



Development Services

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www.cochise.az.gov
1415 Melody Ln, Bdg F
Bisbee, Arizona 85603

Special Use Appeal Application

An appeal against an approved or denied special use may be filed by the applicant or by any other person aggrieved in any manner by the decision by the Planning and Zoning Commission. An appeal must be filed within 15-calendar days of the commission decision. Any submitted appeal will be reviewed by the Board of Supervisors at a public hearing within 60- calendar days of the receipt of the appeal. Additional sheets may be attached, if necessary.

Commission Docket Info

Name of docket being appealed: SU24-07 (Dahlia Solar)

Commission hearing date: Wednesday, September 11, 2024

Appeal submittal date: Thursday, September 26, 2024

Appellant Info

Name: Horus Energy AZ 1 LLC

Address: 16730 Creek Bend Drive, Sugar Land, TX 77478

Email: georgi.velkov@horuscapital.co.uk (applicant), dsandoval@westlandresources.com (agent)

Phone Number: (209)683-3339 (Georgi Velkov-applicant), (520)206-9585 (Diana Sandoval-agent)

Processing Fee

\$600. Applicants may pay online with a credit card or mail a check to the Development Services Department at 1415 W Melody Ln, Building F, Bisbee, AZ 85603, payable to the Cochise County Treasurer.

Required Submittals



This application



A non-refundable processing fee

Appeal Narrative

1. Describe the decision you would like to appeal.

The Cochise County Planning and Zoning Commission failed to approved the Special Use authorization request for a Solar Energy Power Plant at 4283/4355 W. Prince Road (tax parcels 407-17-001 and 407-18-003) for the Dahlia Solar Project.

Ten (10) factors for and against a Special Use were included in the staff report prepared by Cochise County Development Services with an analysis of the project's compliance for each. The staff report finds that the project complies with all 10 factors. It also lists additional reasons for and against approval. Staff recommended approval contingent on standard conditions.

We respectfully challenge the decision based on the reasons below/attached.

2. Provide a complete statement of all reasons why you believe that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or any abuse of discretion. (Additional sheets may be attached.)

Please see attachment.

Appeal Narrative Continued

3. Provide a full explanation of the additional testimony and evidence that will be submitted. Include an explanation of why this was not presented to the Planning and Zoning Commission.

Please see attachment.

Acknowledgment

By typing their name below, the applicant hereby certifies that information contained in this application and accompanying plans and documents is true, correct, and to the best of their knowledge. The applicant understands that if any of this information is false, it may be grounds for denial or future revocation.

Signature: Georgi Velkov

Date: September 26, 2024

Question 2. Provide a complete statement of all reasons why you believe that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or any abuse of discretion.

2a. One commissioner indicated there are too many solar projects in Cochise County already and another indicated Cochise County seems unsuitable for solar based on the FEMA National Risk Index for natural hazards. These statements are very broad, seemingly pre-decisional and contradict the goals of the current Comprehensive Plan which encourages local renewable energy projects and technologies.

Regarding there being too many solar projects in Cochise County, this statement was not supported or apparently informed by local power generators/service providers who would be able to assess the power system in the County to determine if there is no need or benefit for additional solar generation. Solar power provides safe, affordable, reliable, clean energy that can be used locally. This project would diversify the location and size of solar projects serving Cochise County.

Regarding Cochise County not being suitable for solar power generation based on natural hazards, the referenced FEMA index maps the natural hazard risk for the County as “relatively moderate” compared to the rest of the U.S. Being concerned about moderate risk seems overly conservative given that there would be several measures in place to address natural disasters that could impact the solar facility. The project will be remotely monitored 24/7 via supervisory control and monitoring systems, in addition to being routinely inspected several times a month. There will be an emergency management plan in place prior to site plan permitting that addresses natural disasters in a very detailed fashion. Emergency response training and resourcing will be developed in collaboration with local emergency response and County leadership as the project progresses. Construction is still not planned to begin until 2027 and additional Cochise County permits will be required in the interim. The project facility will be fully insured and there will be a decommissioning plan in place with financial assurances. There are engineering solutions to address many concerns such as hail (panels are stowed upright in storms/night), wind (pilings designed for site conditions), and stormwater/flooding (following comprehensive hydrological study, a stormwater management plan will be provided, trackers will be elevated if warranted, perennial ground cover onsite will be maintained, no mass grading will occur in the panel area, and maintenance will be performed on facilities several times a month).

