

BEFORE THE BOARD OF COUNTY COMMISSIONERS

LINCOLN COUNTY, WYOMING

In the Matter of

80 MW Solar Photo Voltaic Generation Facility

Request for Conditional Use Permit Application

File No. 111 PZ 19

FINAL DETERMINATION

THIS MATTER having come before the Board of County Commissioners on the 8th day of January, 2020 for a Conditional Use Permit Application. The Board of County Commissioners have reviewed the application, the Staff Report by the Planning Office, and heard any relevant evidence from the applicant, neighbors, governmental agencies, and other concerned citizens regarding the project. The Board of County Commissioners hereby make the following:

FINDINGS OF FACT

This is a Conditional Use Permit Application for the development of an 80 MW Solar Photo Voltaic Generation Facility to include onsite battery storage for up to 50 MW to be located on 160.8 +/- acres in Township 23 North Range 120 West Sections 34 & 35, Jason and Tracy Thornock property, and 186.4 +/- acres in Township 22 North Range 120 West Sections 2 and 3, Putnam Ranch, LLC property, in the Rural Zone. The proposed project is located approximately 8 miles south of the Town of Cokeville along the west side of the Cokeville-Utah Line County Road No. 12-207. The proposed project would connect to the proposed substation on the previously approved Lincoln Solar I, LLC site to the north via a 3.7-mile Gen-Tie transmission line along the county road right-of-way. The project is located in Township 23 North, Range 120 West, Sections 34 & 35 and Township 22 North, Range 120 West, Sections 2, 3 and 10, 6th Principle Meridian, Lincoln County, Wyoming.

DECEMBER 4, 2019 MEETING: As evidenced by the attached meeting minutes, the project has attracted a great deal of interest in the greater Cokeville community. The county commissioners adopted a motion to table a decision until additional information could be gathered regarding wildlife impacts, hazardous materials and project bonding. Attachments 2. through 5. address these issues.

The main issues brought up in the project meetings to date regarding wildlife are migration blockages and sage grouse core area implications. The attached correspondence from Jason Thornock puts some of these

concerns in perspective by pointing out the project will keep working ranches viable which already provide essential habitat. This argument can also be made for installation of pivot sprinkler systems. While they no doubt displace some sagebrush habitat they also serve to keep ranch land viable. Where some of the preliminary drawings of the project show fencing patterns that may funnel or otherwise trap wildlife, Conditions of Approval 9. requires construction design to avoid that issue.

The governor's executive order identifies sage grouse core areas and recommends against large solar or wind energy projects in these areas. When it comes to privately owned land this is not a prohibition but a recommendation. However the order does carry more weight where additional state permitting is required. One of these related permits would be a stormwater discharge permit from the Wyoming Department of Environmental Quality if certain soil disturbance caps are exceeded. The applicant has indicated that the project will make every effort to stay below those disturbance caps as they were able to do with their Sweetwater Solar project.

The information contained in Attachments 4. and 5. indicates that the very minute levels of cadmium telluride and other chemicals exist in panels but due to their stable state they do not cause the panels to be considered hazardous materials by the EPA and can be landfilled. However most panels will likely be reused or recycled. The primary components of PV panels are tempered glass and aluminum.

Project reclamation assurance is handled three ways. The landowner lease agreements require that once the project is no longer operational the operator has 12 months to restore the site, including all buried components down to 42 inches. The Power Purchase Agreement with Rocky Mountain Power requires reclamation bonding for the life of the agreement. Finally, Conditions of Approval 4. through 6. require bonding on behalf of Lincoln County for road impacts, construction, waste management and reclamation. These conditions are taken from the county's wind energy regulations. In other counties, such as Carbon County, where both wind energy and solar energy regulations have been adopted, the bonding provisions are nearly identical. Wind projects have a much larger construction impact than solar but the reclamation concerns are similar. The bonding provisions are highlighted below.

Whereas most industrial scale projects require significant mitigation of noise, odor, smoke, dust or vibration impacts solar installations result mostly in visual impacts. The development of more efficient panels has enabled the project to shrink from over 500 acres to less than 350 acres. This will reduce the visual impact and create less wildlife impact. Condition of Approval 10. requires a fifty feet setback from the county road ROW to further alleviate visual impact.

