

RESOLUTION NO. 2022-21

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF PROWERS, STATE OF COLORADO

**A RESOLUTION AMENDING PROWERS COUNTY ZONING REGULATIONS BY AMENDING CERTAIN PROVISIONS OF THE OFF-STREET PARKING STANDARDS; AMENDING SUPPLEMENTARY REGULATIONS FOR HOME OCCUPATIONS; AMENDING ADMINISTRATION, TABLE 4; ADDING SUPPLEMENTARY REGULATIONS FOR WIND ENERGY FACILITIES; AND ADDING SUPPLEMENTARY REGULATIONS FOR SOLAR ENERGY FACILITIES.**

**WHEREAS**, pursuant to C.R.S. §30-11-103 and 30-11-107(1)(e), the Board of County Commissioners of Prowers County, Colorado (hereinafter “Board” or “County”), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the interests of the County and its residents; and

**WHEREAS**, the Board is further authorized by *inter alia*, C.R.S. §§30-28-101, *et seq.*, C.R.S. §§30-28-201, *et seq.*, and C.R.S. §§29-20-101, *et seq.*, to adopt regulations for the protection of the public health, safety and welfare of its residents; and

**WHEREAS**, Section 14-Amendment of the Prowers County Zoning Regulations (the “Regulations”) allow the Regulations to be changed whenever the public necessity, health, safety, general welfare and/or good zoning practices justify such action; and

**WHEREAS**, amendments to the Regulations (the “Amendments”) were initiated by Prowers County staff; and

**WHEREAS**, on November 28, 2022, the Prowers County Planning Commission (the “Planning Commission”) caused a notice to be published in the Lamar Ledger with the Amendments on December 1, 2022 and setting a public hearing on November 14, 2022; and

**WHEREAS**, the proposed amendments, with suggested changes as discussed at the public hearing, at which hearing various witnesses were heard and exhibits were presented for the Planning Commission's consideration, and testimony was taken from County staff and any and all persons desiring to appear and give such testimony and present evidence, were recommended to the Board by the Planning Commission on November 14, 2022; and

**WHEREAS**, on November 15, 2022, the Board conducted the public hearing to consider amending the Regulations as advertised, at which hearing various witnesses were heard and exhibits were presented for the Board's consideration, and testimony was taken from County staff and any and all persons desiring to appear and give such testimony and present evidence; and

**WHEREAS**, based on the evidence, testimony, exhibits and presentations by County staff and all interested persons, and comments by the Planning Commission and Board, **THE BOARD DOES FIND AS FOLLOWS:**

1. That proper publication and public notice were provided as required by law for the



hearing before the Planning Commission and the Board.

2. That the public hearings were complete, that all pertinent facts, matters and issues were submitted, and all interested persons were heard at the hearing.
3. That all exhibits were received into evidence, which included:
  - a. Copies of the legal notice of the hearing scheduled for November 14, 2022 and November 15, 2022;
  - b. Draft proposed Amendments to the Regulations are attached hereto as "EXHIBIT A;"
  - c. Testimony and exhibits presented by the general public and all interested persons, if any; and
  - d. Presentations made by County staff concerning the Amendments proposed to the Regulations as contained in EXHIBIT A, including any additional minor revisions identified during the public review and hearing process.
4. That the Board has taken into consideration the following:
  - a. The proposed amendments are in conformance with the Land Use Plan; and
  - b. The changes requested promote the public necessity, health, safety and general welfare and is consistent with good land use and zoning practice.
5. That all requirements of law have been met.

**NOW THEREFORE, BE IT RESOLVED AND ORDERED:**

That the Zoning Regulations, amended April 12, 2012, are further amended as set forth in EXHIBIT A, which is incorporated herein by this reference.

That the Amendments are hereby declared to be effective upon the effective date of this Resolution.

