



PLANNING & ZONING STAFF SUMMARY REPORT

MEETING DATE: November 15, 2022

CASE # ETZ 2022-24

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| ACTING BOARD | ROSWELL-CHAVES COUNTY EXTRATERRITORIAL PLANNING AND ZONING COMMISSION |
| ACTION REQUESTED: | Special Use Permit for a Community Solar Project in the Rural Suburban District |
| LAND OWNER & AGENT: | Chaves County Solar II LLC DG Horizon, LLC (subsidiary of) NextEra Energy Resources LLC |
| LOCATION & LEGAL: | 3798 Horizon Road A portion of the NE/4 of Section 3, T.11S, R. 23E. |
| ITEM SUMMARY | Chaves County Solar II and DG Horizon LLC are proposing a 5 MW community solar facility on 25.5 acres of the 32.5- acre lot located on Horizon Road. |
| SUPPORTING DOCUMENTS | Staff Report, Application, Warranty Deed, Development Plan & DG Horizon, LLC information, Site Photos, Vicinity Map. |

SUMMARY BY: Louis Jaramillo –Planning & Zoning Director

STAFF'S REPORT

CASE # ETZ 2022-24

DG Horizon, LLC and Chaves County Solar II, a Delaware based company that is not government related, are requesting a Special Use Permit for a community solar facility located along Horizon Road on the north side. Horizon Road is only accessible from a small portion of Wrangler Road that only accesses onto Zinnia Road to the south and then onto Red Bridge Road to the west. Horizon, Wrangler and Zinnia Road are chip-sealed, County maintained roads ranging between twenty-one (21) feet to twenty-four (24) feet in size. The proposed site is currently being used as a staging site for the construction of Phase 2 of Next Era Energy's Commercial solar facility site located to the east.

The proposed site and the properties to the west, south, and a portion of the area to the north are zoned R-S Rural-Suburban District. The properties east and a portion of the area to the north are outside the ETZ area and are zoned Agriculture-Residential District. The properties to the north and northeast and east are owned by Chaves County Solar II LLC and possess a Special Use Permit for Commercial Solar Facility approved by the Chaves County Board of Commissioners in 2015. The properties to the south of the proposed site and on the south side of Horizon Road, contain residential homes and are zoned Rural Suburban District.

If approved, DG Horizon, LLC proposes to construct a twenty-four (24') foot service road along the perimeter of the facility for fire prevention and service access. DG Horizon, LLC has provided a development plan showing the solar panels will be ground based. The solar facility would be fenced in for security reasons. (See Project Description for details.) Staff is unsure where this facility would tie into the Xcel powerline as the facility and substation to the north are accessible by Next Era Energy.

Article 25 of the Roswell-Chaves County Extraterritorial Zoning Ordinance No. 80-1 states that a Special Use Permit shall not be transferable from one property owner or location to another. Article 25 lists four considerations the Commission must determine dealing with public health and safety. It also states six reasons for granting a Special Use Permit and notes thirteen development restrictions or conditions the Commission may require as part of the approval such as screen fencing, additional setback requirements and size of the array farm, just to name a few. Finally, Article 25 gives reasons for revoking or terminating the Special Use Permit, such as but not limited to, failure to begin construction, the restrictions and conditions have not been met, or the use becomes detrimental to the public's health and safety.

Should the subject request receive favorable consideration, Staff recommends the following Conditions of Approval:


1. A twenty-four (24) feet wide hard pack, weatherproof, service road shall be required along the perimeter the facility and within the fenced in area for fire and other emergency vehicles.
2. The location and development of the community solar facility shall conform to the presented and approved site plan, included in this report. Any modification to the

location or an increase in size of the facility shall require ETZ Commission's approval.

3. The solar facility shall be constructed in accordance with the site plan presented by the agent and included in Staff's Report. Minor changes may be permitted by Staff for public health or for compliance with other Conditions of Approval listed.
4. Failure to complete the construction of the community solar facility within ten years shall result in the Special Use Permit being terminated.
5. DG Horizon, LLC shall apply for any necessary building and electrical permits for construction of the community solar facility within one year of being awarded the solar project by Xcel Energy.
6. If approved for development, DG Horizon LLC shall agree to a road maintenance agreement with the Chaves County Road Department for Horizon Road.
7. DG Horizon, LLC shall utilize the existing electric transmission lines in the area.
8. DG Horizon, LLC shall provide a de-commissioning and restoration plan for this property.
9. All lighting used on-site shall be shielded from traffic, surrounding properties and shall comply with the NM Night Sky Act.
10. A six-foot security fence is required around the facility.
11. All solar panels and their foundations shall be setback from property lines a minimum of fifty (50) feet.

