



Development Services

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MEMORANDUM

TO: Cochise County Board of Supervisors
FROM: Matthew Taylor, AICP, Planner II
FOR: Richard G. Karwaczka, County Administrator
THROUGH: Christine McLachlan, AICP, Planning Division Manager
SUBJECT: SUA 24-02; Applicant Appeal of Planning and Zoning Commission Decision (Dahlia Solar)
DATE: October 29, 2024

I. APPEAL OF PLANNING AND ZONING COMMISSION DECISION

The appellant, Horus Energy AZ 1 LLC, filed an appeal on September 26, 2024, against a decision made by the Cochise County Planning and Zoning Commission. On September 11, 2024, the Commission voted not to approve Special Use Authorization #SU24-07 for a Solar Energy Power Plant on approximately 596 acres near McNeal (tax parcels 407-17-001 and 407-18-003). The properties are zoned RU-4 (Rural District, one dwelling per 4 acres), and Solar Energy Power Plants require special use approval in rural zoning districts per Section 2.15.070 of the Zoning Regulations.

The Board of Supervisors hears appeals at duly noticed public hearings of Special Use Authorization decisions made by the Planning and Zoning Commission. Following deliberations the Board shall either **affirm**, **reverse**, or **modify** the decision of the Planning and Zoning Commission.

II. PLANNING AND ZONING COMMISSION PUBLIC HEARING

Because of their unique characteristics and potential to impact surrounding properties, special uses may be authorized only if potentially negative offsite impacts are absent or can be mitigated. The Zoning Regulations include ten special use factors representing policy decisions and are intended to reduce uncertainty concerning the potential impacts of the use. The factors focus on how a proposed land use can impact neighboring properties and residents, including consideration of traffic circulation, demand on county services and infrastructure, water conservation, and the degree to which a proposed special use could create negative offsite impacts such as dust, smoke, noise, odors, lights, and stormwater runoff.

The Planning and Zoning Commission heard the special use application during its regular meeting on September 11, 2024. Staff findings utilizing the factors identified in the Zoning Regulations factors included the following:

Factors in Favor of Special Use Approval

1. Complies with ten (10) of ten (10) applicable factors with conditions, including consistency and compatibility with the county's Comprehensive Plan and Zoning Regulations relative to applicable planning policies and zoning district purpose.
2. Low water land use within the Douglas Active Management Area (AMA) boundary.
3. Solar projects place limited strain on local services and infrastructure, generating minimal traffic and water use.
4. The applicant has not requested waivers from applicable development standards.

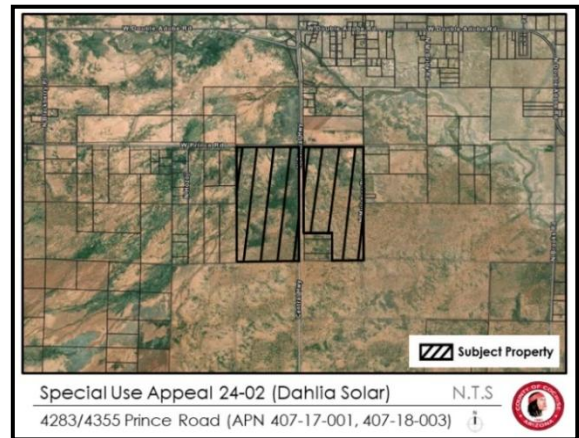
5. Provides a source of clean energy that offsets greenhouse gas emissions.
6. Project-generated electricity enhances grid resiliency and supports future load growth needs.

Factors Not in Favor of Special Use Approval

1. Opposition from multiple nearby property owners.
2. Fugitive dust generated during construction.
3. Visual impacts may disrupt natural landscape views for nearby residents.

The Zoning Regulations identify public input as a specific factor for special use evaluation:

Section 2.48.160.4.g: *If there is major public opposition to a proposed Special Use Authorization request, this may indicate that the technical evaluation regarding the compatibility of the use does not concur with the view of local residents, and a recommendation of denial may be appropriate. If public concerns have been raised, it is fair to ask if the Applicant has made a reasonable effort to address these concerns through the Citizen Review Process. If there is major public support for a proposed use, this may be a factor in favor of the request.*



Staff notified 20 unique property owners within 1500' of the project parcels and received nine (9) written responses in opposition to the project. After considering all the facts during the public hearing, including public opposition, the Commission unanimously voted against a motion to approve (0-7), resulting in the denial of the Dahlia Solar special use application.

The September meeting agenda is available at <https://www.cochise.az.gov/592/Agendas-Minutes>. The meeting video is available on the county's YouTube page at <https://www.youtube.com/watch?v=qkj04iUIYDI> (SU24-07 begins at 1:30:14).

III. APPEAL REQUIREMENTS

Per Section 2.48.160.4 of the Zoning Regulations, appeal applications must include the following:

- An identification of the decision being appealed.
- A complete statement of all reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion; and
- Written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.

The appellant submitted an appeal application on September 26, 2024, which meets the minimum submittal requirements.

IV. APPELLANT SUBMITTAL AND STAFF ANALYSIS

The application identifies the decision being appealed and provides additional information that was not discussed during the public hearing. The rationale for why the appellant believes the Commission's failure to approve the special use was in error is summarized below:

- Staff recommended approval of the special use authorization for a Solar Energy Power Plant, finding compliance with all ten applicable factors with conditions.
- Commission statements relative to the number of county-approved solar projects and the lack of suitability due to potential natural hazards are "very broad, seemingly pre-decisional and contradict the goals of the current Comprehensive Plan, which encourages local renewable energy projects and technologies."
- Multiple Commissioners cited neighborhood opposition as the basis for their vote against the special use application.
- Previously approved solar projects did not demonstrate interconnection agreements with specific electricity providers.