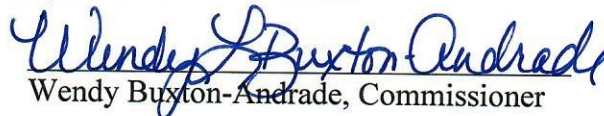
That the County Attorney is authorized to make additional form and style revisions, including but not limited to spelling, numbering, statutory references and other conforming and non-substantive corrections, prior to public distribution and recording.

That the Prowers County Zoning Regulations, as amended on April 12, 2012, shall be supplemented, replaced, superseded or amended by the Amendments only as set forth in EXHIBIT A; shall constitute the now currently enacted and effective version; and shall be kept in the office of the Board of County Commissioners for Prowers County, Colorado, there to be made available for public inspection.

ADOPTED this 15<sup>th</sup> day of December, 2022, by the Board of County Commissioners of Prowers County, Colorado.

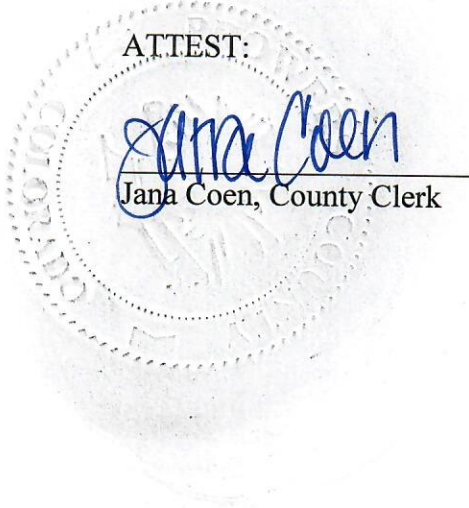
  
Thomas Grasmick, Chairman

  
Ron Cook, Vice-Chairman

  
Wendy Buxton-Andrade, Commissioner

ATTEST:

  
Jana Coen, County Clerk



## EXHIBIT A

### 1) Section 15—Off-Street Parking Standards

The property shall be graded for proper drainage and must be surfaced with an all-weather surfacing and be maintained in usable condition.

### 2) Section 18--Supplementary Regulations

(d) No activity shall on and no equipment or process shall be used in such home occupation which creates noise, vibration, glare fumes, odors, or electrical interference detectable to the normal senses beyond the property line, if the occupation is conducted in a 1-family residence or mobile home, or beyond the residential dwelling, if conducted in other than a 1-family residence or mobile home. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in the voltage off the premises.

### 3) Section 20: Administration

SUMMARY OF PROCEDURE APPROVALS: A summary of zoning procedure approvals is shown in Table 4. The Board of Adjustment is the Board of County Commissioners.

Table 4

Approval Requested	STAFF	BOA	PC	BOCC
Zoning Permit	A			
Special Use Permit	A, X		H	
Planned Unit Development	A, X		H	
Map Amendment	A		H	H
Variance	A	H		

Key: PC                      Planning Commission  
BOCC                      Board of County Commissioners  
BOA                      Board of Adjustment  
A                      Application Required  
X                      Meeting Required  
H                      Hearing Required



Add: Wind Energy Facilities for non-commercial use as a Use by Right to:

Irrigated Agricultura (A-1) District  
Non-Irrigated Agricultural (A-2) District  
Fragile Land (A-3) District  
Single-Family Residential (R-1) District  
Local Commercial (C-1) District  
Highway Commercial (C-2) District  
Industrial (I-1) District  
Floodplain (F-1) District

Add: Wind Energy Facilities for commercial use on properties under 5 acres as a Use by Special Review to:

Irrigated Agricultura (A-1) District  
Non-Irrigated Agricultural (A-2) District  
Fragile Land (A-3) District  
Single-Family Residential (R-1) District  
Local Commercial (C-1) District  
Highway Commercial (C-2) District  
Industrial (I-1) District  
Floodplain (F-1) District

Add: Wind Energy Facilities on properties over 5 acres shall require a 1041 permit, in addition to a Special Use Permit, in all zoning districts.

#### Definitions

Add: WIND ENERGY FACILITIES: Wind-driven machines or turbines, including blades, towers, bases and pad transformers and associated equipment and structures that convert and connect wind energy into electrical power for the primary purpose of sale, resale or offsite use.

