

RESOLUTION NO. 180096

It was moved by Commissioner Baker and duly seconded by Commissioner Jackson to adopt the following Resolution:

WHEREAS, application has been made by Hunter Solar LLC for a Use by Special Review Hunter Solar (Case No. U17-005) to establish a Major Electrical, Natural Gas, or Petroleum Derivative Facility of a Private Company for a solar array development for an electrical power generation facility in excess of 2 MW, to be located on certain property hereinafter described, to-wit:

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 5, THE NORTHEAST AND SOUTHEAST QUARTER OF SECTION 8, SECTION 9 AND THE NORTHWEST QUARTER OF SECTION 16 OF TOWNSHIP 5 SOUTH, RANGE 63 WEST, WEST OF THE 6TH PRINCIPAL MERIDIAN.

Legal Description by Parcel:**PIN 035123014 (PER TITLE COMMITMENT)**

THE SE1/4 OF SECTION 5, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EXCEPTING THEREFROM, THAT PORTION AS CONVEYED TO ARAPAHOE COUNTY IN THE DEED RECORDED AUGUST 8, 1979 IN BOOK 2826 AT PAGE 723; EXCEPTING THEREFROM, THAT PORTION AS CONVEYED TO THE COUNTY OF ARAPAHOE IN THE DEED RECORDED NOVEMBER 28, 2006 AT RECEPTION NO. B6168264; AND EXCEPTING THEREFROM, THAT PORTION AS CONVEYED TO THE COUNTY OF ARAPAHOE IN THE DEED RECORDED APRIL 21, 2014 AT RECEPTION NO. D4032052, COUNTY OF ARAPAHOE, STATE OF COLORADO.

PIN 034633596 (PER TITLE COMMITMENT)

THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EXCEPTING THEREFROM, ANY PORTION AS CONTAINED WITHIN ARAPAHOE COUNTY ROAD 30 (E. QUINCY AVE); EXCEPTING THEREFROM ANY PORTION AS CONTAINED WITHIN ARAPAHOE COUNTY ROAD 129 (S. BRICK-CENTER ROAD); AND EXCEPTING THAT PORTION AS CONVEYED TO THE COUNTY OF ARAPAHOE IN THE DEED RECORDED NOVEMBER 19, 2004 AT RECEPTION NO. B4202245; AND EXCEPTING THAT PORTION AS CONVEYED TO ARAPAHOE COUNTY, COLORADO IN THE DEED RECORDED AUGUST 25, 2005 AT RECEPTION NO. B5127659. COUNTY OF ARAPAHOE, STATE OF COLORADO.

PIN 033700511 (PER TITLE COMMITMENT)

THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EXCEPTING THEREFROM, ANY PORTION AS CONTAINED WITHIN ARAPAHOE COUNTY ROAD 129 (BRICK-CENTER ROAD); EXCEPTING THOSE TWO PORTIONS AS CONVEYED TO PATRICK LAWRENCE BARENBERG IN THE DEED RECORDED JULY 5, 1996 AT RECEPTION NO. A6086167; EXCEPTING THAT PORTION AS CONVEYED TO AMY L. SORBIE AND MAX G. LENAISKI IN THE DEED RECORDED APRIL 24, 1996 AT RECEPTION NO. A6049428; AND EXCEPTING THAT PORTION ORIGINALLY CONVEYED TO DANIEL MOONEY AND TINA MOONEY IN THE DEED RECORDED AUGUST 23, 1996 AT RECEPTION NO. A6110213, COUNTY OF ARAPAHOE, STATE OF COLORADO.