In addition to the potential tax revenues listed below to the schools, county general fund and fire district, the project will contribute significantly to the newly formed Cokeville Hospital District. Finally, the project is quite similar to the first phase approved two years ago with very little pushback from the community. However the additional meetings and feedback have resulted in a better project this time.

PLANNING STAFF RECOMMENDATION:

The November 20, 2019 Planning and Zoning Commission meeting was canceled due to lack of quorum. Lincoln County Land Use Regulations, Chapter 3, Section 3.1, Paragraph E.1. provides that the application shall be forwarded to the Board of County Commissioners in such cases. Planning Staff recommends that the Board of County Commissioners **Approve** file #111 PZ 19, with:

- Findings of Approval A. through D.
- Conditions of Approval 1. through 10.

FINDINGS OF APPROVAL:

- A. The proposal is consistent with the provisions of Wyoming Statute 18-5-203 authorizing the Board of County Commissioners to enact zoning regulation of buildings and uses of land.
- B. The proposed use, with conditions of approval, is consistent with the goals and objectives of the Lincoln County Comprehensive Plan, specifically:
 - a. Introduction, Private Property Rights, 2. Assume the private property holder has the primary responsibility to provide quality land use development which will not adversely affect the community or neighbors;
 - b. Section III Economic Development Goals, A. Promote and assist in the development of commercial, recreational and industrial activities; B. Promote the exploration and development of mineral and alternative energy sources in Lincoln County;
 - c. Land Use Regulations, Section 3.1 Conditional Use Permit Procedures outlining application contents and community participation measures;
 - d. Land Use Regulations, Section 7.1 Definitions, Utility Company Buildings – Buildings and other structures used for housing switches, substations, and other equipment for operation of utilities. Greater than 800 square feet requires Conditional Use Permit Approval.
- C. The proposed use, with conditions of approval, will not substantially impair the appropriate use of neighboring property and will serve the public need, convenience and welfare.
- D. The proposed use, with conditions of approval, is designed to be compatible with adjacent land uses and the area of its location.

CONDITIONS OF APPROVAL:

1. Any substantial modification to the project shall require additional permitting.
2. Permit approval is valid for three years, if construction does not commence by that time a new application will be required.
3. Gen-Tie powerline connecting Lincoln Solar II to substation 3.7 miles north will be underground. New County Right-of-Way License shall be obtained along with BLM Right-of-Way approval where needed.
4. A Construction and Transportation Plan shall be developed in accordance with Lincoln County Land Use Regulations Section 6.31 Wind Power Facilities, Paragraph B.3. Construction and Transportation Plan. The plan shall be approved by the Lincoln County Engineer no later than 60 days prior to construction.
5. A final land reclamation plan shall be developed in accordance with Lincoln County Land Use Regulations 6.31 Wind Power Facilities, Paragraph B.4. Life of Project and Final Reclamation of Project. The plan shall be approved by the Lincoln County Engineer no later than 60 days prior to construction.
6. Conditions of Approval 4. and 5. shall incorporate the provisions of Lincoln County Land Use Regulations Section 6.29 Performance Guarantee Procedures for bonding or other financial surety requirements. Performance guarantee measures shall be in place no later than 60 days prior to construction.
7. Applicant shall arrange point of sale contracts for equipment, whenever possible, to be located within Lincoln County, Wyoming, to enable collection and distribution of local sales tax.
8. Prior to installation of Battery Energy Storage System, BESS, applicant's contractors will coordinate plans with Wyoming Department of Fire Prevention and Electrical Safety, Lincoln County Emergency Management and the Bear River Fire District. The applicant shall provide training, and equipment if necessary, for the fire district.
9. Perimeter fencing shall be designed to push wildlife around the project and not funnel or trap animals.
10. Perimeter fencing near the county road shall be setback a minimum of fifty feet from the county right-of-way.