ADD: COMMERCIAL USE: Any use primarily devoted to a business purpose, such as the purchase, sale, lease or exchange of goods and/or services.

Add: NON-COMMERCIAL USE: Any use that is personal to the landowner and for their benefit.

Add: TURBINE TIP HEIGHT: The height of the turbine measured from the base of the tower to the tip of the blade at a 12 o'clock position.

#### **SECTION 18—SUPPLEMENATRY REGULATIONS**

Add:

**(w) WIND ENERGY FACILITIES.**

- a) PURPOSE: The purpose of this section is to provide for the regulation of the construction and operation of Wind Energy Facilities in Prowers County, subject to reasonable conditions that will protect the public health, safety, and welfare of Prowers County residents.
- b) REQUIREMENTS: The following requirements shall apply to all Wind Energy Facilities and shall be submitted with Use by Special Review Application:
  - (1) In addition to the following requirements, all Special Use Permit Applications shall comply with the Prowers County Zoning Regulations and 1041 Regulations, if applicable.
  - (2) All Special Use Permit Applications shall include an Application Fee of \$2,500.00 to be paid at the time of filing the application materials. The purpose of the application fee is to compensate Prowers County for the cost of reviewing and processing applications for a Special Use Permit. The application fee shall be used to offset any costs that Prowers County incurs in reviewing the Special Use Permit application, including costs incurred from retaining the services of outside agencies or technical consultants to review components of the Special Use Permit application.
  - (3) A Permit Fee of \$10,000.00 shall be paid upon submission of a final permit. If the costs incurred by Prowers County and outside review agencies and technical consultants exceed the amount of the application fee, any reasonable and documented additional costs will be discussed with Applicant prior to Prowers County retaining these additional services, which services shall be paid by Applicant. The Land Use Administrator may request additional professional analysis as needed.
  - (4) The proposed total rated capacity of the Wind Energy Facility.
  - (5) The proposed number, representative types and height, or range of heights of wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
  - (6) Legal Description of the properties on which the proposed Wind Energy Facility will be located.
  - (7) Preliminary location of each turbine, which details the latitude and longitude in decimal degrees.
  - (8) A site map showing the preliminary planned location of all wind turbines, property lines, setback lines, access roads and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the substation(s), ancillary equipment, building(s), and transmission and distribution lines. The site plan must also include the location of all structures and properties, demonstrating compliance of the setbacks.
  - (9) Specify any future phases or extensions of the facility.
  - (10) Estimate beginning and completion of construction and beginning of operation of the Wind Energy Facility.



- (11) Applicant shall provide evidence of liability insurance to cover loss or damage to persons and structures during construction and operation of the Wind Energy Facility.
  - (12) Other relevant information as may be reasonably requested by Powers County to ensure compliance with the requirements of these Regulations.
- c) **IMPACT ANALYSIS.** Applicant will provide a description of the impacts that the proposed Wind Energy Facility may cause including, but not limited to:
- (1) A description of baseline conditions and the impacts that the proposed use may cause.
  - (2) A description of how Applicant will mitigate impacts; and documentation that applicable standards will be satisfied.
  - (3) An Assessment of the potential effects of the proposed project on Prowers County services and capital facilities; in the event that impact to Prowers County services or facilities from construction and operation of a Wind Energy Facility are identified, Applicant shall develop a plan to maintain Prowers County services and capital facilities.
  - (4) All requirements contained within §23(c)(10) of the Prowers County Zoning Regulations.
- d) **SALES AND USE TAX.** Sales and/or Use Tax will be assessed and will be due upon completion of the project. The fee will be based on 1% of the total construction costs of materials for the project.
- e) **SEPTIC SYSTEM.** If the proposed Wind Energy Facility includes uses that must be served by a septic system, Applicant shall comply with applicable Prowers County requirements. Applicant shall provide a statement certifying that the septic system for the Wind Energy Facility will comply with applicable County, State, and Federal requirements prior to construction.
- f) **WATER SUPPLY SYSTEM.** If the proposed Wind Energy Facility includes uses that must be served by water, Applicant shall describe the water source and sufficiency of the water supply for the Wind Energy Facility, including decreed or conditional water rights prior to construction. If a well is required, Applicant shall obtain the necessary permit from the State of Colorado Office of the State Engineer prior to construction.
- g) **WATER AND/OR WIND EROSION CONTROL PLAN.** Applicant will provide a preliminary plan showing existing and proposed grading for the Wind Energy Facility site. The Drainage and Erosion Control Plan shall be accompanied by a description of practices that will be utilized to prevent erosion and run-off during construction. If there are any modifications to this plan, Applicant will provide a final Drainage and Erosion Control Plan prior

