

Procedures Manual

**Subject: WIND/SOLAR ENERGY GENERATION PLAN
OVERLAY (WSEO) REZONING (MAP AMENDMENT)**

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1.1. PURPOSE

The purpose of this procedure is to establish a consistent process for reviewing and approving a request for a wind/solar energy generation plan overlay rezoning.

1.2. BACKGROUND

The LDC establishes uniform standards for the development and use of land. These standards were established to preserve and improve the public health, safety and general welfare of the citizens and businesses of El Paso County including promoting predictability, consistency and efficiency in the land development process for residents, neighborhoods, businesses, agricultural and development interests and being fair to all by ensuring due consideration is given to protecting private property rights, the rights of individuals and the rights of the community as a whole.

The zoning of parcels of land generally conforms to and promotes the County's Master Plan. Zoning protects the rights of property owners while promoting the general welfare of the community. By dividing land into categories according to use, and setting regulations for these categories, zoning governs private land use and segregates incompatible uses. The purpose of zoning is to locate particular land uses where they are most appropriate, considering public utilities, road access, and the established development pattern. In addition to categorizing land by uses such as residential, commercial, and industrial, the LDC also specifies such details as building setback lines, the height and bulk of buildings, the size and location of open spaces, and the intensity to which the land may be developed.

When a property owner wants to use land in a way that is not permitted by the zoning, a request to rezone the property to a classification which permits the desired use may be appropriate. A rezoning is a quasi-judicial action which is considered through a complex process.

1.3. APPLICABLE STATUTES AND REGULATIONS

C.R.S. §§30-28-111, 113, and 114 authorize the Board of County Commissioners to adopt and amend zoning regulations for the regulation by districts or zones of the location, height, bulk, and size of buildings and other structures, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, access to sunlight for solar energy devices, and the uses of land for trade, industry, recreation, or other purposes including methods for the administration of such regulations.

Chapters 3 and 4 of the LDC establish the various zone districts recognized by the LDC that properties may be zoned within El Paso County and the purpose of each zone district.

Section 1.8.4 of the LDC authorizes the DSD Director to change the zoning map when zoning designations and amendments to the boundaries of a zoning district are approved by the Board of County Commissioners.

Section 1.18 of the LDC declares that regulation of the land and the attachment of reasonable conditions to the use, development or subdivision of land is an exercise of valid police power delegated by the State to the County.

Section 2.2.1 (B) of the LDC authorizes the Board of County Commissioners to impose conditions on a Map Amendment.

Section 2.2.1 (G) of the LDC authorizes the Board of County Commissioners to impose reasonable conditions upon approval of any application.

Section 2.1.2 of the LDC provides the authority for the DSD Director to establish standards for processing development applications.

Section 2.2.4 of the LDC establishes the authorities of the DSD Director.

Section 5.1 of the LDC establishes the various uses allowed within each base zoning district.

Section 5.4 of the LDC establishes the dimensional standards within each base zoning district.

1.4. RESOURCES

P-GP-001-08	Determination of Project Type	P-GP-025-08	Expiration of Approvals
P-GP-002-08	Ad Hoc Assistance and Meetings	P-GP-028-08	Rescinding a Permit/Approval (Board Action)
P-GP-003-08	Early Assistance Meeting	P-GP-032-08	Authority to Represent
P-GP-004-08	Early Neighborhood Involvement	P-AR-002-08	Site Development Plan Review
P-GP-005-08	Development Application	P-AR-003-08	OWS Permit Sign-Off
P-GP-006-08	Submission and Acceptance of Application	P-AR-004-08	Sign Permit
P-GP-007-08	Review of Development Applications	P-AR-033-08	Subdivision Exemption
P-GP-008-08	Referral of Development Application	P-AR-039-08	Vested Rights
P-GP-009-08	Development Permit Decision	P-AR-053-08	Surety Release
P-GP-010-08	Resubmission of Denied Application	P-AR-056-08	Boundary Line Adjustment
P-GP-012-08	Public Notice	P-AR-057-08	Driveway Permit Review
P-GP-013-08	Development Agreements	P-AR-058-08	Building Permit Sign-off
P-GP-014-08	Planning Commission Hearing	P-AR-060-08	Erosion and Stormwater Quality Control Permit (ESQCP)
P-GP-016-08	Board of County Commissioners Hearing	P-AR-063-08	Deviation
		P-AR-064-08	Acceptance of Public Improvements
		P-AR-067-08	Replacement of Surety
		P-AR-068-08	Construction Permit
		P-AR-072-08	Warranty