Findings of Fact:

1. The proposed solar facility would be a low impact commercial use in a vacant area and would be an economic benefit to the community with rising utility costs, and to assist in the costly and limited space for personal solar facilities on one's private property.
2. The proposed solar facility may conform with the requirements for approval as stated in Article 25 of the Roswell-Chaves County ETZ Ordinance 80-1.
3. Owner's within 100 feet of the proposed Special Use Permit have been notified of this public hearing by certified and standard mail, per Section 2.5 of the Roswell-Chaves County Extraterritorial Zoning Ordinance No. 80-1. No protest letters have been received at the time of this writing.
4. Planning and Zoning Staff have advertised this meeting in the local Roswell Daily Record 15 days prior to today's public hearing per the Roswell-Chaves County Extraterritorial Zoning Ordinance No. 80-1.


CHAVES COUNTY/ETZ ZONING ORDINANCE
 APPLICATION FOR A **SPECIAL USE PERMIT**

Case Number: ETZ 2022-24 Date Received: 10-17-22 Fee: \$300

Name of Property Owner: Chaves County Solar II, LLC Phone Number: _____

Mailing Address: 700 Universal Blvd., Juno Beach, FL 33408

Name of Applicant: DG Horizon, LLC

Mailing Address: 700 Universal Blvd. Home Phone Number: _____

City, State, Zip: Juno Beach, FL 33408 Business Phone Number: 561-400-8076

Applicant Status: Owner Agent Tenant Other _____

Site Address: Horizon Road, Roswell, NM 88201 ETZ Chaves County

Property Legal Description: SE4NW4 LESS N222.16' W 1099.33'

UPN: 414005922921000000

Present Land Use: Undeveloped

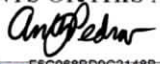
Intended Land Use: Solar Energy Facility

Present Zoning: RS Size of Development in Acres: 40.617

Reason for Request (Attach sheets if more space is needed): Special Use Permit for Solar Energy Facility in RS zoning district

Copy of Deed Attached:

I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC MEETINGS WHICH I OR MY AGENT MUST ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.

 October 12, 2022

Owner's Signature _____ Date _____

October 14, 2022

Chaves County Planning and Zoning Department
Attention: Louis Jaramillo
1 St. Mary's Place, Suite #170
Roswell, NM 88203

Dear Mr. Jaramillo

This request for special use approval of a solar energy facility is made in accordance with the Roswell-Chaves County Extraterritorial Zoning Ordinance, Ordinance No. 80-1, Revision No. 20, effective August 31, 2021 (The ETZ Zoning Ordinance). Section 25.1.1 of the ETZ Zoning Ordinance states that "It is the purpose of this article to establish criteria for those uses listed as special uses in Section 25.2 of this Ordinance, and similar uses, as determined by the Planning Director, and to specify the expiration date as appropriate for approval of such uses." Solar energy facilities are not specifically listed in Section 25.2, but the ETZ has previously approved a solar facility in the S-R District as a special use (Case # ETZ 2022-03).

Project Summary

The proposed project will be approximately 5 megawatts (MW) alternating current (AC). The solar array is a single axis tracking system, which is anchored to the ground by a series of driven posts. The panels will automatically rotate from east to west during the day. There is ancillary electrical distribution equipment within the array including inverters that convert the PV generated electricity from DC to AC and equipment to connect to the utility distribution system. The total power by the Project shall not exceed 5 MW AC. The site will be enclosed by a 6' high chain link fence and 1' of 3 strands barbed wire. Gates and a gravel road will be constructed to provide access for maintenance, fire protection, and other municipal requirements.

The Project site consists of 25.5 acres on the southwestern portion of a 32.3-acre undeveloped parcel in Chaves County. The project is to be located north of Horizon Road, on property owned by Chaves County Solar II, LLC.

Additional Information

GLARE – Photovoltaic panels are constructed with non-reflective coatings and/or glass. These panels are designed specifically to absorb as much sunlight as possible in order to maximize electrical generation, rather than reflect sunlight. Further, the metal supports that form the racking system are typically constructed using galvanized steel or aluminum. Through design and intelligent siting, glint and glare can be eliminated or kept to a minimum.