to construction.

h) ANALYSIS FOR EROSION, SEDIMENTATION AND FLOODING. If any turbine or accessory facility included in the proposed Wind Energy Facility is located within the 100-year floodplain, the Application shall include a preliminary report that addresses the potential for wind erosion, water erosion, sedimentation and flooding. If there are any modifications to the locations of turbines or ancillary facilities, Applicant will provide a final report prior to construction. Floodplain permits will need to be obtained and all requirements contained within the Prowers County Flood Hazard Area Regulations.

i) GEOTECHNICAL REPORT. Applicant shall provide written certification that prior to construction, a professional engineer licensed in the State of Colorado, will complete a Geotechnical Study that includes the following:

- (1) Soils engineering and engineering geologic characteristics of the site based upon onsite sampling and testing.
- (2) Foundation and tower systems design criteria for all proposed structures.
- (3) Slope stability analysis.
- (4) Grading criteria for ground preparation, cuts and fills, and soil compaction.

j) SETBACKS.

- (1) No less than 750 feet from the residence of a participating landowner or 2 times the Turbine Tip Height, whichever is greater, unless waived then the setback shall be no less than 1.1 times the Turbine Tip Height.
- (2) No less than 500 feet from a non-occupied structure and public road.
- (3) No less than 2.5 times the Turbine Tip Height for the non-participating landowner, unless waived then the setback shall be no less than 1.1 times the Turbine Tip Height.
- (4) Setbacks provisions may be waived by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes.

k) NOISE.

- (1) Noise levels when measured at the property line of any adjacent landowner shall not exceed 60 decibels from 7 am to 7 pm.
- (2) Noise levels when measured at the property line of any adjacent landowner shall not exceed 55 decibels from 7 pm to 7 am.
- (3) Noise provisions may be waived by signing a waiver that sets forth the applicable noise provision(s) and the proposed changes.
- (4) Noise shall be measured by an internal study and does not require a third-party noise study.



- l) ROAD USE AND MAINTENANCE AGREEMENT. If any Prowers County roads will be used during construction of a Wind Energy Facility for the purpose of transporting parts, materials and/or equipment, Applicant shall enter into a Road Use and Maintenance Agreement with the County prior to using Prowers County's roads as haul roads. The Road Use and Maintenance Agreement shall include, but not be limited to, the following:
  - (1) A map showing which county roads will be used during construction.
  - (2) A pre-construction baseline survey of county roads to be used during construction to document their pre-construction condition.
  - (3) A mitigation plan to address traffic congestion and potential impacts to county roads to be used during construction.
  - (4) A legally binding agreement between Applicant and Prowers County that requires Applicant to return any county roads to their pre-construction baseline condition.
- m) MINERAL OWNER OBJECTIONS. Should a mineral interest owner have an objection to the proposed Wind Energy Facility, the Applicant shall, to the extent required by applicable Colorado law, reasonably accommodate access to and development of subsurface mineral interests with respect to their proposed use of the property for wind farm facilities. In this regard, the Applicant shall, as a condition of approval prior to the final siting of any Wind Energy Facilities and installation or construction of any such facilities, provide evidence that it has entered into, or made good faith and commercially reasonable efforts to enter into, surface use agreements or other compatible development agreements with surface owners and any mineral estate owners which have filed timely objections to the land use applications pursuant to Colorado statutes. These objections shall be filed with the Land Use Administrator before the Planning Commission public meeting held in review of the proposed Wind Energy Facility. No objections will be accepted by the Land Use Administrator after this date. The Wind Energy Developer may accept objections filed after the hearing date at their discretion.
- n) PROPERTY DAMAGE. Applicant will bear sole responsibility for any damages done to federal, state, county, municipal, and private property during the construction, operations, pre-construction, and decommission phases of the Wind Energy Facility.
- o) MAINTENANCE OF WIND TURBINES. Applicant shall provide a statement certifying that the Wind Turbines will be maintained and operated in accordance with manufacturer specifications, Owner Environmental Health and Safety Plans, and applicable Occupational Health and Safety Administration (OSHA) requirements to ensure the safety of site personnel and the public.



