

**CROWLEY COUNTY BOARD OF COUNTY COMMISSIONERS
RECORD OF PROCEEDINGS**

FEBRUARY 21, 2023

CALL TO ORDER

Board of County Commissioners met in regular session on February 21, 2023. The meeting was called to order by Chairman Blaine Arbuthnot at 8:30 a.m. The following were present:

Blaine Arbuthnot-----Chairman
Roy Elliott-----Vice Chairman
Terry McMillian-----Member
LaShelle Benbow-----Deputy Clerk to the Board

NO NEW BUSINESS TO DISCUSS

RESOLUTION NO. 2023-8541

CONSIDERATION OF A RESOLUTION APPROVING THE STIPULATIONS FOR THE AES SOLAR FARM PROJECT

At 9:00 a.m. the board conducted a planning and zoning hearing. Those present were:

Commissioners: Arbuthnot, Elliott and McMillian
Deputy Clerk to the Board: LaShelle Benbow
Planning & Zoning Administrator: Matt Carter
Audience: Nathan Shultz, Adam Wingard, Kirsta Toanice, Carter Livingston, Graham Basecke, Jordan Bunch, Shirley Ager, Tony Hagans, Sue Ann Lowery, Wayne Rusher, Chris Miller, and Pete Aragon.

The following resolution was reviewed line by line, and the public had the opportunity to discuss and ask questions about the resolution. Motion by Elliott, seconded by McMillian to approve the following resolution:

STATE OF COLORADO)
) ss.
County of Crowley)

At a Regular Meeting of the Board of County Commissioners for Crowley County, Colorado, held in Ordway, Colorado, on the 21st day of February, A.D., 2023, there were present:

Blaine Arbuthnot, Chairman
Terry McMillian, Commissioner
Roy Elliot, Commissioner
LaShelle Benbow, Deputy Clerk to the Board

when the following proceedings were had and done, to-wit:

A RESOLUTION APPROVING THE USE BY REVIEW AND VARIANCE FOR THE AES SOLAR PROJECT

WHEREAS, The County of Crowley, Colorado has adopted a Planning and Zoning Manual; and

WHEREAS, AES of 272 Century Place, Suite 2000 of Louisville, CO 80027 submitted a Use by Review for a solar project in Crowley County (the "Project") in compliance with the requirements of the Crowley County Planning and Zoning Manual; and

WHEREAS, the Crowley County Board of County Commissioners (the "BOCC") held public hearings with AES on September 19, 2022 and September 26, 2022 in public sessions to discuss and review the Use by Review application for the Project; and

WHEREAS, the BOCC determined the application meets all of the qualifications and requirements as required by the Planning and Zoning Manual and approved the Project; and

WHEREAS, the BOCC believe the Project will be economically advantageous to the County of Crowley and that they agree with the totality of the BOCC's findings and conclusions.

NOW, THEREFORE, BE IT RESOLVED by the BOCC, that:

1. The Use by Review application (application #2022-14) shall be treated as a single application.
2. The application states that the Project will be designed, constructed and operated to meet or exceed federal and state safety standards.
3. The Use by Review establishes the Project as an appropriate use of the land, and the use will conserve and utilize Crowley County's natural resources.
4. The application further states that upon completion of the construction of the Project, AES will reclaim all disturbed ground, to the extent practical, to pre-construction conditions.
5. The Use by Review establishes the Project will maintain and stabilize the value of the property.
6. The Use by Review establishes the Project will reduce fire hazards.
7. The Use by Review establishes the Project will create a stable pattern of land use.
8. The Use by Review establishes the Project will be economically beneficial to the County of Crowley, Colorado.
9. AES shall provide the County of Crowley, Colorado with a 2% use tax on all construction materials used in the construction of the Project.
10. If AES undertakes any sales of electricity from the Project to any users/consumers of such electricity in the County of Crowley, Colorado, such sales would be subject to 2% County sales tax; however, since AES will sell all of the electricity generated by the Project to a utility where such utility will resell the electricity to its own customers (and the utility will provide a valid Colorado "sale for resale" exemption certificate to AES in connection with all such sales), AES will not be subject to 2% County sales tax on its sales of electricity generated from the Project.
11. The application provides for extensive revegetation and a reclamation plan that includes proper topsoil handling, trenching and stockpiling, site stabilization and erosion control, and revegetation soil preparation.
12. Prior to the issuance of building permits for the Project, AES and the County will agree upon and enter into a revegetation plan for the disturbed area.
13. Prior to the issuance of building permits for the Project, AES and the County shall agree on the estimated cost of implementing the revegetation plan and AES shall provide the County with bond or other form of financial security to pay for the revegetation in the event that AES does not commence or complete the revegetation in accordance with the revegetation plan.

14. The application provides for the control of noxious weeds and the long-term monitoring of the revegetation and reclamation efforts be appropriate third parties.
15. Prior to the issuance of building permits for the Project, AES and the County will agree upon and enter into a weed and pest control plan.
16. Prior to the issuance of building permits for the Project, AES and the County will agree upon and enter into a Decommissioning and Restoration Agreement.
17. Prior to the issuance of building permits for the Project, AES and the County will agree on the estimated cost of decommissioning the Project in accordance with the Decommissioning and Restoration Agreement and AES will provide the County with a bond or other form of financial security to pay for the decommissioning in the event that the AES does not commence or complete the decommissioning and restoration activities in accordance with the Decommissioning and Restoration Agreement.
18. Prior to the issuance of building permits for the Project, AES and the County shall agree upon and enter into a Road Use Mitigation Agreement.
19. The BOCC has approved the application.
20. This approval authorizes AES to construct the Project in Crowley County, Colorado on the real properties described in the application, subject to the additional conditions set forth above.
21. This approval will be in force indefinitely, so long as the terms and conditions of this approval are fully complied with.
22. The development authorized by this approval shall be at all times in accordance with the plans and/or specifications approved by the BOCC as well as the regulations of the County of Crowley, Colorado.
23. The development authorized by this approval shall be in conformity with all applicable federal and state statutes, regulations and rules, as well as all applicable land use controls including, but not limited to, applicable comprehensive or master plans, subdivision regulations, zoning and building codes.
24. Within thirty (30) days prior to each annual anniversary date of the issuance of this approval, AES shall submit a report detailing all past activities conducted by AES pursuant to this approval including a satisfactory showing that AES has complied with all conditions of the approval and applicable regulations. Upon notice to the BOCC of the fulfillment of all conditions of this approval, and the BOCC's concurrence therein, the BOCC may terminate further annual review requirements.
25. In accepting this approval, AES agrees to pay attorney fees and costs incurred by the BOCC in the event of any litigation challenging this approval, including litigation brought by AES.
26. This is an approval of a site-specific development plan and shall constitute a vested property right pursuant to C.R.S. § 24-68-101, et. seq. for a period of five (5) years from the date of this approval. This resolution shall constitute a development agreement for the purposes of establishing the vested property right.
27. This project shall be subject to an annual review for compliance to the Crowley County Planning and Zoning Board. Failure to comply with any provision of this resolution shall be reviewed by the Planning and Zoning Board, and may result in the withdraw of this variance. Any decision by the Planning and Zoning Board shall be reviewable to the Crowley County Board of County Commissioners, sitting as Crowley County Planning and Zoning Authority.

28. The terms and conditions set forth herein shall be binding upon and run with the land which is the subject of this approval, and shall be enforceable against the successors and assigns of the County of Crowley, Colorado.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye

Elliott-----Aye

McMillian-----Aye

No further business appearing the meeting was recessed.

ATTEST:

Melinda Carter, County Clerk

Blaine Arbuthnot, Chairman