PIN 034720731 (PER TITLE COMMITMENT)

A PARCEL OF LAND SITUATE IN THE SECTION 9, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH P.M., COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 9; THENCE S00°34'59"W ALONG THE WEST LINE OF SAID SECTION 9, A DISTANCE OF 57.02 FEET TO A POINT OF INTERSECTION WITH EXISTING SOUTH RIGHT-OF-WAY LINE OF ARAPAHOE COUNTY ROAD NO. 30 AS RECORDED UNDER RECEPTION NO. B4177870 RECORDED OCTOBER 7, 2004 IN THE RECORDS OF SAID COUNTY, SAID POINT BEING THE POINT OF BEGINNING; THENCE N88°57'36"E ALONG SAID SOUTH RIGHT-OF-WAY LINE BEING 57.00 FEET SOUTH AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 9, A DISTANCE OF 2,144.92 FEET; THENCE S00°34'59"W ALONG A LINE PARALLEL WITH SAID WEST LINE OF SECTION 9, SAID WEST LINE ALSO BEING THE CENTER LINE OF BRICK-CENTER ROAD, A DISTANCE OF 2,031.66 FEET; THENCE S88°57'36"W ALONG A LINE PARALLEL WITH SAID NORTH LINE OF SECTION 9, A DISTANCE OF 2,144.92 FEET TO A POINT ON SAID WEST LINE; THENCE N00°34'59"E ALONG SAID WEST LINE, A DISTANCE OF 2,031.66 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN COUNTY ROAD 129 (BRICK-CENTER ROAD).

PIN 034829547 (PER TITLE COMMITMENT)

A PARCEL OF LAND SITUATE IN THE SECTION 9, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH P.M., COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 9; THENCE N00°34'59"E ALONG THE WEST LINE OF SAID SECTION 9, SAID LINE ALSO BEING THE CENTER LINE OF BRICK-CENTER ROAD, A DISTANCE OF 3,225.49 FEET; THENCE N99°57'36"E ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID SECTION 9, A DISTANCE OF 2,144.92 FEET; THENCE S00°34'59"W ALONG A LINE PARALLEL WITH SAID WEST LINE, SAID LINE ALSO BEING THE WEST LINE OF A PARCEL OF LAND AS RECORDED IN BOOK 2586 AT PAGE 655 OF THE RECORDS OF SAID COUNTY, A DISTANCE OF 3,222.67 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL, SAID POINT ALSO BEING A POINT ON THE SOUTH LINE OF SAID

SECTION 9; THENCE S88°53'05"W ALONG SAID SOUTH LINE OF SECTION 9, A DISTANCE OF 2,145.00 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN COUNTY ROAD 129 (BRICK-CENTER ROAD), PARTIALLY INCLUDED WITHIN THE DEED TO ARAPAHOE COUNTY RECORDED SEPTEMBER 18, 2007 AT RECEPTION NO. B7120722, EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN COUNTY ROAD 34 (E. BELLEVUE AVE), PARTIALLY INCLUDED WITHIN THE DEED TO ARAPAHOE COUNTY RECORDED SEPTEMBER 18, 2007 AT RECEPTION NO. B7120721, AND EXCEPTING THEREFROM ANY PORTION OF SAID LAND AS CONVEYED TO INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION IN THE DEED RECORDED AUGUST 27, 2007 AT RECEPTION NO. B7110702.

PIN 034610332 (PER INFORMATION FROM ARAPAHOE COUNTY ARAPAMAP GIS)

THAT PART OF SEC 9-5-63 DESC AS BEG 1870 FT W & 57.12 FT S OF THE NE COR OF SD SEC TH SSW 2604.43 FT & 134.62 FT TH W 520.44 FT TH SW 751.65 FT TH S 968.29 FT TH W 320.81 FT TH N 4343.34 FT TO A PT ON THE S ROW LINE OF E QUINCY AVENUE 1381.87 FT TO BEG EX MR'S SEC 9-5-63

PIN 034262784 (PER TITLE COMMITMENT)