- p) COMPLIANCE WITH FAA REQUIREMENTS. Wind Energy Facilities shall comply with applicable Federal Aviation Administration (FAA) requirements and/or permits as well as airport overlay zoning requirements.
- q) DECOMMISSIONING. Prior to beginning commercial operations, Prowers County and the Applicant must formulate a Decommissioning Plan to ensure that the Wind Energy Facility is properly decommissioned. The details of the Decommissioning Plan may be based on existing landowner agreements and shall include the following:
- (1) Provisions describing the triggering events for decommissioning the Wind Energy Facility or any portion thereof. If landowner agreements do not describe the decommissioning schedule, decommissioning shall be completed within 18 months of Owner/Developer or its Successors and Assigns' filing a Notice of Termination of Operations with Prowers County.
  - (2) Provisions for the removal of structures, debris and cabling, including those below the soil surface to depths agreed to in landowner agreements, or in the absence of such an agreement, down to 48 inches.
  - (3) Provisions for the restoration of the soil and vegetation.
  - (4) Applicant is required to provide a guarantee of financial security deemed adequate and payable to Prowers County in the form of cash or surety bond ("Financial Assurance") within the first ten (10) years of the project and can be negotiated with the Board of County Commissioners. Financial Assurance shall be secured by the Applicant or its successors and assigns, for the purpose of adequately performing decommissioning.
- (i) Estimated cost shall be based on the cost estimate provided in the Applicant's Decommissioning Plan. The Decommissioning Plan shall be prepared by an independent registered professional engineer licensed in the State of Colorado and shall take into account the salvage values of the Wind Energy Facility components. The cost estimate will be updated by the Applicant every five (5) years after year 10 of operations. Should there be a dispute in the cost estimate, Prowers County may retain outside agencies or technical consultants to provide a cost estimate, at the sole cost and expense of the Applicant.
  - (ii) The Financial Assurance may be released when the development or activity has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to Prowers County.
  - (iii) Any security may be cancelled by a surety only upon receipt of Prowers County's written consent.



Add: Solar Energy Facilities for non-commercial uses as a Use by Right to:

Irrigated Agricultura (A-1) District  
Non-Irrigated Agricultural (A-2) District  
Fragile Land (A-3) District  
Single-Family Residential (R-1) District  
Local Commercial (C-1) District  
Highway Commercial (C-2) District  
Industrial (I-1) District  
Floodplain (F-1) District

Add: Solar Energy Facilities for commercial use on properties under 5 acres as a Use by Special Review to:

Irrigated Agricultura (A-1) District  
Non-Irrigated Agricultural (A-2) District  
Fragile Land (A-3) District  
Single-Family Residential (R-1) District  
Local Commercial (C-1) District  
Highway Commercial (C-2) District  
Industrial (I-1) District  
Floodplain (F-1) District

Add: Solar Energy Facilities on properties over 5 acres shall require a 1041 permit, in addition to a Special Use Permit, in all zoning districts.

#### Definitions

Add: SOLAR ENERGY FACILITIES: Solar collector or other device that provides for the collection of sunlight for the conversion of sunlight to energy.

