of the location, size and generating capacity of the proposed facility in the County's designated newspaper for County notices and in a newspaper with general circulation in the area where the proposed facility is to be located if area not covered by the County's designated newspaper.
  - d. Within five (5) days of filing its application with Arapahoe County, the applicant shall also post a sign listing the case number and type of case (Small Solar System Facility), the phone number of the Planning Division, and the distance from the sign to the proposed facility. The sign shall meet the format specified in Section 5-2.2.A.3 of the Land Development Code and it shall be posted for a period of at least fourteen (14) consecutive days. The sign shall be posted adjacent to and off the shoulder of the county road or other public highway, and at or near the intersection of the proposed facility's access road and the public road, outside of the right-of-way or at such other location acceptable to and approved by Planning Division staff.
- 3. Compliance With County Building and Engineering Standards and Criteria**  
All Small Solar System facilities shall comply with and be installed and operated in accordance with all applicable provisions of all Arapahoe County building and engineering standards, including but not limited to, the Floodplain Regulations, the Building Code, the Grading, Erosion, and Sediment Control (GESC) Manual, the Stormwater Management Manual, the Stormwater Ordinance, Rural Engineering Standards, and the Infrastructure Design and Construction Standards. Waivers or variances from any of these regulations may only be allowed as provided in such regulations, except for location of a facility or portion of a facility within a floodplain which is prohibited.
- 4. Setbacks**
- a. All Small Solar System Facilities shall meet the following standards:
    - I. The facility must meet minimum front, side, and rear setback distances for the zone district in which the facility proposed to be located.
    - II. A zero-foot setback for panels within the facility may be approved if the facility is proposed to cross parcel boundary lines of adjacent parcels and both affected parcels are under common ownership or a surface use agreement between the applicant and each of the affected parcel owners allows for crossing the property line without any setback.
    - III. 2,000 feet from the property line of a Designated Outside Activity Area as measured from the Small Solar System boundary. The facility boundary is defined as the facility's perimeter fence or outer edge of the landscaping required under Section 5-3.5 E.11.b. of these regulations.
    - IV. Outside of a 100-year floodplain and at least 500 feet from the edge of any perennial surface water body, the ordinary high water mark of any perennial or intermittent stream or the edge of any riparian area, whichever is the greater distance, as measured from the pad boundary, unless CPW has waived or modified the setback from the stream, surface water, or the riparian area.
- 5. Health and Safety Requirements**
- a. The Operator shall maintain 24-hour contact information for the Operator and maintain 24-hour contact information for all contractors working at the facility.
  - b. The Operator shall provide directional signage in a conspicuous place at or near the intersection of the access road with the public road, from the time of initial operation until completion of decommissioning. The sign will contain the facility address. The Operator shall maintain signs in a good and legible condition and shall replace damaged or vandalized signs within fourteen (14) days. Directional signs shall be placed at locations and shall contain directions sufficient to advise emergency crews of the Facility's location.



- b. All access roads in excess of 150 feet in length shall be provided with an approved turnaround acceptable to the local authority have jurisdiction for fire and emergency response.
- c. The Operator shall maintain such access roads in good condition and suitable for emergency vehicle use until such time as the Small Solar System Facility has been decommissioned.
- d. The County and/or appropriate emergency response agency may conduct spot inspections of access roads to ensure that emergency access in accordance with this section is maintained.
- e. Applicant shall submit an inclement weather and drive aisle maintenance plan for approval by the authority providing fire and emergency services to the facility site.

**11. Visual Mitigation**

- a. Small Solar System equipment shall be no higher than fifteen (15) feet at the solar panel mounting point. The height of the interconnection equipment may exceed 15 feet.
- b. Small Solar System Facilities within 500 feet of a property line of a property containing a residential occupied structure or a residential platted lot, shall be designed with some form of visual mitigation, to include but not be limited to, opaque fencing, berming, or landscaping. The visual mitigation requirement may be waived if existing screening is present between the proposed Small Solar System Facilities and the respective residence owner's property, or upon submittal to Arapahoe County of a waiver or informed consent signed by the residence owner agreeing to waive the visual mitigation requirement. If landscaping is selected as the method of visual mitigation it shall be drought resistant and watered for 5 years. For purposes of this subsection b, the informed consent when presented to the landowner must include a photo-simulation of the facility from the perspective the residence.
- c. Landscaping or fencing around the perimeter of the land occupied by the Facility shall be installed concurrently with the Small Solar System Facility's completion. The screening shall be designed to minimize visual impacts from adjacent properties and the nearest streets.