A TRACT OF LAND SITUATED IN THE WEST ½ OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 15 AND CONSIDERING THE WEST LINE OF SECTION 16 TO BEAR S00°00'00"W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE N88°19'15"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SECTION 16 A DISTANCE OF 30.01 FEET TO A LINER THAT IS 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 16 AND TO THE TRUE POINT OF BEGINNING; THENCE S00°00'00"W ALONG SAID PARALLEL LINE A DISTANCE OF 782.29 FEET; THENCE N88°32'48"E A DISTANCE OF 2,671.38 FEET TO THE EAST LINE OF THE NORTHWEST ¼; THENCE N01°47'23"W A DISTANCE OF 792.48 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST ¼; THENCE S88°19'15"W A DISTANCE OF 2,646.91 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM, ANY PORTION LYING WITHIN COUNTY ROAD 34 (E. BELLEVUE AVE) AND COUNTY ROAD 129 (S. BRICK CENTER RD)

PIN 034262792 (PER TITLE COMMITMENT)

A TRACT OF LAND SITUATED IN THE WEST ½ OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 15 AND CONSIDERING THE WEST LINE OF SECTION 16 TO BEAR S00°00'00"W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE N88°19'15"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SECTION 16 A DISTANCE OF 30.01 FEET TO A LINER THAT IS 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 16; THENCE S00°00'00"W ALONG SAID PARALLEL LINE A DISTANCE OF 782.29 FEET TO THE TRUE POINT OF BEGINNING; THENCE S00°00'00"W ALONG SAID PARALLEL LINE A DISTANCE OF 569.18 FEET; THENCE N88°32'48"E A DISTANCE OF 2,689.16 FEET TO THE EAST LINE OF THE NORTHWEST ¼; THENCE N01°47'23"W ALONG SAID EAST LINE A DISTANCE OF 569.01 FEET; THENCE S88°32'48"W A DISTANCE OF 2,671.38 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM, ANY PORTION LYING WITHIN COUNTY ROAD 129 (S. BRICK CENTER RD).

PIN 034262806 (PER TITLE COMMITMENT)

A TRACT OF LAND SITUATED IN THE WEST ½ OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 15 AND CONSIDERING THE WEST LINE OF SECTION 16 TO BEAR S00°00'00"W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE N88°19'15"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SECTION 16 A DISTANCE OF 30.01 FEET TO A LINER THAT IS 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 16; THENCE S00°00'00"W ALONG SAID PARALLEL LINE A DISTANCE OF 1,351.47 FEET TO THE TRUE POINT OF BEGINNING; THENCE S00°00'00"W ALONG SAID PARALLEL LINE A DISTANCE OF 565.45 FEET; THENCE N88°32'48"E A DISTANCE OF 2,706.82 FEET TO THE EAST LINE OF THE NORTHWEST ¼; THENCE N01°47'23"W ALONG SAID EAST LINE A DISTANCE OF 565.26 FEET; THENCE S88°32'48"W A DISTANCE OF 2,689.16 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM, ANY PORTION LYING WITHIN COUNTY ROAD 129 (S. BRICK CENTER RD).

PIN 034262814 (PER TITLE COMMITMENT)

A TRACT OF LAND SITUATED IN THE WEST ½ OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 15 AND CONSIDERING THE WEST LINE OF SECTION 16 TO BEAR S00°00'00"W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE N88°19'15"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SECTION 16 A DISTANCE OF 30.01 FEET TO A LINER THAT IS 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 16; THENCE S00°00'00"W ALONG SAID PARALLEL LINE A DISTANCE OF 1,916.90 FEET TO THE TRUE POINT OF BEGINNING; THENCE S00°00'00"W ALONG SAID PARALLEL LINE A DISTANCE OF 561.78 FEET; THENCE N88°32'48"E A DISTANCE OF 2,724.36 FEET TO THE EAST LINE OF THE NORTHWEST ¼; THENCE N01°47'23"W ALONG SAID EAST LINE A DISTANCE OF 561.61 FEET; THENCE S88°32'48"W A DISTANCE OF 2,706.82 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM, ANY PORTION LYING WITHIN COUNTY ROAD 129 (S. BRICK CENTER RD).