ADD: COMMERCIAL USE: Any use primarily devoted to a business purpose, such as the purchase, sale, lease or exchange of goods and/or services.

Add: NON-COMMERCIAL USE: Any use that is personal to the landowner and for their benefit.

#### **Proposed Amendment #5:**

#### **SECTION 18—SUPPLEMENATRY REGULATIONS**

Add:

#### **(x) SOLAR ENERGY FACILITIES.**

a) PURPOSE: The purpose of this section is to provide for the regulation of the construction

and operation of Solar Energy Facilities in Prowers County, subject to reasonable conditions that will protect the public health, safety, and welfare of Prowers County residents.

- b) **REQUIREMENTS:** The following requirements shall apply to all Solar Energy Facilities and shall be submitted with Use by Special Review Application:
- (1) In addition to the following requirements, all Special Use Permit Applications shall comply with the Prowers County Zoning Regulations and 1041 Regulations, if applicable.
  - (2) All Special Use Permit Applications shall include an Application Fee of \$2,500.00 to be paid at the time of filing the application materials. The purpose of the application fee is to compensate Prowers County for the cost of reviewing and processing applications for a Special Use Permit. The application fee shall be used to offset any costs that Prowers County incurs in reviewing the Special Use Permit application, including costs incurred from retaining the services of outside agencies or technical consultants to review components of the Special Use Permit application.
  - (3) A Permit Fee of \$10,000.00 shall be paid upon submission of a final permit. If the costs incurred by Prowers County and outside review agencies and technical consultants exceed the amount of the application fee, any reasonable and documented additional costs will be discussed with Applicant prior to Prowers County retaining these additional services, which services shall be paid by Applicant. The Land Use Administrator may request additional professional analysis as needed.
  - (4) The proposed number, representative types and height, or range of heights of the Solar Energy Facility to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
  - (5) Legal Description of the properties on which the proposed Solar Energy Facilities will be located.
  - (6) Preliminary location of the Solar Energy Facility, which details the latitude and longitude in decimal degrees.
  - (7) A site map showing the preliminary planned location of all Solar turbines, property lines, setback lines, access roads and turnout locations, substation(s), electrical cabling from the Solar Energy Facility to the substation(s), ancillary equipment, building(s), and transmission and distribution lines. The site plan must also include the location of all structures and properties, demonstrating compliance of the setbacks.
  - (8) Specify any future phases or extensions of the facility.



- (9) Estimate beginning and completion of construction and beginning of operation of the Solar Energy Facility.
  - (10) Applicant shall provide evidence of liability insurance to cover loss or damage to persons and structures during construction and operation of the Solar Energy Facility.
  - (11) Other relevant information as may be reasonably requested by Powers County to ensure compliance with the requirements of these Regulations.
- c) **IMPACT ANALYSIS.** Applicant will provide a description of the impacts that the proposed Solar Energy Facility may cause including, but not limited to:
- (1) A description of baseline conditions and the impacts that the proposed use may cause.
  - (2) A description of how Applicant will mitigate impacts; and documentation that applicable standards will be satisfied.
  - (3) An assessment of the potential effects of the proposed project on Prowers County services and capital facilities; in the event that impact to Prowers County services or facilities from construction and operation of a Solar Energy Facility are identified, Applicant shall develop a plan to maintain Prowers County services and capital facilities.
  - (4) All requirements contained within §23(c)(10) of the Prowers County Zoning Regulations.
- d) **SALES AND USE TAX.** Sales and/or Use Tax will be assessed and will be due upon completion of the project. The fee will be based on 1% of the total construction costs of materials for the project.
- e) **SEPTIC SYSTEM.** If the proposed Solar Energy Facility includes uses that must be served by a septic system, Applicant shall comply with applicable Prowers County requirements. Applicant shall provide a statement certifying that the septic system for the Solar Energy Facility will comply with applicable County, State, and Federal requirements prior to construction.
- f) **WATER SUPPLY SYSTEM.** If the proposed Solar Energy Facility includes uses that must be served by water, Applicant shall describe the water source and sufficiency of the water supply for the Solar Energy Facility, including decreed or conditional water rights prior to construction. If a well is required, Applicant shall obtain the necessary permit from the State of Colorado Office of the State Engineer prior to construction.