P-AR-073-08 One Copy Submission

S-PL-002-08 Site Development Plan
Map

1.5. GENERAL SUBMITTAL LIST

The applicant shall submit the required number of each of the following:

R-FM-004-08	Type D Development Application	S-RE-011-08	Geology and Soils Report
R-SA-002-08	Legal Description	S-RE-001-08	Transportation Impact Study (TIS)
R-FM-028-09	Public Notice-Mineral Owner Notification	S-RE-017-08	Drainage Report
R-SA-024-08	Proof of Ownership (Title Commitment)	S-RE-004-08	Wildlife Report
R-FM-033-08	Authority to Represent	S-PL-023-08	Wind/Solar Energy Generation Overlay Plan
R-FM-025-09	Public Notice-Mailed (Adjacent Property Owner Notification)	S-RE-002-08	Wetlands Analysis Report
R-SA-003-08	Development Agreement	S-PL-015-08	Construction Plans
R-SA-016-08	Fire Protection Commitment Letters	S-RE-005-08	Visual Impact Analysis
S-RE-013-08	Natural Landforms, Vegetation, Riparian Analysis	S-RE-008-08	Noise Study
S-PL-019-08	Wildland Fire and Hazard Mitigation Plan	S-PL-006-08	Noxious Weed Management Plan
		S-PL-005-08	Lighting Plan
		S-PL-020-08	Maintenance Plan
		S-PL-021-08	Operations Plan

The applicant shall also submit the required number of each of the following:

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| <ul style="list-style-type: none"> ▪ Letter of Intent ▪ Copy of Power Purchase Agreement, as determined by the DSD Director in consultation with the County Attorney ▪ Copy of Interconnect Agreement, as determined by the DSD Director in consultation with the County Attorney ▪ Copy of Floodplain Development Permit ▪ Proof of Liability Insurance ▪ Copy of State Air Quality Permit ▪ Copy of United States Army Corps of Engineer's Permit | <ul style="list-style-type: none"> ▪ Electromagnetic Interference Report ▪ Documentation of Consultation and Clearance Letter, if applicable, from United States Fish and Wildlife Service ▪ Documentation of Consultation and Clearance Letter, if applicable, from Colorado Division of Wildlife ▪ Determination of No Hazard from Federal Aviation Administration ▪ Documentation of Consultation and Clearance Letter, if applicable, from National Oceanic and Atmospheric Administration (NOAA) ▪ Haul Route Plan ▪ Road Condition Survey |
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- Site Security Plan
- Decommissioning Plan
- Existing Habitable Structures Survey
- Shadow Flicker Analysis
- Emergency Response Plan
- Copy of CDPHE Groundwater Monitoring Plan
- Any other document, report, and/or plan required by the DSD Director
- Affidavit of posting at least 7 days prior to action or hearing conforming to the requirements of R-FM-027-09 Public Notice-Posted (Affidavit of Posting)

1.6. STEP BY STEP REVIEW PROCEDURE

1.6.1. Steps

(A) Step 1 Early Assistance Meeting

Early Assistance Meeting (Required)

An early assistance meeting is required. To obtain an early assistance meeting, the applicant files an Early Assistance Application (R-FM-065-08) and the early assistance meeting is scheduled by the DSD project manager in accordance with (P-GP-003-08).

Purpose of Early Assistance Meeting

The early assistance meeting is an opportunity for the applicant to discuss their proposed development action with the DSD. Proper assistance and analysis concerning application submittal promises complete, accurate information for the customer; improves customer knowledge and understanding of requirements/conditions to be met for a successful application; sets precise timelines and schedules for both the customer and the County; fosters a strategy building relationship; and prioritizes actions to be taken to streamline the process for all parties involved. Improved communication, process, and application planning will afford the opportunity to shorten the permitting/application process and speed up development review process.

