

RESOLUTION 2023-098

A resolution conditionally approving Boulder County Community Planning & Permitting Docket SU-23-0005: Harvest Moon Solar Energy

Recitals

A. Zach Brammer of Cloudbreak Energy Partners, LLC, on behalf of LK Living Trust, LLC (the “Applicant”), requested Special Review approval under Article 4-601 of the Boulder County Land Use Code (the “Code”) to construct an approximately 10.3-acre solar energy facility on an approximately 35.5-acre parcel.

B. The subject property is located at 9770 Isabelle Road, approximately 0.4-mile east of its intersection with N. 95th Street, in Section 21, Township 1 North, Range 69 West, in an Agricultural zoning district of unincorporated Boulder County (the “Property”).

C. The Property is currently developed with a single-family residence and several agricultural structures, including an approved Agricultural Worker Accessory Dwelling Unit. In addition to the residential and agricultural structures on the Property, there is also an approved telecommunications facility (a.k.a. a cell phone tower) and associated equipment structures. The existing structures are generally clustered roughly in the middle of the Property, with the telecommunication facility structures on the Property’s western edge.

D. The Applicant proposes to install a solar energy facility on the northern portion of the Property, encompassing an area of disturbance approximately 7.83 acres in size. Staff reviewed the proposal under Art. 4-514.M of the Code which regulates Ground-Mounted Solar Energy Systems. The project is categorized as a Ground-Mounted Solar Energy System because the panels will be mounted on racking or poles that are attached to the ground and are not mounted to parking canopies as defined in Article 4-514.M.1.

E. The Applicant proposes to install approximately 64 solar arrays, with multiple solar panels per array, arranged in rows running north/south with the mounting posts spaced at 24 feet, 3.5-inch intervals and the rows spaced approximately 20 feet apart. The Applicant also proposes panels that tilt to track the movement of the sun with edges approximately 10 feet, 11 inches above grade when at the steepest pitch; when parallel to the ground, approximately 5 feet, 2.5 inches above grade.

F. In addition to the proposed solar arrays, the Applicant proposes to construct a new access drive to the solar facility off the existing access driveway from Isabelle Road. The solar facility would be surrounded with fencing. The Applicant also proposes connecting the solar energy facility to the existing Xcel Energy infrastructure by overhead utility lines

running from the project area to Xcel lines along the public right-of-way on Isabelle Road. The project is expected to sunset after 25-35 years, with the site to be remediated back to useful agricultural lands at the end of the useful life of the array.

G. The Boulder County Comprehensive Plan identifies important resources on and around the Property. The Property is located within Agricultural Lands of National and Statewide Importance. A Viewshed Protection Score ranging from 1.38 to 1.8 has also been assigned to N. 95th Street in the area of the Property. These resources and the potential impacts on them resulting from the proposed development are discussed in the criteria review of the memorandum and written recommendation to the Board by Boulder County Community Planning and Permitting Department planning staff dated October 12, 2023, together with its attachments (the “Staff Recommendation”).

H. The Boulder County Planning Commission (the “Planning Commission”) considered the application at a public hearing on July 19, 2023. The Planning Commission unanimously recommended approval subject to the conditions of approval listed in the staff recommendation along with an additional condition that the Applicant would use sheep grazing to help maintain the Property. The Planning Commission certified the docket for action to the Board.

I. The above-described request was processed and reviewed as Boulder County Community Planning and Permitting Docket SU-23-0005 (the “Docket”). The Staff Recommendation found that the Docket could meet the criteria for approval, and therefore, recommended that the Board conditionally approve the Docket.

J. At a public hearing on the Docket held on October 19, 2023 (the “Public Hearing”), as further reflected in the official record of the Public Hearing, the Board considered the Staff Recommendation as well as the documents and testimony presented by Community Planning and Permitting Department staff. The Board also heard testimony from Zach Brammer and Brysen Daughton on behalf of the Applicant. No members of the public spoke at the Public Hearing.

K. Based on the Public Hearing, the Board finds that the Docket meets the criteria for special use approval, as set forth in Articles 4-601 of the Code and the additional provisions for Solar Energy Systems listed in Article 4-514.M of the Code, subject to the conditions stated below.