**RESPONSES TO PLANNING AND ZONING COMMISSION REQUESTS FROM
OCTOBER 30, 2019 MOTION TO TABLE:**

1. The updated overview map clarifies the discrepancy on the original by correcting the map legend. Although the solar panel area was mapped properly on the earlier map, the map legend indicated the wrong acreage values causing confusion and concern. In particular it was not clear on the earlier map that the proposed panels would actually be sited over 2,000 feet from the Willis' residence. Based upon the acreage values found in the legend it certainly seemed that the panels would be directly in front of the residence and extend non-stop over a half mile in either direction. Recent improvements in PV technology mean that 80 Megawatts can be generated on around 350 acres compared with 600 acres proposed originally.
2. The attached vicinity maps include water overlay and sage grouse information. The NREX map is from the Wyoming Game and Fish Department's Natural Resource Explorer GIS. It identifies sections of land with known sage grouse leks. The topo overlay map identifies an intermittent stream in the Thornock parcel and another in the Putnam parcel. Prior to construction an engineered drainage plan will be developed to protect these areas.
3. Recently, Lincoln County Assessor, Debbie Larson, obtained tax valuation information from Sweetwater County. Sweetwater Solar is now operational in the western part of that county and has a similar value to the Lincoln Solar II project of \$111 Million. In March, 2018 County 4 received a Socioeconomic Evaluation from Harvey Economics of Denver, Colorado. In that report the estimated facility property tax is \$857,000.00 for year one and \$17.1 Million over the projected thirty-year life of the facility. The Sweetwater Assessor cautioned that since the State of Wyoming does the industrial tax appraisals for the counties the actual assessment value could change. In the example for year one, two thirds of the \$857k would go towards schools, another \$153k would go to the county general fund and the rest to other county tax districts. This could mean around \$38k for the fire district. Since the Sweetwater Solar project is located primarily on BLM administered land the report does not go into the change in tax valuation for the property under the facility. The Lincoln Solar projects will remove land area from the agricultural exempt rate and the converted land will be valued and taxed according to the county's tax appraisal based upon the commercial lease value. Additionally, the project's construction and maintenance materials, subject to Wyoming Sales Tax, would contribute locally. Our five per cent tax is divided out thusly: 2.76 cents to Wyoming and 2.24 cents to Lincoln County. The county's share is then divided between the county and the municipalities according to population. A copy of the Harvey Economics report is attached.
4. Reclamation responsibility is identified in the landowner lease agreement as the responsibility of the solar operator when the project is end of life. It is also subject to a bonding requirement in the Power Purchase Agreement (PPA) with Rocky Mountain Power (RMP.) The applicant has indicated a willingness to carry a bond with the county similar to the one required in Lincoln County Land Use Regulations (LUR) Section 6.31 Wind Power Facilities, Paragraph B. 4. Life of Project and Final Reclamation of Project:
 - a. Provide a statement of the useful life of the project, a decommissioning plan (as noted below) and a final land reclamation plan in the event the project is abandoned or terminated. Bonding shall be required for construction phase as well as decommission/reclamation (note: bonding to be in accordance with LUR

Section 6.29 Performance Guarantee Procedures which require a surety amount of 120 per cent of approved cost). Detailed costs shall be submitted for each. Bonding shall remain in place for the life of the project and reclamation/decommission after construction has been completed. Plan shall be updated every five (5) years until site reclamation and decommissioning is complete. Decommissioning: For applicants that are not otherwise regulated by the Wyoming Public Service Commission (PSC,) each Commercial Wind Energy Project shall have a Decommissioning Plan outlining the anticipated means and cost of removing Wind Energy Project facilities at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party such as a professional engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the Wind Energy Project and any accessory facilities.