2b. Several commissioners cited public response/neighborhood input as the basis of their vote. This factor requires that the applicant makes a reasonable effort to address concerns. The applicant intended to do this through the supplemental submittal, rebuttal, and response during the hearing, and calls/meetings with the neighbors who were willing to engage. Our concern is that many of the opinions in opposition to the project were not based in fact. Inaccurate information included concerns about the use of battery storage (the project will not incorporate battery storage), the release of hazardous materials (not applicable), impacts to the aquifer (none), and even the legitimacy of Horus as a company (see 3a below). Deferring to the opinions in opposition to the project based on flawed information is inappropriate.

2c. One item that continually came up during the hearing was the inability for the applicant to state definitively who they will have an interconnection agreement with, and concerns were raised about whether the energy will be used locally or go out of state. Energy produced locally at this scale will be consumed locally as moving it far away leads to substantial losses. We have engaged with local utilities and are in regular contact regarding offtake, however we cannot have a more substantial or definitive agreement prior to securing entitlement permits and this is beyond our control. Moreover, previous solar projects approved by Cochise County did not all have a definitive interconnection agreement when the Special Use Permit was approved.

Question 3. Provide a full explanation of the additional testimony and evidence that will be submitted. Include explanation of why this was not presented to the Planning and Zoning Commission.

The applicant wishes to provide information that was requested at the September 11, 2024, hearing but which was not immediately available and information in response to comments that could not be provided in the limited timeframes during the hearing.

3a. Information about the Applicant: The applicant is an entity under an affiliate company called Horus Energy. Their website address can be found here: <https://horusenergy.co.uk/>. Horus Energy has several ongoing projects in the U.S. including:

- Duffy Solar in Texas,
- Sandy Hill Solar 1 & 2 in Colorado, and
- Autrey Solar in New Mexico.

The Applicant headquarters is at 20 North Audley Street, London, W1K 6LX. Horus uses their attorney's address for U.S. projects which is the address provided on the application and used for official correspondence. For additional information, please see **Exhibit 1**.

3b. Clarification regarding public funding. There is no public funding for the project. The project is profitable for solar developers like Horus because once there is an interconnect agreement in place, operations and maintenance costs are very low. There are no grants of public funding to the construction or operation of the project. The Inflation Reduction Act (IRA) incentivizes construction by providing tax incentives, but these are not public funding. Solar developers monetize the energy tax credit incentives via tax equity investors. In return for their investment, investors receive an allocation of tax credits, and the bonus depreciation generated on the solar equipment.

3c. Mirror effect. A neighbor raised concerns of the potential mirror effect from the solar farm and a commissioner was concerned about glare causing safety issues for Cochise College Airport (approximately 4 miles south of the project site). Based on review of aerial maps, there appears to be a small (4-acre) solar installation west of the baseball field at the adjoining Cochise College - Douglas Campus. However, we acknowledge the scale of our installation is larger, encompassing approximately 225 acres of solar.

Modern solar panels use antireflective coating integral to the panel and are being used widely across the industry and in very close proximity to airports and have been proven to have no reflective effect. As referenced in the previously submitted application supplement, studies indicate that the potential glare from solar arrays is comparable to glare from a body of smooth water and modern PV panels reflect as little as two percent of incoming sunlight, which is about the same as water and less than soil or even wood shingles¹. Numerous military and civilian airports include solar installations and/or have solar installations on adjacent land including Fort Huachuca, Davis Monthan Air Force Base, and Tucson International Airport.

3d. Visual Impacts. The applicant understands how the project may impact the rural nature of the area and maximizes the proposed open space/wildlife corridors that will retain natural vegetation. The open

¹ National Renewable Energy Laboratory. Research and Analysis Demonstrate the Lack of Impacts of Glare from Photovoltaic Modules. July 2018. <https://www.nrel.gov/state-local-tribal/blog/posts/research-and-analysis-demonstrate-the-lack-of-impacts-of-glare-from-photovoltaic-modules.html>

space/wildlife corridors are 265-1073 ft. wide along the east boundary, 230-320 ft. wide along the south boundary, 183-307 ft. wide to the west and 391-801 ft. wide along the north boundary. The distance to the nearest residence is 400 feet and most are further.

For transparency, a viewshed assessment has now been prepared by Logan Simpson Design (see **Exhibit 2**). This map uses elevation modeling to depict the percent visibility of panels from roadways and neighboring buildings within one mile of the project. Please note: This model does not account for varying vegetation (especially within the onsite open space/wildlife corridors) or any other obstructions on property owners land that may significantly reduce visibility, so this should be considered a conservative model.