Early Assistance Meeting Procedures

When the early assistance meeting is requested, a DSD project manager is assigned. At this meeting, the DSD project manager establishes the list of required submittals based on Section 1.5 and any specific submittals required by the LDC, identifies a list of recommended submittals that will help ensure that adequate information is available to ensure all criteria for approval are met, and tells the applicant the number of copies of each submittal item that is needed for any expanded list of referral agencies [See Section 1.6.1(F) of the specific procedure]. The submittal checklist (R-FM-064-08) will be provided to the applicant at close of the meeting or within 3 business days following the early assistance meeting. The submittal checklist becomes the basis for future submittals and DSD intake staff review for

development application acceptance. A copy of the submittal checklist is required to be submitted with the development application.

(B) Step 2 Neighborhood Meeting

Depending on the nature of the application, the applicant may wish to hold a neighborhood meeting in accordance with P-GP-04-08 Early Neighborhood Involvement or to personally discuss the proposed development application with neighbors.

(C) Step 3 Application Submitted

Type D Development Application Submitted

A complete Type D Development Application along with the required supporting materials is submitted by the applicant to the DSD. The materials submitted shall include all items listed in Section 1.5 of the specific procedure and the submittal checklist (R-FM-064-08). Additional materials should be provided by the applicant as determined necessary to respond the criteria for approval in Section 1.6.2 of the procedure.

(D) Step 4 Determination of Completeness

Determination of Completeness (Notice of Mailing Required)

The DSD intake staff makes a determination of completeness (quantitative and initial correctness review) based on the submittal checklist (R-FM-064-08). If not complete, the application and supporting materials are returned with a request to the applicant to provide any additional required materials not received. If the application is determined to be complete, the application is accepted and a receipt is issued. The DSD project manager researches abutting and affected property owners in accordance with R-FM-025-08 Public Notice-Mailed (Adjacent) and Section 1.6.1 (K) and 1.8 of the specific procedure, and prepares and mails a courtesy notice concerning the application in accordance with R-FM-029-08 Public Notice-Early Notice (Mailed), and Step 6 is initiated.

(E) Step 5 Resubmission of Application (if required)

Resubmission of Type D Development Application (if required)

A complete Type D Development Application along with the required supporting materials is resubmitted by the applicant. The DSD intake staff makes a determination of completeness (quantitative and initial completeness review) based on the submittal checklist (R-FM-064-08). If not complete, the application and supporting materials are returned with a request to the applicant to provide any additional required materials not received and Step 5 is repeated. If the application is determined to be complete, the application is accepted and a receipt is issued. The DSD project manager researches abutting and affected property owners in accordance with R-FM-025-08 Public Notice-Mailed (Adjacent) and Section 1.6.1 (K) and 1.8 of this procedure, and prepares and mails courtesy notice

concerning the application in accordance with R-FM-029-08 Public Notice-
Early Notice (Mailed), and Step 6 is initiated.

(F) Step 6 Application Referral By DSD Project Manager

The DSD project manager conducts the initial review and then refers the application to appropriate review agencies to determine conformance with all applicable codes, rules, regulations and ordinances. The DSD project manager refers the application for review to all reviewing agencies listed on the submittal matrix that is provided to the applicant following an Early Assistance Meeting or prior to application submittal.

Other referral agencies may be necessary based on the nature of the request. The DSD project manager may expand the list of referral agencies as necessary to support the review of the subdivision. The applicant may be requested to provide additional submittal packages if the list of referral agencies is expanded. All referral agency comments are due to the DSD project manager within 21 days of the date of referral.

(G) Step 7 Consolidation of Comments and Request to Applicant

The comments are received and consolidated by the DSD project manager. The DSD project manager confirms conformance with approval criteria. If criteria for approval cannot be met based on comments received or if additional information must be provided to make a determination of conformance to the criteria for approval, comments are transmitted to the applicant for response. The applicant or DSD may request a conference at this point to discuss the issues identified. If a conference is requested, the DSD project manager schedules a meeting with appropriate agency representatives. If criteria can be met and all necessary material has been submitted, Step 9 is initiated.

(H) Step 8 Applicant Submits Information Requested

The applicant submits their response to comments. The DSD project manager reviews the applicant response and determines conformance. The DSD project manager may refer the application to review agencies, if necessary or if requested by reviewer, to determine whether agency comments have been adequately addressed. If applicant's response is deemed adequate, Step 9 is initiated. Otherwise, Step 7 is repeated.

