

1
2 **Saguache County Land Development Code**
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4 **Solar Energy Facilities Guidelines**
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6 These guidelines were initially intended to be adopted as County regulations and contain language
7 reflecting that approach. The Saguache County Commissioners encourage the development of
8 Solar Facilities within Saguache County and the San Luis Valley therefore they have made the
9 decision to use this document as a guideline for any Solar Facilities that are applied for within the
10 unincorporated area of Saguache County.
11

12 These guidelines are applicable to any solar facility seeking approval for any project designed to
13 generate 1MW up to 5MW of power such projects also require a Conditional Use Permit.
14 Facilities designed to generate more than 5MW or over will be required to obtain a 1041 permit.
15

16 Proposed Solar Energy Facilities of 5MW or greater nameplate capacity require a County 1041
17 Permit, application for which shall be administratively processed by the Land Use Administrator
18 or a designee, and presented to the Board of County Commissioners for final decision.

19 Proposed Solar Energy Facilities of 1MW up to 5MW nameplate capacity require a Conditional
20 Use Permit, application for which shall be administratively processed by the by Land Use
21 Administrator or a designee and presented to the Saguache County Planning Commission and
22 Board of County Commissioners for final decision.
23

24 **XXII.1. Authority:**
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26 This Section is authorized by *inter alia*, C.R.S. §§ 29-20-101 et seq., 34-60-101 et seq., 30-28-101
27 et seq., 30-28-201, et seq.
28

29 **XXII.2. Purpose:**

30 This Article XXII is enacted to protect and promote the health, safety, morals, convenience, order,
31 prosperity and general welfare of the present and future residents of Saguache County, and to
32 allow for a reasonable permitting process for solar energy development.
33

34 It is acknowledged that there is significant potential for the capture of solar energy resources
35 both in the County and in the San Luis Valley. Saguache County supports and encourages Valley-
36 wide cooperation and coordination of renewable energy development within the San Luis Valley,
37 as well as a balance between various scales – domestic, distributed, utility - of solar development.
38 Landowners have certain legal rights and privileges, including the right to develop land in a
39 respectful manner, and to have adverse land use impacts associated with energy development
40 minimized and mitigated through compliance with this Article. Should it be established by
41 competent evidence that a proposed facility cannot be operated in compliance with this Article,
42 county land use approval for such a facility may be denied.
43

44 **XXII.3. Jurisdiction:**
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46 This Article XXII shall apply to the unincorporated area of Saguache County.
47

48 **3.1. General Procedures.**
49

1 3.1.1. Construction, installation and operation of solar energy facilities, which are subject
2 to this Article, shall not commence until the relevant authority in accordance with
3 the requirements of this Article has granted administrative approval.

4 3.1.2. Planning Commission review and recommendation together with Board of County
5 Commissioners review and approval shall be required for all solar facilities of 1MW
6 up to 5MW nameplate capacity. Any solar facility that is over 5MW and above
7 requires that a 1041 permit be applied for.

8 3.1.3. This Article provides standards for development review of the surface impacts,
9 natural resource protection requirements, and cost-benefit assessment issues for solar
10 energy facility construction and operation that consider applicable state interests.
11 Saguache County encourages the use of solar technologies and solar energy
12 development models that: minimize surface, wildlife and visual impacts; result in
13 minimal consumptive use of water resources; do not rely on fossil fuel burning
14 cogeneration methods; provide net positive benefits to County and other affected
15 local residents; demonstrate and encourage energy conservation; and reflect
16 appropriate scale.
17

18 **XXII.4. DEFINITIONS**

19 For the purposes of this Article, the following words, terms and phrases shall have the following
20 meanings, except where the context clearly indicates a different meaning:

21 **4.1. ACCESS ROAD.** A road located on private property between the site on which a solar
22 generation or distribution facility is located and the municipal or county road or state highway
23 serving such a Facility.

24 **4.2. APPLICANT.** The person, corporation or other legal entity seeking to develop the solar
25 resource or any other use proposed in connection the development of the solar resource for the
26 site in question.

27 **4.3. ATTAINMENT (NON-ATTAINMENT) AREAS.** An **attainment** area is a zone within
28 which pollution levels are considered to meet United States National Ambient Air Quality
29 Standards. A **non-attainment** area is designated by the EPA when monitored pollutant
30 concentrations exceed these standards a certain number of times (varies by pollutant) over a
31 three-year period.

32 **4.4. COMPATIBLE/COMPATIBILITY.** Able to exist or act together harmoniously,
33 considering noise levels, odors, potential fire hazard, visual impacts, and effects to surface
34 water and groundwater quality/quantity, adequacy of the road system, air quality and
35 surrounding land uses and inhabitants.

36 **4.5. CONCENTRATING SOLAR POWER (CSP).** Solar energy technologies, including
37 linear trough, dish/engine and power tower systems, which use mirrors to reflect and
38 concentrate sunlight onto receivers that collect the solar energy and convert it to heat. This
39 thermal energy is then used to produce electricity via a steam turbine or heat engine driving a
40 generator. CSP facilities generally include a heat (energy) storage component.

41 **4.6. CONTAMINATED SOIL.** Soils impacted by operations in a way that adversely affects
42 their ability to support normal uses or could adversely affect water quality in the future.

43 **4.7. COUNTY.** Saguache County, its Board of Commissioners or other agency of Saguache
44 County with delegated authority to set or enforce these regulations.

- 1 **4.8. CORRIDOR.** The route within which a transmission line right-of-way is located.
- 2 **4.9. DESIGNATED AGENT.** An agent formally designated by either the applicant or a
3 relevant landowner or lessee to act on behalf of the relevant party.
- 4 **4.10. DISTRIBUTED SOLAR ENERGY FACILITY.** A solar energy facility rated to
5 produce between and 10 MW of electricity that is intended for consumption within the San
6 Luis Valley.
- 7 **4.11. DISTRIBUTION SYSTEM.** Electrical infrastructure that distributes energy from a
8 substation to the end users.
- 9 **4.12. DOMESTIC SOLAR ENERGY INSTALLATION.** An individual solar energy
10 installation rated to produce less than of electricity intended for on site or immediate vicinity
11 consumption. A domestic installation may be stand alone or connected to a grid under a net
12 metering agreement.
- 13 **4.13. EASEMENT.** Authorization by a property owner for the use of a designated portion of
14 his or her property by another, for a specified purpose.
- 15 **4.14. HEAT TRANSFER MEDIA –** In a concentrating solar plant, the material that flows
16 through the solar concentrator that “transfers” the heat collected to another material, the
17 thermal storage medium, for storage.
- 18 **4.15. MINERAL ESTATE.** Mineral interest in real property that is shown by the real estate
19 records of the county in which the real property is situated and that is not owned as part of the
20 full fee title to the real property.
- 21 **4.16. NAMEPLATE CAPACITY.** The full-load continuous rating of a generator or other
22 electric power production equipment under specific conditions as designated by the
23 manufacturer. Actual capability can vary from the nameplate rating due to age, wear,
24 maintenance or ambient conditions.
- 25 **4.17. NET METERING.** A policy for electricity consumers who operate (generally small)
26 renewable energy facilities, such as wind, solar or home fuel cells. Under net metering, a
27 system user receives a specific credit for the “net” (produced minus consumed) portion of the
28 electricity generated by the system that is fed back into the grid.
- 29 **4.18. NON-CROPLAND.** Any land used in ways other than those defined as agricultural
30 land.
- 31 **4. 19. NON-POLLUTING ACTIVITY –** Any activity that does not have the capacity to
32 produce measurable degradation to water, air, soil, ambient sound levels or visual attributes.
- 33 **4.20. OPERATING PLAN.** A general description of a facility identifying purpose, use, typical
34 staffing pattern, seasonal or periodic considerations, routine hours of operating, source of
35 services/infrastructure, traffic patterns and any other information related to regular
36 functioning of that facility.
- 37 **4.21. OPERATOR.** A company or individual who has been permitted by Saguache County to
38 conduct any type of solar energy facility construction and/or operation on a permitted site.
- 39 **4.22. PHASE CHANGE MATERIAL (PCM) –** Thermal storage and heat exchange materials
40 designed to operate at high heat, increase heat storage capacity in less space and reduce costs
41 of CSP plants.

1 **4.23. PHOTOVOLTAIC SYSTEMS (PV)** - Literally translated as *light-electricity*,
2 photovoltaic (PV) systems convert solar radiation into electricity using semiconductor materials
3 connected together into modules and arrays of various energy-production capacities. A PV
4 system can also include electrical connections, mounting hardware, power-conditioning
5 equipment, and (for domestic systems not connected to a grid) batteries that store solar energy
6 for later use.

7 **4.24. POLLUTION.** The contamination or other degradation of the physical, chemical or
8 biological properties of water, air or soil, including, but not limited to: change in temperature,
9 taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or
10 other substance into water, air or soil as will or is likely to create a nuisance or render such
11 water, air or soil harmful, detrimental or injurious to public health, safety or welfare, or to
12 domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to
13 livestock, wild animals, birds, fish or other aquatic, life or native flora.

14 **4.25. POTENTIAL CONSERVATION AREA (PCA).** Areas known to contain significant
15 ecological or biological features or species of concern as defined and identified by the Colorado
16 Natural Heritage Program (CNHP).

17 **4.26. POTENTIALLY POLLUTING ACTIVITY.** Any activity that may cause a measurable
18 degradation to water, air or soil quality or produce noise that increases ambient sound levels
19 by more than 10 decibels.

20 **4.27. RECREATIONAL LAND(S).** Lands that are used for the purpose of public or private
21 outdoor recreational activities. Recreational activities may be active or passive and may
22 include, but may not be limited to; sports fields, playgrounds, public parks, camping sites, and
23 trails used for hiking, rock climbing, horse back riding, cross-county skiing, snowshoeing,
24 hunting and fishing.

25 **4.28. RESTRICTED SURFACE OCCUPANY AREA (RSO).** Restricted surface occupancy
26 areas are highly sensitive wildlife habitats where avoidance or anthropogenic structures and
27 disturbances is the most effective method of protecting sensitive species and wildlife.

28 **4.29. RESIDENTIAL AREA.** Any area having an existing residence or platted subdivision
29 lot located within a one-quarter mile radius of a facility site.

30 **4.30. RIGHT OF WAY.** A tract or strip of land, separate and distinct from the adjoining
31 property that is owned for the purpose of occupied by or intended to be occupied by
32 transmission infrastructure.

33 **4.31. SOLAR ENERGY FACILITY.** Any installation of greater than nameplate capacity that
34 utilizes radiation from the sun to produce other forms of energy. A facility may serve
35 domestic, agricultural, experimental, demonstration or commercial purposes, and includes, but
36 is not limited to:

- 37 • Equipment to capture, reflect or magnify solar energy, e.g. photovoltaic panels, or
38 mirrors;
- 39 • Equipment that converts solar energy to other forms, including electrical generators;
- 40 • All ancillary and associated equipment, including water treatment plants, transmission
41 and distribution lines, substations, cooling equipment, roads, storage facilities, waste
42 facilities and/or any other equipment or facility that is necessary for the successful
43 operation of the solar energy facility.