EMF – EMF stands for electric and magnetic fields. These fields surround anything that is generating, transmitting, or using electricity. The highest levels of EMF are measured directly near the source and levels rapidly decrease with increasing distance. Electric fields are the result of the voltage applied to an electrical object, while magnetic fields are the result of the electricity flowing through these objects.

A NextEra Energy Resources, LLC company

700 Universe Boulevard, Juno Beach, FL 33408

Electric and magnetic fields occur naturally and from man-made sources. There are many sources of EMF in our everyday lives, including the lights in our homes and appliances such as televisions and microwaves. EMF research has been evaluated by prestigious national and international scientific organizations, including:

- U.S. National Institute of Environmental Health Sciences (part of the National Institutes of Health);
- U.S. National Academy of Sciences;
- World Health Organization; and
- Health Canada.

None of them has found that exposure to EMF causes or contributes to cancer or any other disease or illness.

HEAT ISLAND EFFECT - It is anticipated that any heat generated from the solar panels will be dissipated into the air at the site. Small size community solar projects such as this are designed to have no impacts from heat or noise that extend beyond the project site.

Decommissioning Surety Bond – A copy is included in this application.

Sincerely,

A handwritten signature in black ink that reads "Brian Harper". The signature is written in a cursive, flowing style.

Brian Harper
Lead Project Manager

After Recording Return To:
Joshua Escoto, Esq.
NextEra Energy Resources, LLC
700 Universe Boulevard, LAW/JB
Juno Beach, FL 33408



COUNTY OF Chaves SWD
STATE OF NEW MEXICO Pages: 9

I hereby certify that this instrument was filed for
Record on 03/17/2022 09:32:42 AM
and was duly recorded as Instrument No. 202201853
of the records of Chaves County, NM.

Witness My Hand and Seal of Office
Cindy Fuller
County Clerk, Chaves, NM
Deputy: Tracy Larson

SPECIAL WARRANTY DEED

JB6 + LB 34-22

Barbara Jean Sheppard and ~~Collins Duane Sheppard~~, as Trustees of the Sheppard Living Trust dated August 27, 2018; Justin Blaine Busby, joined by consenting spouse Linda Busby; and Mary Catherine Clark, Judith Fern Richards, Linda Carol Gregory, and Deborah Shaun Busby, as their sole and separate property (collectively, "Grantor"), for consideration paid, grant(s) to Chaves County Solar II, LLC, a Delaware limited liability company ("Grantee"), whose address is 700 Universe Boulevard, Juno Beach, FL 33408, the following described real estate in Chaves County, New Mexico:

See Exhibit A attached hereto and incorporated herein

subject to taxes for the year 2022 with ^{special} ~~general~~ warranty covenants.

LB JB6 3-4-22

WITNESS our hand(s) and seal(s) this 4th day of March, 2022.

[Grantor signatures on the next pages.]

DECOMMISSIONING BOND

Bond No.: TBD

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____ (Hereinafter called Principal), as Principal and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____ (hereinafter called "Surety") as Surety, are held and firmly bound unto _____ (Hereinafter called "Obligee"), as Obligee, in the penal sum of _____ (\$) good and lawful money of the United States of America, to be paid to the Obligee, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has been granted approval by the _____ to complete Decommissioning Plan _____ and _____

WHEREAS, as a condition of said approval, the Principal is required to file security to cover the cost to _____ associated with the _____, as described in _____ Ordinance, with effective date _____.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall comply with the conditions of the Bond as referenced above, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, THAT THIS BOND IS EXECUTED BY THE PRINCIPAL AND SURETY AND ACCEPTED BY THE OBLIGEE SUBJECT TO THE FOLLOWING EXPRESS CONDITIONS:

1. The term of this Bond is for years beginning on _____, with () possible _____ year extensions. unless released by the Obligee prior thereto.
2. The liability of the Surety shall not be discharged by any payment or succession of payments under this Bond, unless and until such payment shall amount in the aggregate to the penal sum of the Bond, but in no event exceed the penal sum of the Bond regardless of the number of extensions or years it may be in effect.
3. That in the case of default of the Principal, the Obligee will give written notice to the Surety within thirty (30) days thereafter.
4. No right of action shall accrue under this Bond to or for the use or benefit of anyone other than the named Obligee or its successors or assigns. No assignment by the Principal shall be effective without the written consent of the Surety.
5. During the term of this Bond, the Surety shall notify both the Obligee and the Principal by certified mail 120 days before any cancellation of this Bond. If the Principal does not extend the effective date of this Bond, or establish alternate financial assurance within 90 days after receipt of a cancellation notice by the Surety, the Obligee may draw on this Bond.
6. All suits, actions on this Bond must be brought within sixty (60) days of the termination of the Permit or Bond, whichever shall occur first.
7. If any conflict or inconsistency exists between the Surety's obligations as described in the Bond and as described in the underlying Permit, then the terms of the Bond shall prevail.
8. The Surety's liability under this Bond shall not extend in any manner nor will the Surety be responsible to pay any sums due related to hazardous waste clean-up, wetlands mitigation, remediation actions or removal or responsibility for any of these pollution risks whatsoever, unless such matters are a direct result of Principal's actions and required as a result of the conditions set forth in the Permit or for tort liability.
9. No modification of the Permit guaranteed by this Bond shall be binding on the Surety or covered by this Bond without the written consent of the Surety.

IN WITNESS WHEREOF, said Principal and Surety have caused these presents to be executed in their names and by their seals to be hereunder affixed on this _____ day of _____, 20____.