WHEREAS, after public hearing on this matter, the Arapahoe County Planning Commission recommended that the application be approved subject to certain recommended conditions of approval; and

WHEREAS, following said Planning Commission hearing, notice of a public hearing on such proposed Use by Special Review before the Board of County Commissioners for Arapahoe County, Colorado was made by publication on January 18, 2018 in The Villager, a newspaper of general circulation within the Arapahoe County and on January 16 in the I-70 Scout, a newspaper of general circulation in eastern Arapahoe County, by posting of said property, and by mail notification to adjacent property owners in accordance with the Arapahoe County Land Development Code; and

WHEREAS, pursuant to applicable law and the Arapahoe County Land Development Code, a public hearing was held before the Board of County Commissioners at the Arapahoe County Administration Building, 5334 South Prince Street, Littleton, Colorado, on the 6th day of February 2018 at 9:30 o'clock A.M., at which time evidence and testimony were presented to the Board concerning said Use by Special Review request; and

WHEREAS, the Board finds that the Use by Special Review, as proposed in Case No. U17-005 subject to the conditions and/or stipulations recommended by staff and/or as stated in this Resolution complies with all requirements for a Use by Special Review that are set forth in the Arapahoe County Land Development Code; and

WHEREAS, the Board finds that the Use by Special Review, as proposed in Case No. U17-005 subject to the conditions and/or stipulations recommended by staff and/or as stated in this Resolution, also complies with the pertinent provisions of the Regulations Governing Areas and Activities of State Interest in Arapahoe County (1041 Regulations), as required under the Land Development Code for a Major Electrical, Natural Gas, or Petroleum Derivative Facility of a Private Company; and

WHEREAS, pursuant to the authority vested unto the Board of County Commissioners by Article 28 of Title 30 and Article 20 of Title 29, C.R.S. as amended, the Board has concluded that the public peace, health, safety, convenience and general welfare, as well as good zoning practice, justifies granting the Use by Special Review of the above described property subject to the conditions precedent and/or stipulations as hereinafter delineated.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Arapahoe County as follows:

1. The Board of County Commissioners for Arapahoe County hereby grants and approves the application for Use by Special Review Case # U17-005, Hunter Solar, for the property described in this Resolution, subject to the stipulations and/or conditions precedent as hereinafter delineated.
2. Approval of this Use by Special Review is based upon the following understandings, agreements and/or representations:
 - a) The applicant's assent and/or agreement to make all modifications to the final version of the documents that are necessary to conform the documents to the form and content requirements of the County in existence at the time the documents are submitted for signature.
 - b) The representations, statements and positions contained in the record that were made by or attributed to the applicant and its representatives, including all such statements contained in materials submitted to the Board by the applicant and County staff.

3. Approval of this Use by Special Review shall be and is subject to the following stipulations and/or conditions precedent, which the applicant has accepted and which the applicant is also deemed to accept by preparing a mylar for signature by the Chair of the Board of County Commissioners within sixty (60) days of this date and by continuing with the development of the property:
- a) The applicant's compliance with the stipulations of the Arapahoe County Planning Commission as set forth in the record of its proceedings, except as modified in this Resolution.
 - b) The applicant's compliance with all conditions of approval recommended by the staff case managers in the written staff reports presented to the Board, and any conditions stated by staff on the record.
 - c) The applicant's compliance with all of the following additional conditions of approval as stated by the Board on the record and as modified from staff recommendations, including:
 - 1. The applicant makes any modifications to plans, as requested by the Public Works and Development Department, prior to the signing of the Mylars and before any construction is started on this project.
 - 2. The applicant shall address all Engineering Services Division comments, concerns and requirements including, but not limited to, GESC, ROW, and Street Cut permits, a gravel roadway agreement, etc. or as identified in their reports, prior to the start of construction.
 - 3. The applicant shall provide for the removal of the Solar Power Plant, if and when the Solar Power Plant has been abandoned and is no longer functional or operational for a period of more than one year, through the use of a performance bond to Arapahoe County to be provided by the applicant before the project becomes operational or through some other guarantee of removal of the equipment that is acceptable to the Planning Division Manager.
 - 4. The applicant shall meet all of the requirements stipulated by Bennett-Watkins Fire Rescue.
 - 5. This Use by Special Review approval does not run with the land The USR will end when the solar energy production from the site is abandoned for a period of six (6) months or more or on February 6, 2058, whichever occurs first.
 - 6. Provided setbacks from external property lines are maintained around the outer perimeter of the property serving as a leasing site for the solar energy production facility, the solar panels and related equipment may be built up to and cross the eight internal parcel lines, parcel numbers 034633596, 033700511, 034720731, 034829547, 034610332, 034262784, 034262792, and 034262806 for the period that the properties are in use as a solar energy production facility, as generally shown on the USR drawings.
 - 7. Zone district setbacks from the property line(s) of any of the eight individual parcels, identified in the above Condition #6, shall be maintained until such time that the solar energy facility development proceeds onto the adjoining parcel