5. Again, the applicant has indicated a willingness to commit to a Road Use Agreement in accordance with the Lincoln County Land Use Regulations Section 6.31 Wind Power Facilities, Paragraph B. 3. Construction and Transportation Plan (provide detailed Construction Plan and Transportation Impact Study) to include, but not limited to:
 - a. An applicant(s), owner(s), operator(s) or transportation company(s) proposing to use any county road(s) for the purpose of transporting Wind Energy project, substation parts and/or equipment for construction, operation, or maintenance of the Wind Energy Project or Substation(s), shall:
 - i. Identify all such public roads and submit detail mapping of haul routes;
 - ii. Obtain applicable weight and size permits from relevant government agencies prior to transport;
 - iii. Obtain new access, access modification or change of use of access permit;
 - iv. Applicant(s) may be requested to provide additional studies and reports prepared by a qualified professional(s) to determine if impacts to public roads will occur. If impacts are determined, a mitigation plan and/or longterm road maintenance agreement will be required at the discretion of the County Commissioners;
 - v. Plan to include disposal of material (not necessarily able to take to landfill.)
 - b. To the extent and applicant(s), owner(s), operator(s) or transporter(s) must obtain a weight or size permit from the County, the applicant(s), owner(s), operator(s) and/or transporter(s) shall:
 - i. Conduct a pre-construction baseline survey to determine existing road conditions for accessing potential future damage;
 - ii. Secure financial assurance in a reasonable amount at the discretion of the County Commissioners for the purpose of repairing any damage to public roads caused by transporting, constructing, operating or maintaining the Wind Energy Project;
 - iii. The use of public roads and other infrastructure shall be in accordance with and compliance of Federal, State and County regulations governing such activities. Any degradation to, or damage of, public roads or other infrastructure by parties affiliated with the transportation, installation, operation or maintenance of Wind Energy Project will bear all costs

required to return the public roads or other infrastructure to their original or better condition prior to their use of same.

- c. Environmental Impacts.
 - d. Provide a waste management plan, to include an inventory of estimated solid wastes and a proposed disposal program for the construction, operation and eventual decommissioning.
 - e. A written emergency management plan, submitted for review and comment to the County Emergency Management Coordinator and County Sheriff.
 - f. Applicant(s) must provide notice to the record owners and claimants of mineral rights located on and under lands where the wind energy facility will be constructed
6. The applicant has indicated that the 3.7-mile Gen-Tie Powerline will be installed underground to mitigate visual and wildlife impacts.
7. Residential impact is greatly reduced by the clarification of the new overview map where, instead of a solar farm directly in front of the Willis' residence, the nearest point of the project will be about four tenths of a mile to the north.

CONCLUSIONS OF LAW

This Conditional Use Application IS / **IS NOT CONSISTENT** with the following required findings of the Lincoln County Land Use Regulations and Comprehensive Plan:


- ☒ The proposed Conditional Use IS / **IS NOT** consistent with the standards of the Lincoln County Land Use Regulations and IS / **IS NOT** consistent with the goals and objectives of the Lincoln County Comprehensive Plan.
 - ☒ The proposed Conditional Use **WILL** / WILL NOT substantially impair the appropriate use of neighboring property; and **WILL** / **WILL NOT** serve the public need, convenience and welfare.
 - ☒ The proposed Conditional Use IS / **IS NOT** designed to be compatible with adjacent land uses and the area of its location.
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Now, therefore, based on these findings, the Board of County Commissioners takes the following action:

- ☒ **Approve** the Conditional Use Permit application with the conditions and with required findings, as noted;

- ☐ **Approve** the Conditional Use Permit application subject to conditions and findings as the Board deems necessary;
- ☐ **Deny** the Conditional Use Permit application stating findings in support of the action; or
- ☐ **Table** the Conditional Use Permit application and direct the Applicant / Planning Staff to take specific steps to bring the application into conformance with the standards and the policies of the Land Use Regulations, and the goals and objectives of the Comprehensive Plan. The Chairman shall set a specific date when the application is to be heard again.

DETERMINED this 8th day of January, 2020.


Kent Connelly, Chairman

CERTIFICATE OF MAILING

I, Corey Roberts, hereby certify that on the 8th day of January, 2020, I caused a true and correct copy of the foregoing Final Determination to be served by depositing the same in the United States mail, duly enveloped, postage prepaid, addressed to:

Lincoln Solar II LLC
1729 E Fort Union Blvd.
Cottonwood Heights, UT 84121


Corey Roberts