Principal

ATTEST _____

By _____

Surety

ATTEST _____

By _____

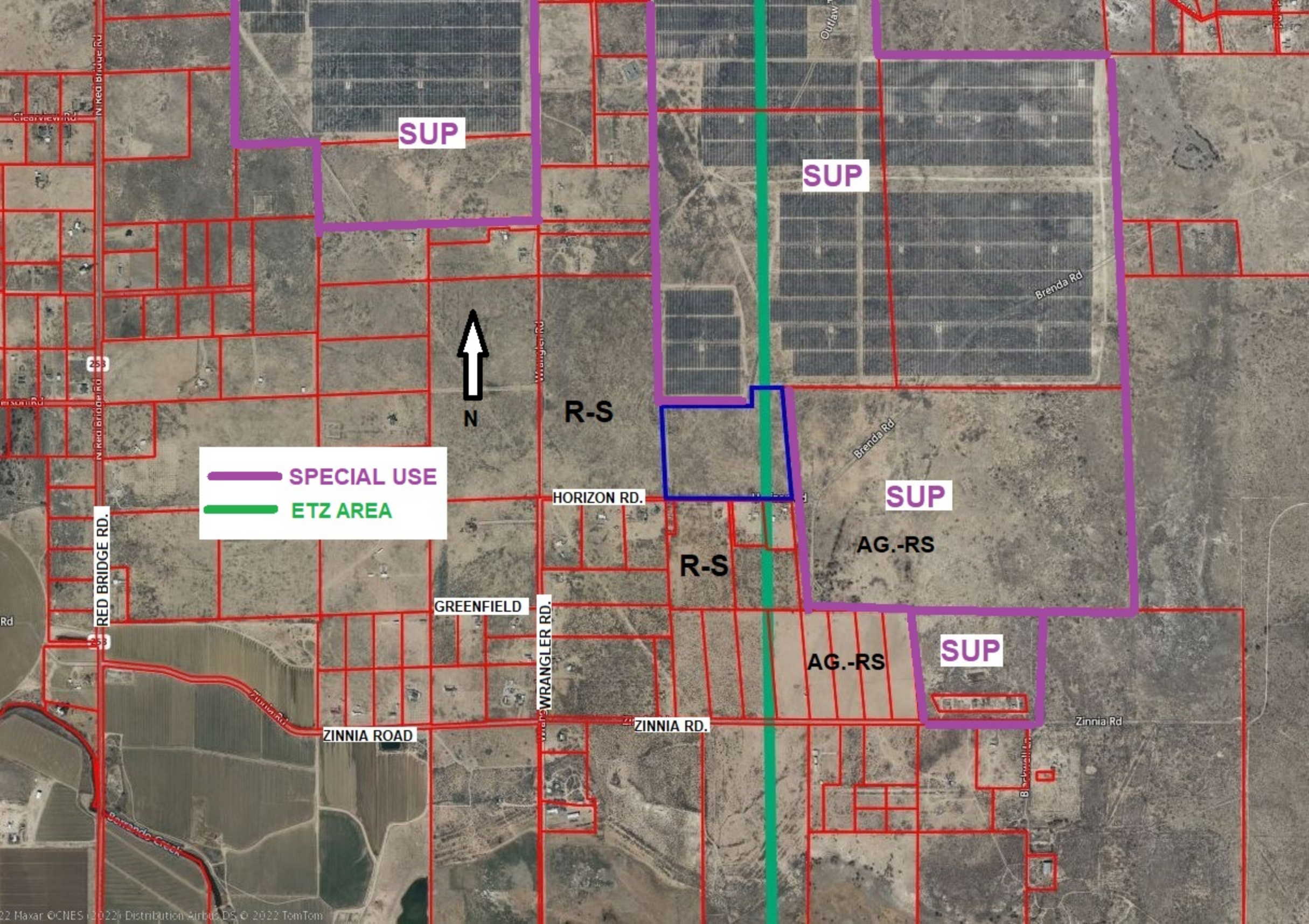
, Attorney-in-Fact

The above terms and conditions of this Bond have been reviewed and accepted by _____
_____, the Obligee.

Acknowledged and Accepted:
By: _____
Printed Name: _____
Title: _____
Date: _____



LOOKING NORTH FROM HORIZON ROAD ONTO THE PROPOSED SITE.





SUP

SUP



R-S

 SPECIAL USE
 ETZ AREA

HORIZON RD.

SUP

AG.-RS

R-S

GREENFIELD

WRANGLER RD.

AG.-RS

SUP

ZINNIA ROAD

ZINNIA RD.

Zinnia Rd

ARTICLE 25
SPECIAL USE PERMITS

Section 25.1 Granting Special Use Permits

A Special Use Permit shall be bound and limited to the parcel(s) of land described in the application and to the land owner/petitioner of the property stated in the application and as stated in the Certificate of Zoning. A Special Use Permit is nontransferable in location or ownership including the name change of a company, LLC, corporation, trust, and/or partnership. So as not to misperceive, confuse and misapprehend prospective owners, a real estate contract shall be construed as a change in ownership and as such shall require a new Special Use Permit application and process.

1. It is the purpose of this article to establish criteria for those uses listed as special uses in Section 25.2 of this Ordinance, and similar uses, as determined by the Planning Director, and to specify the expiration date as appropriate for approval of such uses. It is recognized that these uses which, because of their unique characteristics, cannot be properly addressed without consideration in each case of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location. Special uses shall require issuance of a Zoning Certificate by the ETZ Commission.

Each zoning district lists special uses that, because of their special impact or unique characteristics, can have a substantial adverse impact upon or be incompatible with other uses of land. This impact often cannot be determined in advance of the use being proposed for a particular location. Such uses may be allowed to locate within given districts only through the review process of the special use permit and under the controls, limitations and regulations of such permits. This article establishes general and specific development standards for special uses and provides for a review process which will evaluate the location, scale, compatibility with rural character and development characteristics of such uses and their impact on adjacent properties and the county as a whole, to the end that such uses may be approved, modified, or disapproved fairly and objectively.

Upon the filing of a complete application for a Special Use Permit per the requirements contained in Article 2, Section 2.5 of this Ordinance, the application shall be scheduled for a public hearing before the ETZ Commission. Public notice of the hearing shall be issued as provided for in Article 2, Section 2.5 of this Ordinance. The ETZ Commission may grant approval of special use permits, grant approval with conditions of approval, or deny an application if the characteristics of the intended use would create an incompatible or hazardous condition. The ETZ Commission shall not use a Special Use Permit to alter or reduce the zoning requirements of the zone in which the proposed land use is to locate.

2. Prior to granting any Special Use Permit, the Commission shall hold a public hearing and shall determine that:
 - a. The granting of the Special Use Permit will not be injurious to the public health, safety, morals, and general welfare of the community.
 - b. The use or value of the area adjacent to the property included in the Special Use Permit will not be affected in a substantially adverse manner.
 - c. The site for the proposed Special Use Permit is suitable for that use, and the surrounding properties are compatible with that use.
 - d. That the grant of the Special Use Permit would be within the spirit, intent, purpose, and general plan of this Ordinance.
3. The ETZ Commission, upon receiving a properly filed application or petition, may permit and authorize a Special Use Permit when the following requirements have been met:

- a. The proposed use will not endanger the public health or safety;
 - b. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county, and that it will not create excessive public cost for facilities and services by finding that:
 1. The proposed use will be adequately serviced by adequate existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers/septic systems, and schools; or
 2. The applicant shall provide such facilities; or
 3. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment;
 - c. The proposed use will not generate significant nuisance conditions such as noise, dust, glare, vibration;
 - d. The proposed use meets all required conditions and standards set forth in the zoning district where it proposes to locate;
 - e. The location and character of the proposed use is compatible and consistent with the character of the area in which it is to be located, and will ensure compatibility with existing neighboring land uses; and
 - f. The proposed use is in conformance with the Chaves County Comprehensive Plan.
4. In permitting such uses the ETZ Commission may impose, in addition to the regulations specified herein, such conditions as it deems necessary to protect the best interests of the surrounding property or neighborhood or the county as a whole. These conditions may include, but are not limited to, the following:
- a. Increasing the required lot size, setback or yard dimensions;
 - b. Limiting the height of buildings or structures;
 - c. Controlling the number and location of vehicular access points;
 - d. Requiring the dedication of additional rights-of-way for future public roadway improvements;
 - e. Requiring the designation of public use easements;
 - f. Increasing or decreasing the number of required off-street parking and/or loading spaces as well as designating the location, screening, drainage, surfacing or other improvement of a parking area;
 - g. Limiting the number, size, height, shape, location and lighting of signs;
 - h. Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;
 - i. Designating sites for and/or the size of open space or recreational areas;
 - j. Requiring site reclamation upon discontinuance of the use and/or expiration or revocation of the Special Use Permit;
 - k. Limiting hours and size of operation;
 - l. Controlling the siting of the use and/or structures on the property;

m. Requiring mitigation measures to effectively reduce the potential for land use conflicts with agricultural lands and adjacent residential lands, such as: landscape buffers, special setbacks, screening, and/or site design criteria using physical features, such as rock outcrops, ravines, and roads.

A Special Use Permit shall become void one (1) years after approval or such other time period as established by the ETZ Commission if the use is not completely developed. Failure to begin such action within the time limit specified shall void approval of the Zoning Certificate for the special use.

5. A Special Use Permit may be revoked or limited by the ETZ Commission if any one (1) of the following findings can be made:
 - a. That one or more of the conditions of approval of the Special Use Permit have not been met;
 - b. That the Special Use Permit was obtained by misrepresentation or fraud;
 - c. That the use for which the Special Use Permit was granted has ceased or was suspended for twelve (12) or more consecutive calendar months;
 - d. That the actual or permitted use is in violation of any statute, ordinance, law, or regulation; or
 - e. That the use permitted by the Special Use Permit is detrimental to the public health, safety or welfare, or constitutes a nuisance.
 - f. Change in property ownership or site location.

The ETZ Commission's decision is subject to appeal in accordance with the provisions of Article 2 of this Ordinance.

Section 25.2 Use Regulations A special use permit **shall be required** for the following uses:

1. Airports* or landing fields.
2. Cemeteries and mausoleums
3. Commercial communications transmitter antennas or towers provided they are at least 100 feet from any public way.
4. Community buildings or recreation fields.
5. Electric substations, gas regulator or pump/booster stations, and well and water pumping stations in any district, provided that in any residential district or commercial district, the site shall be developed and maintained in conformance with the general character and appearance of the district. Such development shall include landscaping and suitable screening in the form of a wall, or solid fence and compact evergreen shrub.
6. Extraction of gravel, sand or other raw materials, provided that a satisfactory guarantee be posted with the Commission assuring that the land be left in such a condition that all faces, slopes, edges, or spoil piles have a maximum slope 2½ feet horizontal to one (1) foot vertical.
7. Hospitals, clinics*, and institutions
8. Night clubs*
9. Nursery schools, day nurseries, child care centers, pre-kindergartens, and other special and similar private schools in an Industrial District as an accessory or function for employees, provided that adequate safety from loud noises and other industrial dangers are supplied and there is at least 100 square feet of open play for each child enrolled. Each play area shall be screened with a suitable wall, fence, or evergreen shrub.
10. Parking lots adjacent to, across the street from, or across the alley from the Commercial District, or a Business District.

11. Penal institutions
12. Poultry hatcheries, poultry production, dairying and any similar activities.
13. Private clubs or lodges
14. Railroad tracks, yards, and similar railroad facilities
15. State licensed or state operated family or group care residences for homeless, the criminal offender, or alcohol or drug abusers that function as a transition from institution to community.
16. Substance abuse treatment facilities.
17. Temporary commercial amusements or recreational developments
18. Multigenerational housing as a second dwelling unit in a residential district, with a yearly review by Staff.
19. Day Care Home-Group in a residential district.
20. Workforce Camps