1 **4.32. SPECIES OF CONCERN.** Any plant or animal species or subspecies of state or federal
2 concern as identified by the Colorado Division of Wildlife, the Bureau of Land Management,
3 U.S. Department of Agriculture, U.S. Fish and Wildlife Service or the Colorado Natural
4 Heritage Program, including any species listed as threatened, endangered, candidate or
5 currently under litigation pursuant to the Endangered Species Act.

6 **4.33. STORM WATER MANAGEMENT PLAN.** A detailed analysis of how storm water on
7 the site will be managed, including the system’s design and how it will be constructed to meet
8 applicable County and Colorado Department of Health and Environment requirements.

9 **4.34. SUBCONTRACTOR.** A company or individual who is employed by an Operator to
10 conduct any related activity on the permitted premises.

11 **4.35. THERMAL STORAGE MEDIUM –** A material used to store collected heat for later use.

12 **4.36. TRANSMISSION INFRASTRUCTURE.** The physical hardware needed to connect
13 electrical generation facilities to substations near end user populations. The portion of the
14 system that connects substations to end-users is referred to as distribution.

15 **4.37. UTILITY SCALE SOLAR ENERGY FACILITY.** An installation rated to produce
16 more than 5 MW of electricity.

17 **4.38. WATER BODIES.** The term “water bodies” may include reservoirs, lakes, and
18 perennial or seasonally flowing rivers, streams, creeks, springs, irrigation ditches, aquifers,
19 wetlands, playa, arroyos, stock ponds and draws.

20 All other words used in this Article may be given their usual, customary and accepted meaning in
21 the solar energy industry.

22
23 **XXII.5. Delineation of domestic, distributed and utility-scale solar energy facilities.**

24 **5.1. Domestic Facilities.** Domestic solar energy facilities do not require a permit under this
25 Article. A domestic solar energy facility is defined as an individual solar energy
26 installation rated to produce less than of electricity intended for on site or immediate
27 vicinity consumption. Excess energy that is fed back in to a grid from a domestic solar
28 facility is deemed for the purposes of this section to be consumed on site.

29 **5.2. Distributed Facilities.** A distributed solar energy facility has a nameplate generation
30 capacity of 1MW up to 5MW intended for consumption within the San Luis Valley.
31 Excess energy that is fed back in to a grid from a distributed solar facility is deemed for
32 the purposes of this section to be consumed within the San Luis Valley.

33 **5.3. Utility-Scale Facility.** Utility-scale solar energy facilities require a permit under this
34 Article. A utility-scale solar energy facility is an installation rated to produce more than 5
35 MW of electricity. In addition to the solar radiation collection installation, the facility may
36 include:

37 5.3.1. Equipment, storage yards or construction staging areas;

38 5.3.2. Water lines, wells and associated facilities;

39 5.3.3. Thermal storage facilities;

40 5.3.4. Electric generation and conversion facilities;

41 5.3.5. Chemical storage facilities;

42 5.3.6. Transmission lines located outside an individual solar site;

1 5.3.7. Other equipment or installation related to the production and transmission of solar
2 energy.

3 5.3.8. Due to the size, quality, value and sensitivity of the underlying aquifers, chemical
4 waste facilities are not permitted.

5
6 **XXII.6. Application Submittal Requirements for a Solar Energy Facility Permit**

7 **6.1.** The applicant may submit a minimum of sixteen complete copies, or a number as
8 directed by the Land Use Administrator, of the application and associated materials
9 detailed below, along with the filing fee as set by the Board of County Commissioners.

10 **6.2. Application Materials Required.**

11 **6.2.1. Applicant.** The name, address, telephone and fax numbers, and e-mail address
12 for the applicant; and if the applicant is to be represented by an agent, a notarized
13 letter signed by the applicant authorizing the agent to represent the applicant and
14 also stating the same information for the agent.

15 **6.2.2. If applicant is not the surface owner,** the Applicant may provide the name and
16 address of the owner of the property; documentation of surface ownership; copies of
17 any surface use/damage agreements and leases affecting the area where the solar
18 facility will be operated, including proof of right of entry for ingress and egress and
19 installation of all necessary infrastructure, and such other provisions relating to the
20 use of the surface estate as may be appropriate. Such submitted agreement(s) may
21 be redacted to delete any provisions pertaining to financial and/or non-monetary
22 compensation that the Applicant has paid or agreed to pay to the surface owner. If
23 such agreements have not been executed, the Applicant may submit a notarized
24 written consent or written waiver for the proposed Facility that has been executed
25 by the owner(s) of the property upon which such Facility is to be located, together
26 with a copy of any bond that has been posted as security for possible surface
27 damages For Facilities located within a parcel or parcels for which the Applicant is
28 the current owner or lessee of the parcel(s), the Applicant may provide proof of
29 ownership or a copy of the lease.

30 **6.2.3. Mineral Interest Owner.** Documentation of mineral interest ownership,
31 including name and address of the owner of the mineral interests, if applicable.

32 **6.2.4. Parcel Location.** The legal description (referencing lot and block or tract
33 numbers, homesteads, or metes and bounds), property address and common
34 description of the parcel on which the Facility is proposed to be located.

35 **6.2.5. Identification of Previously Approved Uses.** List any Federal, State and
36 County permits, which have been previously approved under the Land Development
37 Code after April 1988 for the parcel on which the Facility is proposed.

38 **6.2.5. Characteristics and Current Condition of the Operation Location.**
39 Identification of physical characteristics and descriptions of current conditions of the
40 site where the Facility is proposed to occur, including water bodies, soils and
41 vegetation, roads, potential geologic hazards, potential mineral resources, and any
42 other characteristics requested by the Land Use Department to determine potential
43 impacts.

44 **6.2.6. List of Adjacent Land Parcels.** A listing of all land parcels and land uses that
45 are within 1500 feet of the boundaries of the parcel on which the project is proposed,

1 including all properties that are separated from the parcel by a roadway or would be
2 adjacent to the parcels except for the existence of the roadway.

3
4 **6.2.7. Vicinity Map.** A vicinity map which shall, at a minimum, include the following:

5 **6.2.7.1. Facility Location.** Location of the Facility on a United States Geological
6 Survey quadrangle map or on a recorded plat if the proposed solar facility is
7 within an approved subdivision, including GPS localization coordinates, with
8 the location highlighted so that it is easy to see.

9 **6.2.7.2. Transmission System Lines.**

10 a. A map that displays the route(s) of all existing transmission and/or
11 distribution infrastructure that will be used by the facility and all new
12 transmission and/or distribution infrastructure that will be necessitated by
13 the facility.

14 b. Prior to installation of lines, an Encroachment Permit may be obtained
15 from the Road and Bridge Department for any road crossings and work in
16 Saguache County rights-of-way or Saguache County roads.

17 **6.2.7.3. Topographic Features.** Water bodies, contour lines and elevations,
18 within one mile of the proposed solar facility.

19 **6.2.7.4. Roads.** All public and private roads that traverse and/or provide access
20 to the proposed Facility, and identification of the public or private entity
21 having jurisdiction over each road(s).

22 **6.2.7.5. Easements.** Easements recorded or historically used that provide access
23 to or across, or other use of, the parcel(s).

24 **6.2.7.6. Special Districts, Municipalities, Subdivisions, Structures.** Locations
25 of special district boundaries, municipalities, subdivisions, and commercial or
26 residential structures within three miles of the site.

27 **6.2.7.7. Proximity to other Energy Facilities.** Location of other existing
28 permitted or proposed energy facilities within five miles of the site.

29
30 **6.2.8. Site Plan Map.** An accurate map with north arrow and appropriate scale
31 (generally 1"=50') for the parcel(s) where the Solar Facility will occur. The map
32 may be prepared digitally on county geographic information system parcel maps,
33 and indicate the following:

34 **6.2.8.1. Easements and Rights-of-Way.** Utility easements and rights-of-way.

35 **6.2.8.2. Improvements.** Any existing improvements.

36 **6.2.8.3. Proposed facilities.** A description of facilities proposed for the site,
37 including the type and scale (projected output) of the facility, the area
38 required, solar radiation collection equipment and placement area, heat
39 transfer and energy storage facilities, structures, transmission and
40 distribution lines, tanks, wells, generators, compressors, engines,
41 impoundment facilities, temporary living quarters, staging and storage areas
42 and equipment, roads, fencing, type and location of exterior lighting.

43 **6.2.8.4. Site Features.** Any significant site features including floodplains, water
44 bodies, drainage patterns, cultural and archeological resources.

45 **6.2.8.5. Topography.** Existing and proposed topography at five-foot intervals or
46 some other interval established by the Land Use Department as necessary to
47 portray the direction and slope of the area affected by the Solar Facility.

1 **6.2.8.6. Color photos (8” x 10”)**. An aerial photo of the location of the proposed
2 solar facility installation and ground photos of adjacent areas facing north,
3 south, east, and west showing existing landscape. Photos should be taken
4 during a season when vegetation features can be clearly documented.

5 **6.2.9. Application and Permits.** Copies of all local, state and federal applications
6 authorizing or required for the Facility, and permits, when issued.

7 **6.2.10. Operation Plan.** A plan including projected start and completion dates for
8 construction, estimated duration of facility operation, description of equipment
9 used, including horsepower; transportation, generation, and post-operation
10 activities, including a site reclamation plan pursuant to section 8.5.7. of this
11 Article.

12 **6.2.13. Reasonably Foreseeable Future Development Plan.** The Applicant may
13 provide a summary of the applicant’s projected development scenario, including
14 location and density of arrays, roads, transmission lines, generators, and any
15 other facilities for all of the proposed and adjacent lands owned or leased or
16 projected to be occupied by solar energy facilities operated by the permittee.

17 **6.2.14. Water and Sewer.** Detailed data on the projected use of water, its availability
18 and source and a plan for sewage handling.

19 **6.2.15. Noxious Weed and Introduced Species Prevention Plan.** A plan for the
20 management and prevention of noxious weeds and/or harmful introduced species
21 on the site that complies with all County and State requirements.

22 **6.2.16. Waste Management Plan.** A plan for the handling, storage, transportation,
23 treatment, recycling and disposal of waste generated by the Facility.

24 **6.2.17. Access and Transportation Routes/Plan.** A map that identifies the access
25 route to and within the parcel, color photos of the proposed road locations to be
26 used for accessing the property, and a narrative estimating the number and types
27 of vehicles anticipated per day, including weights, that will travel over the
28 route(s).

29 **6.2.18. Roadway Impact Analysis.** An analysis of the impacts of the Facility to the
30 roadway system within the County.

31 **6.2.19. Visual and Sound Mitigation Plans.** Measures proposed to minimize and
32 mitigate the visual and sound impacts of the Facility.

33 **6.2.20. Identification of Water Structures.** Identification of irrigation ditches and
34 other water structures, ownership of water rights appurtenant thereto, and
35 evaluation of any impacts to the structures, water rights or water quality.