- g) **WATER AND/OR SOIL EROSION CONTROL PLAN.** Applicant will provide a preliminary plan showing existing and proposed grading for the Solar Energy Facility site. The Drainage and Erosion Control Plan shall be accompanied by a description of practices that will be utilized to prevent erosion and run-off during construction. If there are any modifications to this plan, Applicant will provide a final Drainage and Erosion Control Plan prior to construction.
- h) **ANALYSIS FOR EROSION, SEDIMENTATION AND FLOODING.** If any solar collector or accessory facility included in the proposed Solar Energy Facility is located within the 100-year floodplain, the Application shall include a preliminary report that addresses the potential for soil erosion, water erosion, sedimentation and flooding. If there are any modifications to the locations of the solar collector or ancillary facilities, Applicant will provide a final report prior to construction. Floodplain permits will need to be obtained and all requirements contained within the Prowers County Flood Hazard Area Regulations.
- i) **GEOTECHNICAL REPORT.** Applicant shall provide written certification that prior to construction, a professional engineer licensed in the State of Colorado, will complete a Geotechnical Study that includes the following:
  - (1) Soils engineering and engineering geologic characteristics of the site based upon onsite sampling and testing.
  - (2) Foundation and tower systems design criteria for all proposed structures.
  - (3) Slope stability analysis.
  - (4) Grading criteria for ground preparation, cuts and fills, and soil compaction.
- j) **SETBACKS.**
  - (1) No less than 300 feet from the residence of a participating landowner to the panel, unless waived then the setback shall be no less than 100 feet.
  - (2) No less than 100 feet from a non-occupied structure to the panel.
  - (3) No less than 500 feet from the residence of a non-participating landowner to the panel.
  - (4) No less than 50 feet from a public right of way to the panel.
  - (5) Setbacks provisions may be waived by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes.
- k) **NOISE.**
  - (1) Noise levels when measured at the property line of any adjacent landowner shall not exceed 50 decibels from 7 am to 7 pm.
  - (2) Noise levels when measured at the property line of any adjacent landowner shall not



exceed 45 decibels from 7 pm to 7 am.

- (3) Noise provisions may be waived by signing a waiver that sets forth the applicable noise provision(s) and the proposed changes.
  - (4) Noise shall be measured by an internal study and does not require a third-party noise study.
- l) ROAD USE AND MAINTENANCE AGREEMENT. If any Prowers County roads will be used during construction of a Solar Energy Facility for the purpose of transporting parts, materials and/or equipment, Applicant shall enter into a Road Use and Maintenance Agreement with Prowers County prior to using Prowers County's roads as haul roads. The Road Use and Maintenance Agreement shall include, but not be limited to, the following:
- (1) A map showing which county roads will be used during construction.
  - (2) A pre-construction baseline survey of county roads to be used during construction to document their pre-construction condition.
  - (3) A mitigation plan to address traffic congestion and potential impacts to county roads to be used during construction.
  - (4) A legally binding agreement between Applicant and Prowers County that requires Applicant to return any county roads to their pre-construction baseline condition.
- m) MINERAL OWNER OBJECTIONS. Should a mineral interest owner have an objection to the proposed Solar Energy Facility, the Applicant shall, to the extent required by applicable Colorado law, reasonably accommodate access to and development of subsurface mineral interests with respect to their proposed use of the property for Solar farm facilities. In this regard, the Applicant shall, as a condition of approval prior to the final siting of any Solar Energy Facilities and installation or construction of any such facilities, provide evidence that it has entered into, or made good faith and commercially reasonable efforts to enter into, surface use agreements or other compatible development agreements with surface owners and any mineral estate owners which have filed timely objections to the land use applications pursuant to Colorado statutes. These objections shall be filed with the Land Use Administrator before the Planning Commission public meeting held in review of the proposed Solar Energy Facility. No objections will be accepted by the Land Use Administrator after this date.
- n) FENCING. The Solar Energy Facilities shall be enclosed with a security fence as approved pursuant to a fencing plan submitted to the Prowers County Land Use Administrator. Appropriate signage shall be placed upon such fencing that warns the public of the high voltage therein.
- o) COMPLIANCE WITH FAA REQUIREMENTS. Solar Energy Facilities shall comply with applicable Federal Aviation Administration (FAA) requirements and/or permits as well as airport overlay zoning requirements.