within the USR boundary, at which time the solar panels and related equipment may cross the internal property line between the affected parcels as provided in said Condition #6.

8. The applicant shall work with adjacent property owners to mitigate visual impacts through setbacks, fencing, vegetation, or other mutually acceptable means, while providing sufficient transparent fencing for wildlife migration and preventing a snow fence effect and establish an agreement with the adjacent property owners as to the style of fencing along those properties, subject to electrical code requirements.
 9. The applicant shall work with mineral rights owners to ensure that minerals underlying the project are accessible.
 10. The applicant shall construct a perimeter fence in compliance with Colorado Parks & Wildlife recommendations.
 11. The applicant shall conduct surveys for burrowing owls and tree, shrub and ground nesting raptors and songbirds prior to construction. If nests are identified a minimum of a 500-ft buffer will be maintained until the young are no longer dependent on the nest or Colorado Parks & Wildlife is in agreement that construction can proceed without buffers.
 12. The applicant shall perform an initial bird population survey prior to initial construction to establish a baseline of the number of bird species and their numbers. And thereafter an annual bird mortality survey will be required for the first 3 years following initial construction activities. Project maintenance crews will collect, identify, photograph and keep records of bird corpses. The data shall be provided to the Colorado Parks & Wildlife with a copy to the Planning Division Director so that Colorado Parks & Wildlife and the Planning Division can evaluate the impact of the project on area bird populations.
 13. The applicant shall minimize the crossings of small drainages during construction, even if water is not present at the time of construction. If drainages need to be crossed, they shall be crossed perpendicular to minimize the increase in sediment load.
 14. The applicant shall provide one or more wildlife corridors that will allow wildlife to migrate through the solar facility. The planned corridor or corridors will be submitted to Colorado Parks & Wildlife for review.
 15. The applicant shall notify adjacent property owners of construction schedules.
 16. The applicant shall meet all of the requirements stipulated by IREA.
- d) The applicant's performance of all commitments and promises made by the applicant or its representatives and stated to the Board on the record, or contained within the materials submitted to the Board.
4. Upon the applicant's completion of any and all changes to the revised Use by Special Review Mylar as may be required by this Resolution, the Chair of the Board of County Commissioners is hereby authorized to sign same.

5. That the Zoning Map of Arapahoe County shall be and the same is hereby amended to conform to and reflect said change.
6. County planning, engineering and legal staff are authorized to make any changes to the mylar form of the approved document as may be needed to conform the documents to the form and content requirements of the County in existence at the time the documents are submitted for signature, and to make such other changes that are expressly stated by staff before the Board, or are recommended by staff in the written staff reports, or are referred to by the movant Commissioner. No other deviation or variance from the form and content of the documents submitted for the Board's consideration are approved except to the extent stated in this resolution.
7. The County Attorney, with the concurrence of the planning and/or engineering case managers, is authorized to make appropriate modifications to the resolution and plan documents as needed to accurately reflect the matters presented to the Board and to record and clarify, as necessary, other aspects and ramifications of the Board's action.

The vote was:

Commissioner Baker, Yes; Commissioner Conti, Yes; Commissioner Holen, Yes; Commissioner Jackson, Yes; Commissioner Sharpe, Yes.

The Chair declared the motion carried and so ordered.