The appellant also provides information either not discussed or not available during the September Commission meeting, including additional business information and other projects within the United States; public funding versus tax credit incentives; "mirror effect" or glare and possible impacts on local aviation; aesthetic impacts and effects on local wildlife; site maintenance and upkeep; construction noise; and, hazards associated with solar panels.

V. STAFF RECOMMENDATION

The applicant and staff met notification requirements for Special Use Authorization SU24-07 (Dahlia Solar) in accordance with the requirements outlined in the Zoning Regulations. Additionally, the county satisfactorily advertised the September 11, 2024, Planning and Zoning Commission regular meeting, ensuring the general public had timely notice and both physical and remote access to the meeting. Lastly, the Commission Chair followed procedural requirements for each docket item scheduled for the public hearing on September 11th on the agenda, allowing time for staff presentations, applicant statements, public comments, applicant rebuttals, and Commission discussion. More than a dozen individuals spoke during the public hearing for Docket SU24-07, with a majority expressing opposition to the special use request.

Staff completed the notification process for the appeal from October 2 to 9, 2024. This process was identical to that of the original special use, including the 1500' notification list of 20 unique property owners. Public input information will be provided to the Board at the public hearing on October 29, 2024.

Based on the September 11, 2024, public hearing of Docket SU24-07 and the September 26, 2024, appeal application, staff finds the following factors for Docket SUA24-02:

Factors in Favor of the Appeal

1. The appellant has met the application submittal requirements.
2. Staff recommended conditional approval of Docket SU24-07 (Dahlia Solar).

Factors Not in Favor of the Appeal

1. The Zoning Regulations authorize the Planning and Zoning Commission to render Special Use Authorization decisions.
2. The Commission considered special use factors contained in the Zoning Regulations.
3. Appeal approval reverses a unanimous decision by the Commission.

Based on the factors in favor of the appeal, Staff recommends approval of Docket SUA24-02, **reversing** the Planning and Zoning Commission's decision and approving Docket SU24-07 with the following conditions of approval:

1. The project owner shall submit, in advance or concurrent with their first commercial permit, a Traffic Improvement and Maintenance Plan, which successfully mitigates project impacts to Central Highway. The plan shall include, but not be limited to, a traffic control plan, a dust control plan, a road stabilization plan, and a road maintenance plan.
 2. The project owner shall apply a chemical stabilizer, such as Magnesium Chloride, to Central Highway during the project construction phase. Road preparation and application shall follow best practices to improve product performance and shall be in accordance with the manufacturer's specifications.
 3. Project vehicles and equipment shall not use North Frontier Road to access the project site during or after construction.
 4. The applicant shall submit an Emergency Response Plan in conjunction with building permit submittals for County and fire responder review and approval.
 5. The project owner shall include all Best Management Practices (BMP) for dust mitigation and wind erosion with the dust control plan of the Traffic Improvement and Maintenance Plan:
 - a. Minimize grading and vegetation removal. Landscaping with native plants can help support wildlife and pollinator species in the area while reducing dust and erosion.
 - b. In areas where vegetation removal and/or grading is required, schedule the process of vegetation removal to the minimum time required prior to module installation.
 - c. Limit vehicle speed on Central Highway within project limits, during facility construction, to 25 miles per hour.
 - d. Apply water to disturbed soil areas using water trucks to control dust and maintain proper moisture levels for soil compaction. Minimize over application of water to prevent runoff and ponding.
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- e. Suspend grading during periods of high wind.
 - f. Cover all trucks hauling soil or other loose material in and out of the proposed Project site.
 - g. Gravel or aggregate should be used where access roads meet paved roads to limit offsite disturbance and prevent mud and dirt track-out.
6. The project owner shall conduct preconstruction surveys per the Migratory Bird Treaty Act (MBTA) prior to vegetation removal or ground disturbance associated with project construction.
 7. The project owner shall exclusively use PV panels with an anti-reflectivity coating that is integral to the panel.
 8. All solar racks shall be installed to maintain no less than a 12' minimum clear distance, measured from the outer edge of panels, between all tracker rows. The applicant shall not exceed a 38% ground cover ratio, defined as panel area to total project area, for the project site.
 9. A 4"-6" gap between the bottom of project-related perimeter fencing and the ground surface shall be reserved for small ground animal permeability.
 10. Within 30 days of approval of the Special Use, the applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to the operation of the Special Use, the applicant shall apply for a building/use permit for the project within 12 months of approval. The building/use permit shall include a site plan in substantial conformance with the approved special use concept plan, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 12 months of the Special Use approval. Otherwise, the Special Use may be deemed void upon 30-day notification to the applicant.
 11. It is the applicant's responsibility to obtain any additional permits or meet any additional Conditions that may apply to the proposed use pursuant to other federal, state, or local laws or regulations.
 12. Any changes to the approved Special Use will be considered a Modification to this Special Use and will require review and approval of the Planning and Zoning Commission.

VI. ATTACHMENTS

- Staff Memo for Docket SU24-07

Sample Motions

Madam Chair, I move to approve Docket SUA24-02, **reversing** the Planning and Zoning Commission's decision and approving Docket SU24-07 with conditions of approval recommended by Staff.

Madam Chair, I move to deny Docket SUA24-02, **affirming** the Planning and Zoning Commission's disapproval of

Docket SU24-07.