36 **6.2.21. Water Quality Non-Point Source Impacts.**

37 **6.2.21.1. Non-Point Source Impacts to Water Quality.** A description of
38 potential non-point source pollution associated with the proposed Solar
39 Facility and proposed mitigation thereof.

40 **6.2.21.2. Mitigation and Avoidance.** Proposed avoidance and mitigation
41 measures to minimize any water quality impacts associated with the
42 construction and operation of the facility that fully meet the requirements of
43 Article XVIII, “Significant Groundwater Recharge Zones”, of the Saguache
44 County Land Development Code. Proposed mitigation may include an
45 erosion control plan required under this Section.

1 **6.2.22. Biological Assessment (BA) Report.** A site-specific biological assessment,
2 including the results of consultation with the Colorado Division of Wildlife, and
3 any other relevant agencies as listed in Article II of the Land Development Code,
4 to determine the presence of any significant biological resources. Biological
5 assessments may include presence of habitat for sensitive species and plant
6 communities, wildlife corridors and migration routes, critical wintering habitat,
7 calving or other significant wildlife habitat. The BA should include an analysis
8 and evaluation of the impacts of the construction and operation of the Facility on
9 any biological resources identified, and proposed mitigation. Mitigation
10 measures must, at a minimum, meet the requirements under Article XX
11 “WILDLIFE” of the Saguache County Land Development Code and Section
12 8.4.3. of this Article. The BA report may include detailed description and GIS
13 recordings of all significant biological resources identified.

14 **6.2.23. Vegetation.** A written description of the type, character, and density of
15 existing and proposed vegetation on the parcel, a summary of the impacts of the
16 Facility on vegetation, and proposed mitigation measures.

17 **6.2.24. Drainage and Erosion Control Plan.** A plan that identifies existing and
18 proposed drainage patterns and the methods for controlling erosion during
19 construction and operation of the Facility.

20 **6.2.25. Emergency Response Plan.** An emergency response plan that addresses any
21 reasonably foreseeable hazardous event associated with the construction and
22 operation of the Facility, including the name and contact information for the
23 applicant’s incident commander, proposed signage, access/evacuation routes, and
24 health care facilities anticipated to be used. The plan must be submitted to the
25 County Office of Emergency Management for comment and shall include a
26 provision for the Solar Facility Operator to reimburse the appropriate emergency
27 response service providers for costs incurred in connection with an emergency,
28 where applicable.

29 **6.2.26. Flood Hazard.** If applicable, a map showing the boundaries of a 100-year
30 flood, delineating the possible depth of flood waters on the proposed site, and the
31 proposed location of public improvements within the flood boundaries, including
32 buildings, utilities and roads. A professional engineer must certify this
33 information.

34 **6.2.27. Fire Hazards.** An assessment of fire and wildfire hazards within three miles of
35 the site, and a plan for mitigating wildfire hazards.

36 **6.2.28. Geologic Hazards.** An assessment of the geologic hazards within three miles
37 of the site, including but not limited to induced earthquakes, hydrothermal/
38 volcanic intrusion breaches, subsidence and mudflows, and a plan for mitigating
39 geologic hazards.

40 **6.2.29. Cultural Survey.** A cultural, historical, and archeological assessment of the
41 parcel, which has been submitted for review by the relevant agencies pursuant to
42 the Land Development Code. The Cultural Survey may include identification,
43 GIS recording and evaluation of any cultural, archeological or historical
44 resources within a ¼ mile radius of the proposed project area, including Native
45 American burial or other culturally significant sites that meet the requirements
46 for eligibility for registry under the National Historical Preservation Act.

1 **6.2.30 Impacts to local residents.** An assessment of the anticipated costs, risks and
2 benefits associated with the project to County residents and any non-County
3 residents that reside within 10 miles of any component of the facility, including
4 related transmission/distribution infrastructure.

5 **6.2.31 Incentive Programs.** A description of any program that the applicant may
6 offer to promote energy conservation and/or increase access for San Luis Valley
7 residents to renewably-generated energy, including domestic and distributed
8 scale installations.

9 **6.3.32. Existing Land Uses.** A written summary of the existing uses of the parcel.

10 **6.2.33. Waiver.** Documentation of the basis for any waiver that the applicant may
11 request pursuant to this Section.

12
13 Note: Certain submittal requirements may be waived or modified by the Land Use
14 Administrator if it is demonstrated that the material to be waived or modified is not
15 applicable to the specific application.

16
17
18 **XXII.7. APPLICATION and REVIEW PROCESS.** Applicants for a Solar Energy Facility
19 Permit shall comply with the following procedures:

20 **7.1 Pre-Application Meeting.**

21 7.1.1. All Applicants for a Solar Energy Facility permit may schedule and attend a pre-
22 application meeting with a member of the Land Use Department before submitting
23 an application. The purpose of the pre-application meeting is to inform the
24 Applicant of the applicable procedures, submittal requirements, development
25 standards, and other pertinent matters before the Applicant finalizes its proposal. If
26 a formal permit application is not submitted within one hundred-eighty (180) days
27 of the pre-application meeting, a new pre-application meeting must be scheduled and
28 held before the formal application will be accepted.

29 7.1.2. If the applicant is not the surface owner it shall be the Applicant's responsibility to
30 invite relevant property owner(s) of the parcel(s) - to the pre-application meeting by
31 sending a letter at least thirty (30) days in advance of the pre-application meeting
32 inviting said property owner(s) to attend the meeting. Proof of such notice shall be
33 submitted to the Land Use Department by a certificate of mailing.

34 **7.2. Review Procedure for all Solar Energy Facility Permit Applications.**

35 Proposed Solar Energy Facilities of 5MW or greater nameplate capacity require a
36 County 1041 Permit, application for which shall be administratively processed by the
37 Land Use Administrator or a designee, and presented to the Board of County
38 Commissioners for final decision.

39 Proposed Solar Energy Facilities of 1MW up to 5MW nameplate capacity require a
40 Conditional Use Permit, application for which shall be administratively processed by
41 the by Land Use Administrator or a designee and presented to the Saguache County
42 Planning Commission and Board of County Commissioners for final decision.

1 **7.2.1. Determination of Completeness by Land Use Administrator.** The Land Use
2 Administrator or a designee shall determine whether the application is complete
3 and includes all of the required information prior to beginning any review of an
4 application under this Article. Other permit and/or assessment materials
5 prepared for other permitting or review entities may suffice as a portion of the
6 application, subject to Administrative Review. The Land Use Department shall,
7 within (ten) 10 days of receiving the application, notify the applicant in writing
8 that the application is either complete or incomplete, or shall indicate a date by
9 which such determination shall reasonably be made.
10

11 7.2.1.1. Application Is Not Complete. If the application is not complete, the Land
12 Use Department shall inform the applicant of the deficiencies in writing and
13 shall take no further action on the application until the deficiencies are
14 remedied.
15

16 7.2.1.2. Failure To Correct Constitutes Withdrawal. If the applicant fails to
17 correct the deficiencies within 60 days of the postmarked or certified date of
18 the mailing of the notification of incompleteness, the application shall be
19 considered withdrawn.
20

21 7.2.1.3. Application Is Complete. If the application is complete, the Land Use
22 Department shall certify it as complete, assign the application an agenda
23 date with the Planning Commission and provide notification of the meeting
24 date to the applicant.
25

26 7.2.1.4. Completeness is not a determination of compliance. A determination that
27 an application is complete shall not constitute a determination that it
28 complies with the applicable standards of this Article.
29

30 **7.2.2. Notice to Adjacent and Affected Property Owners.**

31 7.2.2.1. **When reasonable**, the Land Use Department may provide written notice
32 by certified mail to owners of real property within three miles of the subject
33 parcel in which the Solar Energy Facility is proposed to be located, otherwise
34 the notice shall be placed in the relevant newspaper(s). This notice shall be
35 mailed within ten (10) business days of the application being determined
36 complete by the Land Use Administrator. A copy of the notice will be provided
37 to the applicant. The applicant shall pay the cost of mailing the notice. The
38 notice shall include:

- 39 • Description of the Solar Energy Facility;
- 40 • Map showing the location of the proposed Facility, including a physical
41 address and GPS coordinates;
- 42 • Identification of the Applicant and its designated agent, including contact
43 information for the Applicant and its agent;
- 44 • Vicinity map showing the site, existing and proposed access roads; facilities
45 to be constructed including transmission lines; and a description of the
46 equipment proposed to be used or located upon the site, both during and after
47 completion of the Facility; and
- 48 • The date of the public meeting of the Planning Commission(s) to review the
49 application in accordance with subsection 7.6.1.

1 The property owners to whom notice is mailed be determined by the Land Use
2 Department using the most current list of property owners maintained by the
3 Office of the Saguache County Assessor. The notice to affected owners shall
4 provide a statement that all written comments regarding the application must
5 be received by the Land Use Department within thirty days after the
6 postmarked date of the notice, with such specific deadline referenced in the
7 Notice.

8 7.2.2.2. Subdivisions and Associations. If any part of an existing subdivision or
9 35-acre tract development is within 3 miles of the subject parcel in which
10 the Solar Energy Facility is proposed to be located, the Land Use
11 Department may notify all of the landowners within the existing subdivision
12 or 35-acre tract development. If any landowners required to be provided
13 notice are also members of a condominium or homeowner's association, the
14 Land Use Department may also provide written notice to the association in
15 the same manner as other landowners.

16 7.2.2.3. The Applicant may post a notice (to be obtained from the Land Use
17 Department) in a conspicuous place on the property or closest public
18 roadway within 5 days of the submittal of the solar energy facility permit
19 application to the Land Use Department. The Applicant may submit to the
20 Land Use Department a photograph of the posted notice taken at the time of
21 posting, which displays the date and time of said posting.

22 7.2.2.4. It shall be the responsibility of the notified landowner(s) to give notice of
23 the proposed operation to any affected tenants of the proposed facility. The
24 Land Use Department shall notify the landowner of this responsibility.
25

26 **7.3. Land Use Department Review.** The Land Use Department shall review the
27 application. The express purpose of the review is to ensure that the proposal
28 complies with all applicable development standards and requirements.

29 **7.4. Review by Referral Agencies.** The Land Use Department may require the
30 application materials or any portion thereof be submitted for professional analysis
31 and recommendations by any other review agency, organization, or technical
32 consultant deemed appropriate and necessary to complete the review, including
33 other County offices and departments, municipal, state, or federal agencies having an
34 interest in or authority over all or part of the proposal, and other reasonable
35 substantive experts and legal consultants. The applicant shall be responsible for all
36 necessary costs associated with the referral. The referral review and comment period
37 shall be thirty (30) business days from the date that the application is deemed
38 complete.
39

40 **7.5. Report.** Following the referral review and comment period, the Land Use
41 Department shall prepare a report that identifies whether the Solar Energy Facility
42 complies with the Standards set forth in this Article.
43

44 **7.6. Public Review Procedure.** All applications for permits for solar energy facilities of
45 1MW up to 5MW shall be scheduled for public review according to the following
46 process:

1 **7.6.1. Review by Planning Commission.** The application for a Solar Energy
2 Facility Permit shall be considered by the relevant Planning Commission(s)
3 following a properly noticed public meeting.