**12. Fencing**

- a. If Operator elects or is otherwise required by other codes (e.g. NEC) to install fencing, a fence permit must be obtained from Arapahoe County Zoning and fencing shall:
  - i. Comply with CPW stipulations
  - ii. Meet specific requirements outlined in 12. b.
- b. Locks/Emergency Access Hardware
  - i. The Operator shall provide approved KNOX brand emergency access hardware for any locked facility gates or access points.
  - ii. OEM and the appropriate fire district will approve the hardware.

**13. Wildlife, Wetlands, Riparian Areas and Stream Channel Measures**

- a. The Operator shall implement the recommendations of Colorado Parks & Wildlife (CPW) that address any site-specific site conditions.
- b. The Applicant shall avoid constructing in CPW-mapped High Priority Habitats (HPH) to the maximum extent possible.
- c. Fencing that bisects streams or other tributaries with an ordinary high water mark is prohibited.
- d. Operator shall inspect the interior of the facility at least once weekly, to potentially free any trapped animals, such as but not limited to deer or antelope.
- e. Operator shall keep record of and shall make a written report to CPW, at least once annually, to document wildlife species that became entrapped within the security fencing or collided with facility equipment, panels, or wires.

**14. Floodplains/Floodways Restrictions**

- a. Small Solar System facilities shall not be located in a floodplain. Access roads and underground utilities are permitted to cross floodplains provided they are

designed to meet Arapahoe County Floodplain Regulations and the Infrastructure Design and Construction Standards or other applicable Engineering Standards and those crossings are in accordance with a floodplain permit issued by the Arapahoe County Floodplain Administrator in accordance with Section 5-4.3 of the Land Development Code.

**15. Decommissioning**

- a. Within 9 months of ceasing operations, the operator shall complete decommissioning of the Small Solar System which will include removal of all aboveground and belowground equipment, removal of access roads and reclamation per the GESC Plan.
- b. Any equipment that cannot be recycled shall be properly disposed in accordance with all State and Federal regulations.
- c. The site shall be revegetated in compliance with the property owner's specifications or the GESC Plan.
- d. Prior to putting the facility into operation, the owner/operator shall provide to the County a decommissioning bond in an amount approved by the Building Division and with a form of surety approved by the County. Such bond shall name the County as the beneficiary or obligee on the bond. The owner/operator shall maintain such bond at all times through the operation and closure of the facility and for the nine-month period provided above or until the facility is fully decommissioned and the property fully restored as required herein, whichever is the later date. Upon expiration of the nine-month period, the County may call on the surety to fund the cost of any remaining decommissioning requirements.

**16. Insurance**

Prior to putting the facility into operation, the owner/operator shall provide proof of general liability insurance with commercially reasonable amounts of coverage for the permitted Small Solar System Facility. Facility owners/operators shall maintain such insurance in place through all times the facility is in operation.

**17. Operation in Compliance with Laws and Regulations**

The Small Solar System Facility shall be operated in compliance with all applicable federal, state, and local laws and regulations.

**F. APPROVAL/DENIAL/CONDITIONS OF APPROVAL OF ADMINISTRATIVE USE BY SPECIAL REVIEW/APPEAL**

**1. Action to Approve, Conditionally Approve or Deny**

The PWD Director may approve, approve with conditions, or deny an Administrative Use by Special Review application for a Small Solar System Facility. Written notice of the decision shall promptly be provided to the applicant, and, if denied, the notice shall include a statement of the reason(s) for denial.