- p) VISUAL APPEARANCE. Solar power plant buildings and accessory structures shall, to the extent reasonably possible, use materials, colors, and textures that will blend the facility into the existing environment. Lighting shall be limited to the minimum necessary to mitigate visual impacts. No solar power plant shall produce glare that would constitute a nuisance, as defined by state law.
- q) ELECTRICAL INTERCONNECTIONS. All electrical interconnections and distribution components must comply with all applicable codes and public utility requirements.
- r) FIRE PROTECTION. All solar power plants shall have a defensible space for fire protection in accordance with any applicable rural fire chief or Prowers County Sheriff directives.
- s) WILDLIFE HABITAT AREAS AND MIGRATION PATTERNS. Information must be included on any use of the site by endangered or threatened species and whether the project is in biologically significant areas. If threatened or endangered species exist in the area, consultation with Colorado Parks and Wildlife and United States Fish and Wildlife Service will be necessary.
- t) SOLID WASTE OR HAZARDOUS WASTE. As applicable, the application must include plans for the spill prevention, clean-up, and disposal of fuels, oils, and hazardous wastes, as well as collection methods for solid waste generated by the project.
- u) PROPERTY DAMAGE. Applicant will bear sole responsibility for any damages done to federal, state, county, municipal, and private property during the construction, operations, pre-construction, and decommission phases of the Solar Energy Facility.
- v) MAINTENANCE OF SOLAR COLLECTORS. Applicant shall provide a statement certifying that the solar collector will be maintained and operated in accordance with manufacturer specifications, Owner Environmental Health and Safety Plans, and applicable Occupational Health and Safety Administration (OSHA) requirements to ensure the safety of site personnel and the public.
- w) DECOMMISSIONING. Prior to beginning commercial operations, Prowers County and the Applicant must formulate a Decommissioning Plan to ensure that the Solar Energy Facility is properly decommissioned. The details of the Decommissioning Plan may be based on existing landowner agreements and shall include the following:
  - (1) Provisions describing the triggering events for decommissioning the Solar Energy Facility or any portion thereof. If landowner agreements do not describe the decommissioning schedule, decommissioning shall be completed within 18 months of Applicant or its Successors and Assigns' filing a Notice of Termination of Operations with Prowers County.



- (2) Provisions for the removal of structures, debris and cabling, including those below the soil surface to depths agreed to in landowner agreements.
- (3) Provisions for the restoration of the soil and vegetation.
- (4) Applicant is required to provide a guarantee of financial security deemed adequate and payable to Prowers County in the form of cash or surety bond ("Financial Assurance") within the first ten (10) years of the project and can be negotiated with the Board of County Commissioners. Financial Assurance shall be secured by the Applicant or its successors and assigns, for the purpose of adequately performing decommissioning.
  - (i) Estimated cost shall be based on the cost estimate provided in the Applicant's Decommissioning Plan. The Decommissioning Plan shall be prepared by an independent registered professional engineer licensed in the State of Colorado and shall take into account the salvage values of the Solar Energy Facility components. The cost estimate will be updated by the Applicant every five (5) years after year 10 of operations. Should there be a dispute in the cost estimate, Prowers County may retain outside agencies or technical consultants to provide a cost estimate, at the sole cost and expense of Applicant.
  - (ii) The Financial Assurance may be released when the development or activity has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to Prowers County.
  - (iii) Any security may be cancelled by a surety only upon receipt of Prowers County's written consent.