4 **7.6.2. Schedule Public Meeting by Planning Commission(s).** A public meeting of
5 the relevant Planning Commission(s) shall be scheduled within forty-five (45)
6 calendar days of the date of completeness determination, if possible, or as soon
7 as possible thereafter.

8 **7.6.3. Notice of Public Meeting.** Public notice shall be given as follows:

9 7.6.3.1. Publication of Notice. The notice shall be published no less than thirty
10 (30) days prior to the date of the meeting, in the newspaper of record
11 and any other publication(s) deemed necessary and appropriate by the
12 Land Use Administrator.

13 7.6.3.2. Notice to Affected Parties. No less than thirty (30) days prior to the
14 date of the public meeting of the Planning Commission(s) to review the
15 application, the Land Use Department shall provide written notice by
16 certified mail to affected parties as defined in Section 7.2.2.

17 **7.6.4. Planning Commission Recommendation.** Following the public meeting, the
18 relevant Planning Commission(s) shall recommend to the Board of County
19 Commissioners that the application for a Solar Energy Facility Permit be
20 approved, approved partially, approved with conditions, or denied, based upon
21 the Solar Energy Facility Standards set forth in Sections 7.6.6. and 8 of this
22 Article.

23 **7.6.5. Review and Decision by Board of County Commissioners.**

24 **7.6.5.1. Schedule of Public Hearing.** After the Planning Commission(s)
25 conveyance of recommendation(s) to the Board of County Commissioners,
26 the permit application shall be placed on the Board's agenda and a public
27 hearing scheduled. Notice of the public hearing shall be made as detailed
28 in section 7.6.3. The public hearing shall be conducted in accordance with
29 Section 11 of this Article.

30 **7.6.5.2. Oral Announcement.** Immediately following the public hearing, the
31 Board shall proceed to verbally render its provisional decision on the
32 application, or it shall take the matter under advisement until an
33 announced date certain.

34 **7.6.5.3. Written Resolution.** Following the Board of County Commissioners'
35 oral announcement of its decision, a written resolution shall be adopted as
36 its final action or decision on the application. This written resolution shall
37 set forth findings based upon competent evidence in the record of
38 proceedings before the Board and any applicable federal, state or county
39 statutes, rules, regulations or policies. The Land Use Department shall
40 prepare the written resolution for the Board of County Commissioners'
41 consideration within fifteen (15) days of the verbal decision, or such period
42 of time as the Board of County Commissioners shall specify.

43 **7.6.5.4. Final Decision.** For the purposes of judicial review, the Board of
44 County Commissioners' final action or decision on an application shall be
45 deemed to have been made as of the date upon which the Board of County
46

1 Commissioners executes the written resolution, which shall constitute the
2 Board of County Commissioners' final action or decision.
3

4 **7.6.6. Review Criteria:** Review and decision to approve, approve partially, approve
5 with conditions or deny an application for a solar energy facility permit may be
6 made and determined based upon its compliance with all performance
7 standards and other requirements of this Article and by applying the following
8 criteria deemed applicable by the BOCC to the evidence in the record of
9 proceedings before the Planning Commission and the Board of County
10 Commissioners:

11 **7.6.6.1 Need.** The demonstrated need for the facility, of the scale and in the
12 location proposed, to serve the applicant's existing and projected renewable
13 energy production and operational requirements.

14 **7.6.6.2. Suitability.** Suitability of the size, location and type of the proposed
15 facility given its design, operational characteristics. Factors to be considered
16 include, but are not limited to: visual impacts, including lighting; wildlife
17 impacts; impacts upon water quantity and quality; impacts to air quality,
18 vegetation and noise levels; appropriate scale; and public safety factors.

19 **7.6.6.3. Adequacy of Existing Roads and Access to the Site.** Consideration
20 of existing and proposed road alignment, intersections, condition, structure
21 and site distances; traffic volumes and types of equipment; dust control;
22 existing road uses; and documentation of the Applicant's legal right to use the
23 proposed access (es).

24 **7.6.6.4. Site Characteristics.** Factors to be considered include, but are not
25 limited to: topography, natural hazards (landslides, flooding, wildfire), current
26 resource values (water resources; open space corridor, prime agricultural land,
27 other potential minerals, wildlife habitat, recreational), identified natural
28 heritage, historic, cultural and archeological sites, and other special
29 designations under various provisions of the Land Development Code, such as
30 significant recharge areas.

31 **7.6.6.5. Compatibility.** Compatibility with existing uses and those which can
32 reasonably be anticipated, based upon present subdivision and land use
33 approvals for properties located within the surrounding affected area, as
34 determined by the Board of County Commissioners, based upon competent
35 evidence in the record. A Facility's compatibility with land uses in the
36 surrounding area which the Board of County Commissioners finds will be
37 affected by its operation, may be determined by the applicant's projected ability
38 to minimize and mitigate the impacts which it generates, as set forth in the
39 facility's operational plan. Provisions of the operational plan may be in
40 accordance with proven management practices that are designed to protect the
41 public health, safety and welfare, and the value and integrity of the surface
42 estate and other natural, cultural, agricultural resources, and with all applicable
43 County regulations and standards.
44

45 **7.6.6.6. Benefits in excess of costs to affected residents.** In addition to
46 mitigating any negative impacts, the proposed development is encouraged to
47 create a net benefit to local residents, such as high quality employment and
48 training opportunities and/or increased access to affordable renewable energy

1 and conservation applications for homes, farms, ranches, businesses and public
2 facilities.
3

4 **7.7. Coordination with State or Federal Actions and County Permitting Process**

5 Final action by the County on a Solar Energy Facility application may be delayed until
6 any required Environmental Assessment (EA), Environmental Impact Statement
7 (EIS) or other permit by a state or federal agency is issued, so that the County will
8 have the benefit of the analysis and determinations made by other entities in reaching
9 its own decision.
10

11 **XXII.8. Performance Standards for All Solar Energy Facilities.**

12 **8.1. Rights and Responsibilities.** Recognizing the need to develop renewable energy
13 resources, acknowledging the right of property owners to preserve the value of their
14 property, and the right of the county to regulate land uses to protect and promote the
15 health, safety and well-being of the public and environment, the following criteria shall be
16 used in siting solar energy facilities. Facilities that cannot comply with these criteria may
17 be denied. All negative impacts of installation and operation will be required to be
18 mitigated to an acceptable standard. The County shall determine the compliance of the
19 proposal using the standards contained in this Section. Standards are listed in the order
20 of their importance. Where conflicts between standards occur, the higher ranked
21 standard will be used.

22 **8.1.1.** Facilities shall be located to maximize, to the extent feasible, use of existing
23 infrastructure. This includes, but is not limited to, the use of existing roads,
24 transmission and distribution infrastructure and rights-of-way.

25 **8.1.2.** All facilities shall be located to minimize any negative impacts to wildlife habitats,
26 corridors and flyways.

27 **8.1.3.** All facilities shall be designed and located to minimize negative impacts to view
28 shed.

29 **8.1.4.** All facilities shall be located to minimize any negative impacts to adjacent
30 residences, agricultural operations, commercial structures, public buildings, county
31 approved platted building envelopes, and ongoing agricultural operations in
32 accordance with all provisions of this Article.

33 **8.1.5.** The standards in this Code shall not cause the operator to site the facility in: a
34 geologic hazard area; an area with slopes exceeding five (5) percent; an area of
35 wetlands under the jurisdiction of the U.S. Army Corps of Engineers; an area within
36 a floodway of a stream or river as shown on the Flood Insurance Rate Maps (FIRM)
37 or as determined by a state licensed professional engineer.
38

39 **8.2. Location of Solar Arrays.**

40 **Finding:** The County finds that scenic resources are primary to the County's economy
41 and quality of life, and that the high quality of our vistas should be maintained to the
42 maximum extent feasible. Therefore the County finds that the potential impacts
43 attendant to solar energy development would be best mitigated for the County as a whole
44 if solar energy capture facilities are designed and sited to minimize the visual impact to
45 the County's scenic vistas.

1 8.2.1. Facilities shall be planned so that the facility occupies and disturbs the least surface
2 area feasible to ensure safe, effective, and efficient operations.

3 8.2.2. Facilities shall be sited with due consideration to:

4 8.2.2.1. Topographic characteristics of the site;

5 8.2.2.2. Existing view shed;

6 8.2.2.3. Natural resource constraints (e.g. wetlands, wildlife corridors);

7 8.2.2.4. The location of utilities or similar services;

8 8.2.2.5. Impacts to the water table and water rights of proximal users;

9 8.2.2.6. Geologic factors;

10 8.2.2.7. Safety and security concerns;

11 8.2.2.8. Any other relevant factor.

12 8.3. Land Use Coordination Standards.

14 8.3.1. **Purpose:** The purpose of these standards for the coordination of land uses is to
15 minimize conflicts between solar energy facilities and other land uses.

16 Setback requirements will be according to the characteristics of the proposed site of the
17 Facility, and the existing or planned land uses and other resources proximal thereto.

18 8.3.3. Visual Impacts.

19 8.3.3.1. The maximum extent possible, the applicant may use structures and
20 equipment of the minimum size necessary to satisfy functional requirements.

21 8.3.3.2. Pursuant to Article IV of this Code, solar power tower installations over
22 40 feet in height will only be approved exceptionally, if the applicant can
23 successfully demonstrate that:

24 a. Installation can fit harmoniously into the surrounding landscape of the
25 proposed site, or

26 b. no effective and feasible alternative exists which fulfills the energy
27 generation goals of the facility.

28 8.3.3.4. The applicant may replace earth adjacent to water crossings at slopes less
29 than the natural angle of repose for the soil type of the site.

30 8.3.3.5. To the maximum extent possible, the applicant may align access roads to
31 follow existing grades and minimize cuts and fills.

32 8.3.3.6. All facilities may be in color tones that provide maximum blending with the
33 surrounding land.

34 8.3.3.7. The County recognizes that the Facility will have a limited life, or the
35 Facility as initially constructed, may be replaced by new technology. In the
36 event that portions of the Facility become unutilized during Facility's
37 operational life, the Applicant or its successor(s) shall dispose of any unused
38 equipment and reclaim any unused portions of the site within the time
39 periods delineated in this Section.

40 8.3.3.8. During operations, landscaping practices that are appropriate to the
41 surrounding territory and vegetation may be applied on a site-specific basis,
42 within the parameters of the energy generation purposes of the facility.

1 8.3.3.9. Exterior lighting, when required, shall meet the standards set forth under
2 the Land Development Code. All lighting associated with solar energy
3 development will be shielded to prevent direct visibility of the source of light
4 from off-site, directing all exterior lighting either toward the ground or the
5 surface of the building. The minimum lighting necessary to effectively carry
6 out operations safely may be used.