(I) Step 9 Staff Report and Recommended Action

The DSD project manager prepares the staff report (which may be a standard form). The staff report is provided to the applicant and incorporated into the commission and board meeting materials. The staff report is also available to the public for review.

(J) Step 10 Hearing Scheduled

Planning Commission

The DSD project manager schedules the required public hearings before the Planning Commission in accordance with the hearing procedures (P-GP-014-08 Planning Commission Hearing).

Board of County Commissioners

The DSD project manager schedules the required public hearings before the Board of County Commissioners in accordance with the hearing procedures (P-GP-016-08 Board of County Commissioners Hearing).

(K) Step 11 Notice of Hearing

Notice of Hearing (Mailing, Posting, and Publication Required)

The DSD project manager prepares notice of the public hearing in accordance with the *P-GP-012-08* Public Notice. Notices are mailed to adjacent property owners by the DSD project manager in accordance with R-FM-025-08 Public Notice-Mailed and C.R.S. §24-67-104(1)(e) which requires written notice of the public hearing shall be delivered or mailed, first-class postage prepaid, at least 15 days prior to the public hearing to adjoining landowners. Notice is sent to the newspapers of record in accordance with R-FM-026-08 Public Notice-Published by the DSD project manager in accordance with C.R.S. §30-28-116. Signs are prepared by DSD project manager and the applicant is contacted to pick up and post the notice. The posting shall follow the requirements of R-FM-027-08 Public Notice-Posted (Affidavit of Posting). The applicant provides the DSD with an affidavit of posting within 7 days of posting the property and in advance of the public hearing. If the required information is not submitted by the applicant in advance of the first scheduled hearing, the hearing is cancelled and Step 10 is initiated.

(L) Step 12 Hearing Held

Planning Commission

The hearing before the Planning Commission is held. The hearings are held in accordance with Planning Commission policies and procedures. The hearing procedures are not specifically governed by this Procedures Manual.

Board of County Commissioners

The hearing before the Board of County Commissioners is held. The hearings are held in accordance with Board of County Commissioners policies and procedures. The hearing procedures are not specifically governed by this Procedures Manual.

(M) Step 13 Decision Concerning Development Permit

Planning Commission Action

The Planning Commission acts by resolution to recommend approval with or without conditions, or denial of the application. Steps 9 through 12 are

repeated for the Board of County Commissioners hearing and the staff report is updated incorporating the results of the Planning Commission meeting.

Board of County Commissioners Action

The Board of County Commissioners acts by resolution to approve with or without conditions, or denies the application. The decision including any reasons for the decision is documented in the record.

New Application Filed if Denied

If an application is denied, a new application must be filed and new fees paid.

Appeal of Decision of Board of County Commissioners

Any person aggrieved by the decision of the Board of County Commissioners may only appeal the decision to district court in accordance with State law.

(N) Step 14 Development Permit Closeout

A copy of the decision is provided to the applicant by the DSD project manager. In advance of final approval of the Rezoning, the DSD project manager requests the required documentation from the applicant to determine conformance of the Rezoning with any conditions of approval. If any documents associated with the approval require recording, they are recorded by the DSD project manager. Upon meeting all required conditions and following any required recording, the DSD Director changes the official zoning map and notes if conditions were placed on the Rezoning that impact future development or use of the property.

Upon denial or following the change to the zoning map, the DSD project manager closes the file. A copy of original file is scanned along with copy of decision of the Board of County Commissioners.

1.6.2. Criteria for Approval

A rezoning to WSEO may be approved pursuant to the requirements in Section 4.3.5.(F)(1) of the Land Development Code.

1.7. REVIEW PERIOD

A WSEO rezoning is classified as a Type D Development Application. The timeline for reviewing a Type D Development Application is dependent upon several factors, including, but not limited to, staffing, workload, project size and/or complexity, and quality and completeness of submittal materials.

1.8. NOTICE

Notice shall meet the notice requirements of P-GP-012-09 Public Notice.

1.9. FORM OF ACTION

A WSEO rezoning shall be considered approved as of the date of approval of the rezoning by the Board of County Commissioners, by the execution of the resolution approving the rezoning by the Chairman of the Board of County Commissioners.

1.10. EXPIRATION (IF APPLICABLE)

Not applicable, unless specified by condition of approval.