L. Therefore, the Docket can be approved subject to the conditions stated below.

Therefore, the Board resolves:

Docket SU-23-0005 is approved on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

1. The site plans dated October 2, 2023, are approved as submitted, subject to all additional conditions of approval.
2. Prior to the issuance of any permits by the Boulder County Community Planning and Permitting Department and within one-year of the signing of the Resolution, the Applicant must provide a Development Agreement for review and approval by county staff. Once approved by county staff, the Development Agreement must be signed and notarized by the Applicant and recorded by county staff.
3. The maximum height of any given panel in the system must not exceed 11 feet above existing grade.
4. The Applicant must show that all fencing of more than 6 feet in height meets the applicable setbacks for the Agricultural Zoning District and that the Applicant has obtained a building permit for any such fencing on plans submitted for permitting.
5. The area of disturbance must not exceed 7 acres. Plans submitted for permitting must include detailed information on all areas of disturbance, including delineating the extent of all areas of the land's surface disturbed or in any way changed as a result of construction activity, including but not limited to new structures, access, and areas used for access or parking during and following the construction process.
6. All utility lines from the project area to where they transition to the existing Xcel infrastructure must be located underground, in compliance with Article 7-1200.B.1 of the Code.
7. The solar energy facility as proposed is subject to a sunset date of 35 years after construction is complete or at the end of the effective lifespan of the facility, whichever is sooner.
8. Prior to issuance of any permit for deconstruction/decommission, the Applicant must submit a full post-decommission revegetation plan to be reviewed and approved by Community Planning and Permitting staff.
9. Decommissioning and remediation of the facility and project area must begin within 90 days of the project's sunset, and must be completed within one year of decommissioning commencing.
10. Prior to the recordation of the Development Agreement, the Applicant must provide Boulder County with a security bond for the cost of removing the system and remediation of

the project area. The amount of the bond must be based on documented anticipated costs for removal of all above and below ground infrastructure as described in the decommissioning plan submitted by the Applicant and all required post-decommissioning revegetation. The bond amount must be reviewed and approved by Community Planning and Permitting staff.

11. No construction is permitted under wet soil conditions.

12. The access drive to the project area must be reduced to 18 feet in width.

13. The proposed access must be designed according to the Boulder County Multimodal Transportation Standards, including but not limited to:

- a. Standard Drawing 11 - Private Access
- b. Standard Drawing 18 - Access Turnaround
- c. Standard Drawing 19 - Typical Turnaround & Pullout Locations

At building permit, the Applicant must submit plans that delineate and note the revised access requirements, including revised width, access cross section, and revised emergency vehicle turnaround.

14. During construction, all materials, machinery, dumpsters, vehicles, and other items associated with the project should be staged on the Property.

15. The storage containers must be neutral or earth-tone in color.

16. The construction trailer and portable toilet must be removed from the Property within 30 days of completion of construction.

17. The Applicant must install vegetative screening along all of the eastern, northern, and western edges of the project area, with the exception of the access drive to the facility.

18. Prior to the issuance of any building or grading permit, the Applicant must submit a detailed landscaping plan, showing the location of all landscape plantings, information on the specific species to be used, and watering and maintenance information.

19. The Applicant must remove and replace any of the vegetative screening that dies or fails throughout the life span of the facility.

20. At permitting, the Applicant must submit revised runoff calculations and detention requirements in light of the pending Mile High Flood District criteria for solar fields, which use imperviousness of 5 percent when panels are parallel to contours (maximum tilt), 20

percent when diagonal, and 40 percent when perpendicular (minimum tilt). Post-development runoff numbers must account for the change in runoff from the solar panels.

21. At building permit, the Applicant must submit plans that demonstrate compliance with Section 1200 of the Boulder County Storm Drainage Criteria Manual.

22. At building permit, the Applicant must submit a Boulder County Stormwater Quality Permit application.

23. Per their commitment of record, the Applicant must maintain the area under the solar arrays through the grazing of appropriate livestock.

24. The Applicant shall be subject to the terms, conditions, and commitments of record and in the file for Docket SU-23-0005: Harvest Moon Solar Energy.

[Signature Page to Follow]

A motion to approve the Docket was made by Commissioner Marta Loachamin, seconded by Commissioner Claire Levy, and passed by a 2-0 vote. Commissioner Ashley Stolzmann was excused from the Public Hearing.

ADOPTED as a final decision of the Board on this _____ day of December 2023.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Claire Levy, Chair

Excused October 19, 2023

Ashley Stolzmann, Vice Chair

Marta Loachamin, Commissioner

ATTEST:

Clerk to the Board