7 8.3.3.10. Where possible, facilities shall consider siting in areas that maximize the
8 amount of natural screening available for the facility. Natural screening
9 includes, but is not limited to, the use of existing vegetation as a background,
10 the construction of the facility near mature stands of vegetation or behind
11 ridges and natural rock formations.

12 a. All facilities shall be sited to avoid crossing hills and ridges or
13 silhouetting.

14 b. All facilities shall be sited in order to minimize the amount of cut and fill
15 needed to construct the facility.

16
17 8.3.3.11. All facilities shall be sited away from prominent natural features such as
18 distinctive rock and land forms, vegetative patterns, river crossings and other
19 landmarks.

20 **8.3.4. Safety and Security**

21 8.3.4.1. Safety practices generally accepted by the solar energy industry shall be
22 used at all times during facility construction and operation to minimize the
23 danger to the general public.

24 8.3.4.2. All land within twenty-five (25) feet of any tank or other structure
25 containing flammable or combustible materials shall be kept free of dry weeds,
26 grass or rubbish.

27 8.3.4.3. Where the applicant's visual mitigation plan specifies alternative security
28 fencing, the alternative fencing may apply.

29 **8.3.5. Sound Emissions.**

30
31 **Findings:** 70% of the land in Saguache County is publicly owned: national forest,
32 national park, BLM-managed lands, wildlife refuge, wilderness areas, etc. Ambient
33 sound levels are lower in most locations (20-35dBA daytime) than the standard for
34 rural residential areas (55dBA).

35 In some areas of the County, the viability of the facilities and activities that form
36 the economic base for the community is dependent on quietude.

37 Sound levels are measured in decibels, and increase logarithmically. The acoustic
38 energy between 25dBA and 45dBA is an increase in sound pressure energy of 100
39 times and represents a six fold increase in subjective sound perception. The
40 increase of sound energy from 15dBA to 45dBA is 1000 times, and an increase in
41 sound energy level from 15dBA to 55dBA is 10,000. Therefore, any determination
42 of "acceptable" sound levels cannot be arbitrary or absolute, but must take into
43 account the ambient sound levels existing on the parcel prior to the commencement
44 of operations.

- 1 8.3.5.1. All construction, maintenance, and operations of the solar energy facility,
2 including substations, may be conducted in such a manner so as to make the
3 least noise possible.
- 4 8.3.5.2. The exhaust from all engines, motors, coolers and other mechanized
5 equipment, including compressor station fans, may be vented in a direction
6 away from the closest existing building units or platted subdivision lots. (See
- 7 8.3.5.3. All facilities with engines or motors, not electrically operated, may be
8 equipped with quiet design mufflers (also referred to as “hospital grade” or
9 “dual dissipative”) or equivalent. Such equipment may be properly installed
10 and maintained in proper working order.
- 11 8.3.5.4. All facilities that have compressors, engines, or motors which generate
12 sound and are located within 400 feet of an existing residence, office,
13 institutional, commercial or industrial structure; or within 400 feet of
14 known wildlife habitat and/or migration routes; or within 400 feet of
15 recreational areas, must be placed behind a maintained, acoustically
16 insulated housing or a cover enclosing the motor or engine to further reduce
17 sound and lessen visual impact.
- 18 8.3.5.5. In determining noise mitigation requirements, specific site characteristics
19 may be considered, including but not limited to:
20 a. Nature and proximity of adjacent development (design, location, type)
21 b. Prevailing weather patterns, including wind direction.
22 c. Vegetative cover on or adjacent to the site.
23 d. Topography.
- 24
- 25 8.3.5.6. Based upon the specific site characteristics set forth in this Section, the
26 nature of the proposed activity, its proximity to surrounding development,
27 and type and intensity of the noise emitted, one or more of the noise
28 abatement measures listed below may be additionally required:
29 a. Acoustically insulated enclosures for motors/engines.
30 b. Vegetative screen of trees and shrubs that may be placed within a fenced
31 enclosure.
32 c. Solid wall, fence or berm of acoustically insulating material surrounding
33 all or part of the facility.
34 d. Acoustically insulated building enclosing the installation.
35 e. Restrictions on hours of operation of certain activities
- 36 8.3.5.7. Sound levels may be monitored pursuant to Section 9.3.2 of this Article.
37

38 **8.4. Environmental Quality Standards:**

39 **8.4.1. Water Quality & Consumption:**

40 The value of both surface and ground water and the life and lands that depend on them
41 is immeasurable. The County finds that the protection of the water resources is of
42 primary importance, and must be adequately ensured by any applicant for a solar
43 energy facility permit.

1 **8.4.1.1. Consumptive Use.** Utility scale facilities are encouraged to utilize solar
2 technologies that minimize the consumptive use of groundwater resources.

3 **8.4.1.2. Water quality.** The solar energy facility may not cause significant
4 degradation to water resources, including surface waters, water wells or the aquifer.

5 **8.4.1.3. Water body setbacks.**

6 a. Non-polluting activities associated with the solar energy facility may be located a
7 minimum of 150 feet from the normal high water mark of any water body.

8 b. Any potentially polluting activity associated with the solar energy facility may
9 be located a minimum of 1000 feet from the normal high water mark of any water
10 body.

11 **8.4.1.4. Hazardous materials.** To the maximum extent feasible and effective,
12 environment-friendly materials may be used as thermal storage, heat transfer and
13 phase change media, coolants, fuels, hydraulic fluids, lubricants and weed control.
14 If it can be demonstrated that toxic substances must be utilized, reasonable and
15 effective management and maintenance measures must be employed to prevent any
16 release of such hazardous materials to the environment.

17 **8.4.1.5. Secondary containment.** Secondary containment may be constructed or
18 installed around all tanks containing thermal storage media; fuel supplies or other
19 substances that, if released, have the potential to measurably degrade ground and
20 surface water quality. Secondary containment structures must be sufficient to
21 contain the contents of the largest single tank in the project area plus sufficient
22 freeboard to contain precipitation, and be sufficiently impervious to contain
23 discharged material.

24 **8.4.1.6. Storm water:** The operator shall submit a storm water management plan
25 and comply, at a minimum, with State storm water management standards, if
26 required.

27 **8.4.1.7. Monitoring.** An approved or conditionally approved Facility may
28 comply with the following requirements:

29 a. All solar energy facilities shall comply with all applicable state water quality
30 standards and classifications established by the Water Quality Control
31 Commission.

32 b. Identify the physical source of the water to be used for the facility and
33 legal entitlement to use such water (e.g., Water Court decree).

34 c. Onsite containment and disposal of water associated with facilities shall be in
35 accordance with applicable federal, state and county requirements and all other
36 provisions of this Article.

37 **8.4.2. Air Quality.**

38 **Finding:** The County notes that the San Luis Valley has been found to be one of the
39 most optimal sites for solar energy generation in the United States.

40 8.4.2.1. No solar energy facility may cause significant degradation to air quality.
41 Specifically, all standards and requirements under the Clean Air Act and
42 Organic Act for the preservation of the Class 1 Airshed of the Great Sand

1 Dunes National Park and Preserve and other applicable public lands may be
2 met.

3 8.4.2.2. Air emissions from the operation may be, at a minimum, in compliance with
4 the permit and control provisions of the Colorado Air Quality Control
5 Program, Title 25, Section 7, C.R.S.

6 8.4.2.3. **Odors and Dust.** Solar energy facilities and equipment may be operated in
7 such a manner that odors and dust do not constitute a nuisance or hazard to
8 public health, safety, welfare, and the environment.

9 a. **Fugitive dust.** Operators may employ practices for control of fugitive dust.
10 Such practices may include but are not limited to the use of speed restrictions,
11 regular road maintenance, and restriction of construction activity during high-
12 wind days. Additional management practices such as road surfacing, wind
13 breaks and barriers, and plantation of ground cover may also be implemented.

14 b. Any solar facility operator engaged in clearing or leveling of land or who is
15 the owner or operator of land that has been cleared that is greater than five (5)
16 acres in attainment areas or one (1) acre in non-attainment areas from which
17 fugitive dust will be emitted may be required to use all available and practical
18 methods which are technologically feasible and economically reasonable to
19 minimize such fugitive dust emissions.

20 8.4.2.4. **Emission Control Equipment:** The operator may comply with existing
21 EPA rules and any future regulations validly adopted by an authority. To the
22 maximum extent possible, all fossil fuel powered engines used on site may
23 employ the latest emission-reduction technologies, e.g. high-pressure direct
24 injection (HPDI) of fuel and exhaust gas recirculation (EGR).

25 26 **8.4.3. Wildlife and Species of Concern.**

27 8.4.3.1. The solar energy facility shall not cause significant degradation of wildlife,
28 including any federal, state or Colorado Natural Heritage Program-identified
29 species of concern, or to their habitat.

30 8.4.3.2. At a minimum, the facility shall comply with all CDOW recommendations
31 regarding solar energy facility siting, construction, operation and
32 maintenance in Colorado.

33 8.4.3.5. **Multiple Site Plan.** In lieu of a site-specific mitigation review for each
34 facility, the applicant may submit to the Land Use Department a multi-site
35 plan addressing cumulative impacts to wildlife from the estimated total
36 number of facilities. The multi-site plan shall include, but not be limited to, all
37 items under this Section.

38 8.4.3.6. **Non-litigable Impacts.** Impacts from solar energy facilities that threaten
39 endangered species (as defined by the Colorado Division of Wildlife) may be
40 considered non-litigable and grounds for either denial of the permit or request
41 for relocation of the site.

42
43 **8.4.4. Geologic Hazard Areas; Floodplains.** The applicant may demonstrate that a
44 Major Facility is not located within a geologic hazard area as determined by the
45 State of Colorado Geological Survey.

1 **8.4.5. Waste Management and Disposal:**

2 8.4.5.1. When a minor or major facility becomes operational, all construction-
3 related debris may be removed from the site. The site may be maintained free
4 of debris and excess materials at all times during operation.

5 8.4.5.2. No burning of trash may occur on the site.

6 8.4.5.3. Bear-proof dumpsters and trash receptacles may be utilized at all facilities.

7 8.4.5.4. All human waste may be fully contained and disposed of in accordance with
8 all County regulations.

9 8.4.5.5. A written management plan for waste minimization through beneficial
10 reuse and recycling of waste is required. The plan may describe the proposed
11 use of the waste, method of waste treatment, product quality assurance and
12 may include a copy of any certification or authorization that may be required
13 by other laws, rules or regulations.

14
15
16
17 **8.5. Surface Disturbance Standards**

18 Purpose: The purpose of this section is to minimize negative impacts to surface
19 activities and surface conditions.

20 **8.5.1. Agricultural Resources:** Solar energy facilities shall be located so as to avoid
21 the unreasonable loss of productive agricultural land.

22 **8.5.2. Cultural and Historic Resources** – The solar energy facility may not cause
23 significant degradation of cultural, historic, or scientific resources or significant
24 disturbance to archeological sites.

25 All requirements under the following Acts may be met: the National Historic
26 Preservation Act, including Section 106; the Native American Grave Protection
27 and Repatriation Act; and the American Indian Religious Freedom Act.