Neighbours have raised concerns regarding project impacts on the rural character of the area and on residents' use and enjoyment of their property. Unlike fossil fuel plants or industrial facilities, solar installations do not produce air, water, or soil emissions. The panels are mounted on racking, with current design putting the maximum panel height at approximately 8 ft. high at maximum tilt. Minimal disturbance of existing vegetation, especially around the buffer areas with neighbours, will further reduce impact. A passive solar facility is one of the least impactful forms of development when compared to new residential subdivisions, shopping centres, large-scale commercial or agricultural facilities such as feed lots. The applicant will also explore with neighbours' additional visual mitigation options once the site layout is finalized.

3e. Habitat and Vegetation Management. Of the 596 acres of the project site, panels will only cover 225 acres. The panels will incorporate anti-reflective glare and will be spaced no less than 12 feet, 1 inch apart to avoid the appearance of water for avian species in accordance with Arizona Game and Fish recommendations. Wildlife-friendly fencing allows small animals to go through the site and exclusion fencing will usher larger animals like deer along the preserved open space/wildlife corridors. In addition to the significant acreage that will not be developed, the project has committed to minimal grading (required mainly for the substation and internal maintenance roads).

Vegetation will be mowed/masticated, and stumps may be directly treated with herbicide in the panel area. Strategic maintenance of vegetation in the panel area will preserve perennial ground cover and be reseeded as required. Invasive grasses will be removed, and any areas of temporary disturbance will be seeded with native grasses and forbs to maintain ground cover for erosion and dust control. Biodiversity at the project site is expected to increase over time. Once the facility is decommissioned, areas that are bare of vegetation would be seeded in accordance with the decommissioning and reclamation plan. Plants that have been continually trimmed and treated will be permitted to reestablish. Wildlife is expected to acclimate to changes in the site over time and continue to use the site and vicinity following construction. Several wildlife measures will also be implemented during construction (see Biological Evaluation from Special Use Permit application).

Horus is also exploring agrivoltaics and is in contact with a local sheep grazing company to discuss maintaining vegetation growth and reducing fire risk. Horus is currently exploring this option to understand vegetation requirements and requirements for reseeding.

3f. Construction Noise. While the overall construction timeframe for the project is estimated at between 12 and 18 months, most of the work during that timeframe is mounting panels onto the racking system and connecting them to the inverters. The most noise intensive part of the construction is the pile driving, which on average takes up to 8 weeks. Noise will dissipate and attenuate with distance from the work activities. All construction work will be limited to daytime hours.

3g. **Hazardous Material Concession.** Neighbors have requested soil sampling on an annual basis before and after construction. We understand this would be sampling for potential lead releases from the panels. The applicant can agree to sampling before construction and the first 5 years of operation on an annual basis. If the samples do not show change, monitoring would discontinue to avoid continual costs.

Exhibits:

1. Letter from Horus Energy AZ 1 LLC Counsel Regarding U.S. Address of Record
2. Viewshed Map

THE LAW OFFICE OF ANTHONY F. NEWTON

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September 26, 2024

Cochise County Board of Supervisors
1415 Melody Lane
Building G
Bisbee, Arizona 85603

Re: Horus Energy AZ 1 LLC; U.S. Address of Record

Dear Ladies and Gentlemen:

My name is Anthony F. Newton. As you can see from my letterhead, I am an attorney in the State of Texas. I have been licensed to practice law in the State of Texas for more than 20 years. In addition to my private practice, I serve in a capacity as outside counsel to energy companies. In that regard, for the past 3.5 years, I have served as Corporate and M&A counsel to Horus Partners US Inc., an affiliate of Horus Energy. I am writing this letter with respect to the address of record for Horus Energy AZ 1 LLC, internally referred to among Horus Energy as the “Dahlia Solar Project”.

The address of record in the United States for Horus Partners US Inc., Horus Energy AZ 1 LLC, as well as all affiliated entities in the United States is the following:

16730 Creek Bend Drive
Sugar Land, Texas 77478

That address is used for my private practice as referenced in my letterhead. That address is also my business address with the State Bar of Texas. I have leased space at that address for over four years. Beginning in July 2020, during the Covid pandemic, I leased a room and conference space, because I needed a safe, sanitary location for clients and other parties to meet in person. Beginning in September 2022, as the United States emerged from the Covid pandemic, I reduced my lease to conference room space, which I continue to do as of the date of this letter and will continue to going forward. As part of my leased space, the front desk receives packages and mail on my behalf.