**2. PWD Director's Discretion to Refer to the Board**

In lieu of the PWD Director making a decision on an application, the Director has the discretion to refer any application for Administrative Use by Special Review or amendment thereto to the Board for its consideration and decision at a public hearing. In such event, the Board shall make its determination based upon the requirements of this Section; however, unless waived by the Board, compliance with the notice requirements set forth in Section 5-3.4.C.2. is required prior to the Board hearing. At such public hearing, the Board may approve, approve with conditions, or deny the application.

**3. Permits Required Prior to Commencement of Operations**

If applicable under the Land Development Code or other Arapahoe County code or regulation, an Access Permit issued under the Infrastructure Design and Construction Standards and a GESC Permit, shall be required prior to the development of a Small Solar System Facility. A Floodplain Development Permit shall be required prior to any work within a floodplain. A Building Permit will be required prior to construction of structures or the erection of equipment within the Facility in accordance with the Arapahoe County Building Code.

**4. Appeal of Decision on Application for Administrative Use by Special Review**

An applicant may appeal the Public Works and Development Director's denial of an application for an Administrative Use by Special Review for a Small Solar System Facility, or any conditions of approval, to the Board of County Commissioners for a de novo hearing. The Applicant must file the appeal within fourteen (14) calendar days of the date of the PWD Director's decision by submitting a letter of appeal to the Planning Division Manager. Thereafter, the matter will be scheduled on the next available agenda of the Board, following public notice required by Section 5-3.4.C.2. At such hearing, the Board may affirm, reverse, or modify the decision of the PWD Director, based upon the criteria set forth in this Section 5-3.5.

**G. ADMINISTRATIVE AMENDMENT**

If the Applicant or the Operator proposes changes from the plans approved through the Administrative Use by Special Review, including but not limited to the type, size and layout of equipment on the facility or visual mitigation measures, the Applicant is required to submit an amendment to the approved Administrative Use by Special Review plans showing the proposed changes. The PWD Director may approve, conditionally approve, or deny the proposed amendment in accordance with the provisions of this Section 5-3.5. The proposed amendment will be reviewed by PWD staff and, as needed for the review of the application, PWD Staff may require additional information. The amended application will need to meet all requirements of this Section and be approved in writing. The PWD Director may exercise his or her discretion to elevate any proposed amendment to the BOCC for consideration and decision as provided in Section 5-3.5.F.4 above. Upon recommendation of PWD Staff, the PWD Director may waive the need for amendment of the Administrative Use by Special Review provided that the proposed change is found to be minor, with no material effect to or departure from the original approval, and without the potential for significant surface impacts to public health, safety, welfare, or the environment at the Facility site.

**H. TRANSFER/SALE OF FACILITIES TO A NEW OPERATOR**

The Operator of a Small Solar Facility must notify the Planning Division in writing within seven days of the closing on any transfer of a Small Solar System Facility or Facilities to a different Operator or other successor owner. The Operator must also provide written notice of the transfer or conveyance identifying the new owner to the fire district having jurisdiction over the facility or other authority providing emergency fire and rescue services for the facility, and to the Arapahoe County Office of Emergency Management. Prior to commencing any operations at the site of the transferred Small Solar System Facility, the new Operator or successor owner must first provide the following to the County, OEM and the applicable fire district:

1. Letter(s) authorizing the transfer of the Small Solar System Facility operation as approved through the original Administrative Use by Special approval for the Facility to the new Applicant and the new Applicant's written acceptance of responsibility for the operations at the Small Solar System Facility and agreement to abide by all terms and conditions of the Administrative Use by Special Review approval.
2. A decommissioning bond and evidence of all insurance as required under these regulations.

**Small Solar System Definitions**

The Small Solar System definition is proposed to be included in the Definitions Chapter 7 of the Arapahoe County Land Development Code

**Small Solar System Facility or Facilities**

A definable area where an Applicant has disturbed or intends to disturb the land surface in order to locate a solar power generating facility designed to produce electricity with a maximum capacity of 5 Megawatts (MWac) alternating current, or MW capacity whichever is greater. A small solar system does not include battery storage equipment of facilities.

**Small Solar System Facility Boundary**

A definable perimeter limit around a small solar system facility at the outer edge of the facility fencing.