28 **8.5.4. Roads and Access:**

29 **8.5.4.1. Ingress and Egress.** Ingress and egress points to public roads may be
30 located, maintained and improved to assure adequate capacity for efficient
31 movement of existing and projected traffic volumes and to minimize traffic
32 hazards.

33 **8.5.4.2. Improvements.** Installation of facilities which are accessible by non-
34 maintained roads included in the county road system, which the County Road
35 & Bridge Supervisor determines are inadequate to safely accommodate the
36 additional traffic associated with the operation of the facility, may be permitted
37 only if such roads are improved and maintained by the operator to a level
38 which the County Road & Bridge Supervisor determines is necessary to allow
39 such traffic to use such roads in accordance with applicable state and county
40 standards.

41 **8.5.4.3. Use of Existing Roads.** With the exception of such circumstances and
42 other operational requirements or limitations imposed by existing contractual
43 agreements or government regulations (e.g. CDOT access permits), the
44 operator may use existing roads and easements.

1 **8.5.4.4. Use of Subdivision Roads.** In those instances where an Operator accesses a
2 Facility via a road or roads within a subdivision and a governing entity exists
3 (e.g. homeowners' association) with legal authority to bind the entity and its
4 members, and with the authority to grant access rights over such roads and/or
5 negotiate agreements with respect to their use, the operator will negotiate a
6 fair and reasonable road maintenance or road improvement agreement with
7 such entity for the purpose of paying or making in-kind contributions for its
8 pro rata share of the cost of maintaining or improving the affected road(s).
9 Such agreement or memorandum shall be recorded with the Clerk and
10 Recorder.

11 **8.5.4.5. Access Roads.** Access Roads serving Facilities, including existing and/or
12 proposed roads that connect a Facility to a county road or state highway may
13 be reviewed in accordance with this Section and Section III of the Saguache
14 County Land Development Code and may be subject to all applicable impact
15 fees. All access and oversize or overweight vehicle permits must be obtained
16 from Saguache County Road & Bridge Department prior to beginning
17 construction of a facility or use of a County road. All proposed transportation
18 routes to the site may be reviewed and approved to minimize traffic hazards
19 and adverse impacts on County roadways. Existing roads may be used to
20 minimize land disturbance unless traffic safety, visual or noise concerns, or
21 other adverse surface impacts are determined to require new or additional
22 roads, or unless the applicant demonstrates to the County's satisfaction that it
23 has been unable to obtain authorization to use an existing road.

24 **8.5.4.6. Private Access Roads.** For those Access Roads located between the parcel
25 on which a Facility is proposed and the county road or state highway serving
26 such a Facility, the applicant may provide written documentation as part of the
27 application demonstrating that it has the legal right to use such road(s) for the
28 purpose of accessing the Facility and the applicant may demonstrate that such
29 road(s) can provide adequate physical access to the proposed Facility, in
30 accordance with applicable Land Development Code standards.

31 **8.5.4.7. Maintenance Agreement.** If the projected use of the public roads resulting
32 from the solar energy facility will result in a need for an increase in roadway
33 maintenance or snow removal on County roads, the County may require the
34 Operator to:

- 35 a. Reimburse the County for any short term costs; and
- 36 b. Provide a bond or other financial assurance in an amount acceptable to the
37 County to cover any costs of repairing longer term impacts to roads due to the
38 operation that have not been offset by overweight vehicle fees and impact fees.

39 **8.5.4.8. State Highway Access.** If access is directly off of a State Highway, the
40 applicant must have an approved State Highway Access Permit for the
41 proposed facility.

42 **8.5.4.9. Use of Equipment.** The operator shall:

43 Remove and restore the condition of the road as promptly as is reasonable
44 under the circumstances if mud and/or debris are tracked onto the County road
45 by the operator's equipment.

46 **8.5.4.10. Hazardous Materials** – Full disclosure, including Material Safety Data
47 Sheets, of all hazardous materials that will be transported on any public or

1 private roadway within the County for the solar energy facility must be
2 provided to the Saguache County Office of Emergency Management. This
3 information will be held in strictest confidence and shared with other
4 emergency response personnel only on a “need-to-know” basis.
5

6 **8.5.5. Weed Control.**

7 The Applicant may be responsible for ongoing weed control for all permitted
8 Facilities and the access roads under applicant’s control leading to such Facilities.
9 The appropriate weed control methods and species to be controlled may be
10 determined through review and recommendation of the Natural Resource
11 Conservation Service (NRCS), the CSU Extension Service and the Saguache
12 County Weed Manager or designee, in accordance with Colorado Noxious Weed
13 Act and any applicable Resolution of the Board of County Commissioners for the
14 management and eradication of noxious weeds in Saguache County.

15 **8.5.6. Reclamation.** Interim and final reclamation may be governed by the approved
16 reclamation plan for the facility.

17 8.5.7.1. The reclamation plan may provide for a reasonable reclamation schedule
18 considering the specific surface use and surrounding land uses.

19 8.5.6.2. Interim reclamation should take place on an ongoing basis throughout
20 the duration of the project.

21 8.5.6.3. If the Applicant is not the surface owner, all equipment used for
22 construction, operation and maintenance of an operational facility may be
23 removed from the site within thirty (30) days of completion of the work
24 for which the equipment is used, unless otherwise agreed to by the surface
25 owner. Permanent storage of non-essential equipment on major solar
26 energy generation sites may not be allowed, unless otherwise agreed to by
27 the surface owner and determined by Saguache County to be in
28 conformance with the applicable Land Development Code standards.

29 Upon permanent closure of the Facility or cessation of the production of
30 energy from the Facility, the operator may begin disposal of equipment and
31 reclamation of the Facility and site within six (6) months of closure or
32 cessation of energy production from the Facility.

33
34 **8.5.6.4. Re-vegetation Plan.** Where facilities reduce or destroy existing
35 vegetation, the applicant in consultation with the NRCS and the Center
36 Conservation District shall develop a re-vegetation plan for the site.
37

38 **8.5.6.5. Road Design and Construction.** Roads should be designed and
39 constructed to allow for successful interim and eventual final reclamation. Re-
40 vegetation of roads, ditches and cut and fill slopes will help stabilize exposed
41 soils and reduce sediment loss, reduce the growth of noxious weeds, reduce
42 maintenance costs, maintain scenic quality and forage, and protect habitat. To
43 ensure successful growth of plants and forbs, topsoil must be salvaged where
44 available during road construction and re-spread to the greatest degree practical
45 on cut slopes, fill slopes, and borrow ditches prior to seeding. To ensure

1 stability of freshly top soiled slopes during re-vegetation, the application of
2 mulch or other sediment control may be appropriate.

3
4 **8.5.6.6. Primitive Roads.** The appropriateness of primitive roads or routes is
5 site/use specific and is based on factors such as anticipated dry or frozen soil
6 conditions, seasonal weather conditions, flat terrain, low anticipated traffic, or
7 operator's access needs. Operators should not flat-blade roads. Drainage must
8 be maintained to avoid erosion or the creation of a muddy, braided road.
9 Resource damage must be repaired as soon as possible and the operator will
10 consult with the County and, if the applicant is not the surface owner, private
11 surface owner(s) to determine if all or a portion of the road needs to be upgraded
12 to an all-weather access road.

13 **8.5.6.7. Protection and Monitoring -** Newly reclaimed areas should be
14 adequately fenced for two years or until interim reclamation vegetation is
15 established. Interim and final reclamation progress of all disturbed areas may be
16 monitored with a standardized evaluation and monitoring protocol to include the
17 establishment of photo points and vegetative cover measurements approved by the
18 NRCS and the Center Conservation District.

19
20 8.5.6.7. Previously approved and established reclamation or mitigation projects or
21 sites may not be developed or otherwise impacted without replacement in-kind.
22

23 **XXII.9. Public Health, Safety & Welfare Protections**

24 **9.1. Emergency Preparedness and Response Plan Required.** The applicant for a solar
25 energy facility must submit an emergency preparedness and response plan to the Saguache
26 County Office of Emergency Management for review and recommendation. The Plan may
27 be approved by the Board of County Commissioners. The plan is subject to approval by
28 the BoCC and shall be filed with the County and updated on an annual basis or as
29 conditions change (e.g. turnover in responsible field personnel, change in substances used).
30 The emergency plan may consist of the following information, at a minimum:

31 9.1.1. Name, address and phone number, including a twenty-four (24) hour emergency
32 number of at least two (2) persons responsible for emergency field operations.

33 9.1.2. A printed map, including GPS coordinates, showing the name, location and
34 description of all project-related facilities. The map may be prepared digitally on
35 county geographic information system parcel maps. The as-built facilities map will be
36 held confidentially by the county's emergency management officer or other County
37 designee, and may only be disclosed as needed in the event of an emergency.

38 9.1.3. A written response plan for the potential emergencies that may be associated with
39 the operation of the facilities.

40 9.1.4. A fire prevention, response and safety plan.

41 **9.2. Inspections.**

42 **9.2.1. 24 hour contact -** The applicant may provide the telephone number of a contact
43 person who may be reached 24 hours a day for purposes of being notified of any
44 proposed County inspection under this Section or in case of emergency. The cost

1 of any inspection deemed reasonable and necessary by the County may be borne
2 by the applicant.

3 **9.2.2. Right to Enter** - For the purpose of implementing and enforcing this Article,
4 duly authorized County personnel may enter onto subject property upon
5 notification of the permittee, lessee or other party holding a legal interest in the
6 property. If such entry is denied, the County may have the right to obtain an
7 order from a court of competent jurisdiction to obtain entry.

8 **9.3. Financial Assurance**

9 **9.3.1. Bonding.** To ensure compliance with the mitigation and other performance
10 requirements of this Section and the specific conditions for approval for all facilities, the
11 applicant, shall provide such security as set forth in this Section.

12
13 **9.3.1.1. Performance Bonds.**

- 14 a. A performance bond in the amount of at least \$10,000; and
15 b. An additional, site specific performance bond, which may be 100% of the
16 estimated actual cost of removal of surface facilities and restoration of,
17 disturbed surface areas. The amount of such bonds will be based upon cost
18 estimates provided by the Operator subject to review and approval by the
19 County and subject to increase or decrease based upon revised cost estimates
20 required to be provided by Operator on an annual basis, dating from initial
21 approval of the application.
22 c. As a condition of approval, the required performance bond(s) may be in place
23 before any activity permitted by the approval commences. The performance
24 bond may remain in place until all obligations contemplated by the bond
25 have been fulfilled to the satisfaction of the County.
26 d. The form of the performance bond may consist of cash, certificates of deposit,
27 an irrevocable letter of credit or equivalent financial security acceptable to
28 the County.
29 e. Upon notification by the operator that obligations contemplated by the bond
30 have been fulfilled or that work contemplated by the bond will not be
31 necessary, the County may have 90 days to accept or reject Operator's
32 request to reduce or retire the bonding requirement.