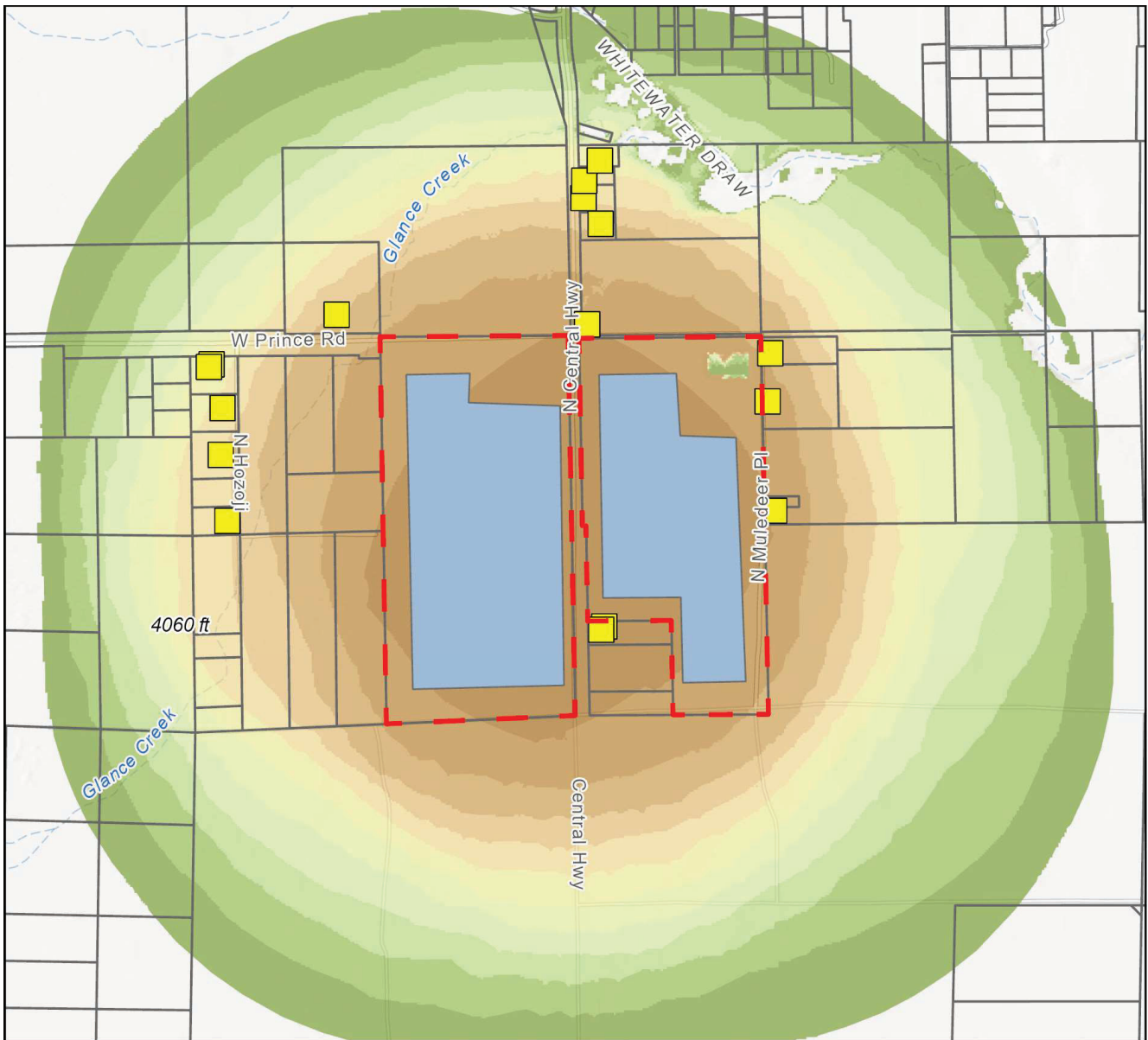
You may confirm this arrangement with the Director of Sales, Meghan Wright, during normal business hours at the Hyatt Place of Sugar Land.

I hope this information is helpful. Please let me know if there is any other information I may provide.

Sincerely,













Law Office of Anthony F. Newton

Anthony F. Newton
Anthony F. Newton
For the Firm



-  Project Boundary
-  Panels
-  Neighboring Buildings
-  Parcel Boundary

Percent Visibility of Panels

-  Not visible
-  10% or less
-  20%
-  30%
-  40%
-  50%
-  60%
-  70%
-  80%
-  90%
-  Greater than 90%
-  Full Visibility

This map shows how much of the project will be visible from 1 mile. This model does not include varying vegetation that will reduce the visibility significantly.

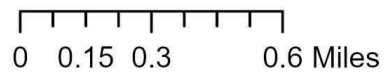


Exhibit 2. Viewshed Map