33
34 **9.3.1.2. Road Mitigation Bond.** In addition to the performance security described
35 above, if the permitted Facility will utilize County roads to access the facility, a
36 road mitigation bond may be required to ensure adequate repair and restoration
37 of County roads from any damages due to facility-related use, as stipulated in
38 Section 8.5.6.7. Any road mitigation bond requirement will be determined on
39 an application-by-application basis depending upon roads utilized, miles
40 traveled, type of Facility to be operated, weight of vehicles and the traffic
41 generated thereby.

42 The road mitigation bond may be determined by the Board of County
43 Commissioners, in consultation with the County Road and Bridge Supervisor
44 and/or, if deemed necessary, a licensed civil engineer, as part of the approval of
45 the Facility.

46
47 **9.3.1.3. Emergency Response Bond.**

- 1 a. Operators may also be required to post bonds sufficient to cover the estimated
2 cost of emergency response to hazardous material spills, fires and accidents
3 that may reasonably be expected to have a significant chance of occurrence.
4 The amount of such bonds will be determined on a case-by-case basis by the
5 designated County authority taking into consideration the nature and scope
6 of risks imposed by the operations.
7
8 b. In the event that the County determines that neither the Operator or its
9 Subcontractors nor the County is capable of providing adequate emergency
10 response, the Operator will be required to provide a contract with a party
11 capable of providing the unmet response need, subject to the approval of the
12 County, in addition to a bond to cover emergency response costs that the
13 County is able to provide. The county may revise the amount of the required
14 bond or the requirement for an emergency response contract at any time
15 based upon new information by giving 30 days notice. If Operator or
16 Subcontractor fails to comply with any new requirement at the end of the
17 notice period, operations may be suspended until such time as the new
18 requirement is met.

19 **9.3.1.4. Transfer of Interest.** An Operator may not be allowed to transfer its
20 interest in, nor be replaced as Operator of permitted solar energy facilities
21 unless and until bonding requirements for the transferee or new operator have
22 been set by the County and met prior to the date of transfer or replacement.
23

24 **9.3.2. Indemnification and Liability Insurance.** The Operator may provide or cause to be
25 provided the insurance described below for facility for which a solar energy facility
26 permit is issued, such insurance to continue until the well is abandoned and the site
27 restored.
28

29 **9.3.2.1. Indemnification and Express Negligence Provisions.** Each permit
30 for a solar energy facility issued by the County may include the following
31 language: "Operator does hereby expressly release and discharge all claims,
32 demands, actions, judgments, and executions which it ever had, or now has
33 or may have, or its successors or assigns may have, or claim to have, against
34 Saguache County, and/or its departments, its agents, officers, servants,
35 successors, assigns, sponsors, volunteers, or employees, created by, or
36 arising out of personal injuries, known or unknown, and injuries to
37 property, real or personal, or in any way incidental to or in connection with
38 the performance of the work performed by the Operator under a solar
39 energy facility permit issued by the County, or caused by or arising out of,
40 that sequence of events which occur from the Operator's actions under the
41 solar energy facility permit or work performed by the Operator. The
42 Operator shall fully defend, protect, indemnify, and hold harmless Saguache
43 County and/or its departments, agents, officers, servants, successors,
44 assigns, sponsors, or volunteers, or employees from and against each and
45 every claim, demand, or cause of action and any and all liability, damages,
46 obligations, judgments, losses, fines, penalties, costs, fees, and expenses
47 incurred in defense of Saguache County and/or its departments, its agents,
48 officers, servants, successors, assigns, sponsors, volunteers, or employees,
49 including, without limitation, personal injuries and death in connection
50 therewith which may be made or asserted by Operator, its agents, assigns,

1 or any third parties on account of, arising out of, or in any way incidental to
2 or in connection with the performance of the work performed by the
3 Operator under a solar energy facility permit and the Operator agrees to
4 indemnify and hold harmless Saguache County and/or its departments, its
5 agents, officers, servants, successors, assigns, sponsors, volunteers, or
6 employees from any liabilities or damages suffered as a result of claims,
7 demands, costs, or judgments against the County and/or, its departments,
8 its agents, officers, servants, successors, assigns, sponsors, volunteers, or
9 employees, created by, or arising out of the acts or omissions of Saguache
10 County occurring on the facility site. It is understood and agreed that the
11 indemnity provided for in this section is an indemnity extended by the
12 operator to indemnify and protect Saguache County and/or its departments,
13 agents, officers, servants, successors, assigns, sponsors, volunteers, or
14 employees from the consequences of the negligence of Saguache County, its
15 departments, agents, officers, servants, successors, assigns, sponsors,
16 volunteers, or employees, whether that negligence is the sole or
17 contributing cause of the resultant injury, death, and/or damage. Liability
18 for the sole negligence of the county in the course and scope of its duty to
19 inspect and permit the solar energy facility is limited to the maximum
20 amount of recovery under the tort claims act.”
21

22 **9.3.2.2. Liability Insurance.** Operators may be required to carry insurance
23 against personal injury, property damage, environmental damage and general
24 liability in amounts to be determined by the County in reasonable relationship
25 to the risks presented by the scope of operations to be permitted. This
26 amount may be subject to annual review and revision by the County and may
27 be reviewed and may be revised at any time following an incident involving
28 substantial damage. All Subcontractors employed by the Operator may be
29 subject to insurance requirements bearing a reasonable relationship to the
30 nature and scope of work to be done for the operator as evidenced by the
31 contract with Subcontractor, which may be submitted, to the County at least
32 30 days prior to commencement of any work. No work may commence until
33 the County requirement for insurance has been determined and evidence of
34 insurance has been submitted to the County Land Use Department from an
35 insurer licensed to operate in the State of Colorado. Required insurance
36 coverage may be provided by insurers with an A. M. Best rating of at least A
37 (VIII) or by a self-insurance program approved by the Colorado Insurance
38 Commission and re-approved on an annual basis. Insurance certificates may
39 require at least 30 days’ notice to the County prior to termination of coverage
40 for any reason and may include the County as a named insured. The amount
41 of any deductible and the existence of any exclusion are subject to approval by
42 the County as reasonably within the financial responsibility of the Operator or
43 Subcontractor. Insurance and self-insurance programs may be reviewed
44 annually and insurance requirements may be revised at any time based on
45 changed circumstances with 30 days notice. If new insurance requirements
46 are not met within the 30 days notice period, the affected operations of
47 Operators or Sub-contractors may be terminated until such time as the new
48 insurance requirement is met.
49

1 **9.3.2.3. Insurance guidelines.** Nothing in this section is intended to limit the
2 liability of the operator in the event that damages exceed the covered amounts.
3 The County reserves the right to pursue every means available to recover actual
4 costs associated with damages of any kind related to the solar energy facility
5 from any and all responsible and/or interested parties.

6 **9.3.2.4. Certificates and Policies of Insurance.** Certificates of insurance
7 must be provided to the County Land Use Department evidencing all
8 coverage and endorsements required by this section with the solar energy
9 facility permit application, and the acceptance of a certificate without the
10 required limits and/or coverage may not be deemed a waiver of these
11 requirements. Copies of original policies confirming coverage must be
12 provided prior to the issuance of a Permit.

13 **9.3.2.5. Failure to Maintain Insurance Cause for Revocation of Permit.**
14 Substantive violations (that is, a failure at any time for any reason) to have in
15 force required insurance coverage may result in revocation of the permit to
16 operate and all permitted operations may cease consistent with safety
17 considerations until a valid insurance certificate has been supplied to the County
18 Land Use Department. In addition, as a condition to reinstate the permit, the
19 Operator or Subcontractor may be subject to payment of a per diem fine to be
20 set by the County Commissioners according to the scale and scope of the
21 operation, for each day of operation without required insurance coverage in
22 force, and a showing that they have a plan in place to insure that future
23 violations will not occur.

24 **9.3.2.6. Operators and Subcontractors Dually Responsible.** For clarity, the
25 performance of any work on Operator's premises by a Subcontractor who has
26 not met fully met these requirements in advance may be deemed a substantive
27 violation by the Operator and may also be deemed a substantive violation by the
28 Subcontractor or grounds for refusal to approve operation in the County by
29 Subcontractor.

30 **9.3.2.7. Responsibility of Parent Companies and Non-operating Economic**
31 **Interests.** Any Operator or Subcontractor who is a subsidiary of another
32 company may provide a guarantee of its obligations from its parent company.
33 Any non-operating entity which has a financial interest of any kind in
34 Operator's activities may be required by the County to demonstrate financial
35 responsibility appropriate to the nature and extent of its interests as determined
36 by the County which may include but is not limited to liability insurance
37 coverage. Solar energy facility permit applicants are required to disclose in
38 their application the existence and nature of any non-operating economic
39 interests and any new such interests that are to be created at least 60 days
40 before the effective date. The County may impose insurance or other financial
41 responsibility requirements on the non-operating interest holder as a condition
42 of the continuing validity of Operator's permit.

43 XXII.10. Exceptions/Limitations/Amendments/Penalties

44 10.1. Special Exception Requests:

1 10.1.1. The applicant may request special exceptions to provisions of this Article.
2 Requests for special exceptions for proposed facilities may include, but not be
3 limited to, one or more of the following factors:

- 4 10.1.1.1. Topographic characteristics of the site;
- 5 10.1.1.2. Duration of use of the facility;
- 6 10.1.1.3. Proximity of the facility to occupied structures;
- 7 10.1.1.4. Ownership status of adjacent and/or affected land;
- 8 10.1.1.5. Construction of adequate infrastructure to serve the project; or
- 9 10.1.1.6. Planned replacement and/or upgrading of facility equipment.

10
11 10.1.2. If the Board of County Commissioners finds, based upon competent evidence in
12 the record, that compliance with certain portions of this Article is impossible or
13 unreasonable, a special exception may be granted for a period of time not to exceed
14 six (6) months. Upon completion of the six (6) month period, the application may
15 receive additional review by the County. The Board of County Commissioners,
16 upon showing of good cause by the applicant, may:

- 17 10.1.2.1. Further extend the special exception;
- 18 10.1.2.2. Require that the facility be brought into compliance with the performance
19 standards; or
- 20 10.1.2.3. Revoke the special exception approval.

21
22 **10.2. Operational Conflicts Special Exception:** Special exceptions to this Section may be
23 granted where the requirements of the section actually conflict in operation with the
24 requirements of state law or regulations. The Board of County Commissioners may hear
25 all applications where a special exception due to operational conflicts is requested in a
26 noticed public hearing. The applicant may have the burden of pleading and proving both
27 an actual, material, irreconcilable operational conflict between the requirements of this
28 Section and those of the state law or regulation in question in the context of a specific
29 application, and that compliance with the state law or regulation alone adequately fulfills
30 the County's responsibilities to protect and promote the health, safety, and convenience,
31 order, prosperity and general welfare of the present and future residents of the county.
32 For purposes of this section, an operational conflict exists where the County condition of
33 approval or regulation actually conflicts in operation with the state statutory or
34 regulatory scheme, and such conflict would unreasonably materially impede or destroy
35 the state's interest in the development, production, and utilization of solar energy
36 resources in the state, and/or the protection of the public health, safety and welfare. An
37 operational conflict may occur where the County regulation prohibits an activity, which
38 the state has clearly authorized, or authorizes an activity, which the state has clearly
39 prohibited. Additional County requirements in areas regulated by the state which also
40 falls within County land use powers and which are necessary to protect the public health,
41 safety and welfare under the facts of the specific application presented, and which do not
42 impose unreasonable burdens on the applicant, may be presumed not to present an
43 operational conflict. If the Board of County Commissioners finds, based upon competent
44 evidence in the record, that compliance with the requirements of this Article may result in
45 operational conflicts with the state statutory and regulatory scheme, a special exception to
46 this Article may be granted, in whole or in part, but only to the extent necessary to
47 protect the State's demonstrated compelling interest or to alleviate that burden on the
48 applicant that has been found to be unreasonable. The Board of County Commissioners

1 may condition the approval of a special exception as necessary to protect the public health,
2 safety and welfare by mitigating any adverse impacts arising from the grant of approval.

3 **10.3. Limitations.**

4 **10.3.1. General.** Issuance of a solar energy facility permit may authorize only the
5 facilities for which it is issued.

6 **10.3.2. Permit Duration.** Solar energy facility development may be commenced within
7 two (2) years of the date of approval. Failure to commence the permitted activity
8 within two (2) years may cause the permit to expire. A new permit may be approved
9 subject to the submission and full review of a new application.

10 **10.3.3. Validity.** The permit may be valid for as long as the applicant maintains the
11 conditions of approval.

12 **10.3.4. Violations.** If the conditions of approval of the permit are not maintained, the
13 applicant may be considered in violation of these regulations and the permit subject
14 to the penalty and revocation provisions of this Code.

15 **10.4. Amendments.**

16 10.4.1. Where a facility has been approved and the applicant desires to modify the subject
17 facility by changes to equipment, site layout, approved operating plan, etc., an
18 amendment to the original application may be required if the level of impact will be
19 increased as a result of the modification. The activity described in the amendment to a
20 minor or major facility will be granted administrative approval if it complies with the
21 standards herein. (In cases where the amendment would consist of the addition of a
22 major facility, review may be required as for a new major facility.

23 10.4.2. The Land Use Department may approve minor amendments to an approved
24 solar energy facility. Authorized minor amendments include those that do not alter
25 the basic intent and character of the approved permit, are consistent with the
26 performance standards herein, are deemed necessary in light of technical and
27 engineering considerations first discovered during actual construction, and could not
28 have been reasonably anticipated during the initial review process.

29 10.4.3. Minor amendments must comply with all relevant Saguache County
30 regulations. Minor amendments may include, but are not limited to, variations in the
31 location of facility components which do not decrease the approved setback to
32 residential or commercial structures, deviations to the location of access roads which
33 are wholly contained on site and are approved by the owner of the surface rights, and
34 modifications to the visual mitigation plan which do not adversely impact adjoining
35 property owners or the general public.

36 10.4.4. Modifications which the applicant determines in good faith are required in
37 order for the facility to continue operating and must be done immediately in order to
38 maintain the existing level of production, may be done on an emergency basis,
39 without prior notice to or approval by the Land Use Department, provided that such
40 modifications do not pose any significant risk to the public health, safety and welfare.
41 The applicant may provide the Land Use Department with notification of emergency
42 modifications by filing a written amendment to the application, specifying the
43 modifications made, within five (5) working days of their completion.
44
45

1 **10.5. Penalties and Enforcement:**

2 **10.5.1. Civil Action:** In case any building or structure is or is proposed to be erected,
3 constructed, reconstructed, altered or used, or any land is or is proposed to be used,
4 in violation of any provision of this Section; or an Applicant fails to comply with
5 any other provisions of this Section or the Saguache County Land Use Code or fails
6 to comply with any conditions placed upon any approval of a Facility, the County
7 Attorney, or where the Board of County Commissioners deems it appropriate, the
8 district attorney, in addition to the other remedies provided by law, ordinance or
9 resolution, may institute an injunction, mandamus, abatement or other appropriate
10 action or proceeding to prevent, enjoin, abate or remove such unlawful erection,
11 construction, reconstruction, alteration or use. In the event that enforcement
12 action is required to be taken under the provisions of this Section, Saguache
13 County may be entitled to collect its reasonable attorneys fees and costs incurred in
14 any such action from the Permittee.

15 **10.5.2. False or Inaccurate Information:** The Board of County Commissioners may
16 revoke approval of a facility if it is determined at a public meeting, held on at least
17 ten days notice to the applicant, that the applicant provided information and/or
18 documentation upon which approval was based, which the applicant, its agents,
19 servants and employees knew, or reasonably should have known, was false,
20 misleading, deceptive or inaccurate. The applicant and the Land Use Department
21 may be provided with an opportunity to be heard at the public meeting prior to the
22 Board of County Commissioners' rendering its decision.

23 **XXII.11. CONDUCT OF PUBLIC HEARING.**

24
25 A public hearing may be conducted in accordance with the following process:

26
27 **11.1. Rights of All Persons.** Any person may appear at a public hearing and submit
28 evidence, including oral testimony, either individually or as a representative of an
29 organization. Comment may also be submitted in written form before or during the
30 hearing, or within a period of time after the hearing has closed as designated by the
31 review body chairperson.

32 **11.2. Order of Proceedings.** The order of the proceedings may be as follows:

33 **11.2.1. Applicant's Presentation.** At its option, the applicant may make an oral or a
34 written presentation that informs persons at the hearing of the nature, location,
35 and scope of the proposed Facility. This presentation may not be made by
36 County staff or consultants, and may be waived by the Chairperson if there are
37 no members of the public at the hearing, and the applicant has previously
38 explained the proposed Facility to the review body conducting the hearing.

39 **11.2.2. Questions by Review Body.** The review body may ask questions of the Land
40 Use Department, or the applicant, or anyone else who is present.

41 **11.2.3. Public Comments.** Public comments may be heard. Written comments that
42 have been received at least 5 business days prior to the date of the hearing may
43 be reported by the Land Use Department and acknowledged to be part of the
44 hearing record.

45 **11.2.4. Ex Parte Communications.** Members of decision-making bodies may not
46 engage in *ex parte* communication about applications under review or reasonably
47 anticipated to come under review. If an *ex parte* communication is attempted by

1 telephone, in person, by telefax or other means outside of a regularly scheduled
2 meeting, the member of the decision-making body involved may first attempt to
3 stop the party from the prohibited behavior, then document the communication
4 and notify the Land Use Administrator by telephone or in written form. The
5 Land Use Administrator may then enter that documentation into the public file.
6 The Land Use Administrator may report that documentation at the next
7 meeting or hearing on the subject application. No *ex parte* communication may be
8 considered by a decision-making body, or any of its members, in making a
9 decision on a Solar Energy Facility permit matter.

10 **11.2.5. Applicant Response.** The applicant may respond to any comments made by
11 the public, the Land Use Department, or the review body.

12 **11.2.6. Land Use Department Response.** The Land Use Department may respond to
13 any statement made by the applicant, the public, or the review body.

14 **11.3. Time Limits for Testimony.** The chairperson conducting the public hearing may
15 set reasonable time limits for testimony or presentation of evidence. If any testimony
16 or evidence is so limited, the person offering that testimony or evidence may have an
17 opportunity to enter it into the record in writing at the public hearing.

18 **11.4. Continuance of Public Hearing.** At the conclusion of the hearing, the body
19 conducting it may continue the public hearing to a fixed date and time. An applicant
20 may have the right to request, and be granted on a showing of good cause, one
21 continuance of each required hearing. All subsequent continuances may be granted at
22 the discretion of the body conducting the public hearing and upon a finding that good
23 cause has been shown for the continuance.

24 **11.5. Closure of Public Hearing and Acceptance of Written Testimony after**
25 **Closure.** If the hearing is not continued, it may be closed. At the close of the hearing,
26 the chairperson of the body conducting the hearing may leave the record open for a
27 defined period of time during which only written comment will continue to be
28 accepted. If no such time period is defined, no further written comment may be
29 accepted after the hearing is closed, except that any public comments received in
30 writing prior to the hearing, but after the report prepared by the Land Use
31 Department pursuant to Section 11.2.3. may be included in the record.

32 **11.5.1. No *Ex Parte* Comments Accepted.** The chairperson may announce that
33 there may be no *ex parte* comments accepted by members of the decision-making
34 body.

35 **11.5.2. All Written Comments Received become Part of Record.** All written
36 comments, along with supporting data and references, received within the
37 specified comment period may be made a part of the record and may be available
38 for public inspection at the Planning Department when the hearing was
39 conducted by the Planning Commission. When the hearing was conducted by the
40 Board, copies of all such comments may be available at the Administration Office.
41 All timely written submittals may be made a part of the record of the proceeding.

42 **11.5.3. Record of Public Hearing.** The body conducting the public hearing may
43 record the public hearing by any appropriate means, including audiotape or
44 videotape, and written minutes. The written and taped record of oral proceedings,
45 including testimony and statements of personal opinions, the minutes of the
46 hearing and other meetings of the review body, all applications, exhibits, and
47 papers submitted in any proceeding before the decision-making, administrative, or

1 review body, the Land Use Department's report, and the decisions of the review
2 and decision-making bodies, may constitute the record. Those materials, on
3 presentation to the County, may become the public property of the County and
4 may not be removed from County possession without proper written
5 authorization from the custodian of the record.

6 **11.5.4. Materials Are Part Of Public Record.** Said materials may be public information,
7 available to the public at the Land Use Administration office during regular business
8 hours. The Department, as official custodian of those records, may make such rules
9 with reference to the inspection of such records as are reasonably necessary for the
10 protection of such records and the prevention of unnecessary interference with the
11 regular discharge of the duties of the Land Use Department.

12 GLOSSARY

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15 **Finding:** The majority of Saguache County is comprised of high altitude desert. Two
16 major aquifers, which supply water to San Luis Valley residents, towns, and
17 agricultural operations, lie partially within the County's boundaries. Much of the
18 County serves as a significant recharge area for these aquifers, which lie atop one
19 another and are referred to as the mayow, or unconfined aquifer and the deep, or
20 confined aquifer.

21 Rio Grande Basin water is over-allocated, with shortfalls projected by 2030. The Rio
22 Grande Decision Support System study on the confined aquifer documents this fragile
23 water system and allows the State Water Engineer to promulgate rules regarding the
24 aquifer based on the information provided by the study. As part of the Rio Grande
25 Water Conservation District, Saguache County keeps itself apprised of water drawn
26 from the mayow or unconfined aquifer for the federally mandated Closed Basin Project.
27 The Closed Basin Project helps supply Colorado's water commitment to New Mexico
28 and Texas under the federal agreement known as the Rio Grande Compact. These
29 vital aquifers are part of a vast water system that is not fully understood, but upon
30 which all life in the region depends. They are an irreplaceable resource that the County
31 will continue to collaborate to protect.