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November 6, 2018

Via Electronic Mail

Pitkin County Attorney
c/o Richard Y. Neiley III, Assistant County Attorney
530 East Main Street, Suite 301
Aspen, CO 81611
Richard.Neiley@pitkincounty.com

Re: Application for Location and Extent Review and Review for Activities of State Interest
Aspen Consolidated Sanitation District dated May 2, 2018.

Dear Richard:

As you are aware, my firm represents Pitkin County Solar, LLC ("**Pitkin Solar**"), which is acting as agent for Aspen Consolidated Sanitation District ("**ACSD**" or the "**Applicant**") with regard to the above referenced application (the "**Application**"). This letter follows our conversation of November 1, 2018 regarding the Application and the proposed development of solar electrical generating facilities (the "**Project**") as described in the Application. It is important to note from the outset that ACSD and my client have not withdrawn or agreed to amend the Application. At this time, the Application continues to be subject to Location and Extent Review as directed by the Community Development Department in the original Pre-Application Letter addressed to ACSD and dated February 7, 2018. A copy of the Community Development Department's February 7, 2018 Pre-Application Letter is attached hereto for your convenience.

First, in our conversation of November 1, 2018, we discussed the current status of the Application and the Pitkin County (the "**County**") Planning and Zoning Commission ("**P&Z**") hearing schedule for tonight, November 6, 2018. At that time, we discussed what actions were necessary by P&Z to continue the Application beyond the present hearing. I have not heard from you since our conversation, but I have indications that the hearing was cancelled at the behest of the County without formal action. Please let me know how the County decided to handle this. As you are aware, the Pitkin County Land Use Code (the "**Code**") section 2-20-120, "Actions by Decision-Making Bodies" permits a County decision-making body to continue any meeting only to a date certain.

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Next, in our conversation we discussed the County's suggestion, transmitted in your October 9, 2018 letter, that the Application be amended to address the criteria for Special Use Review instead of Location and Extent Review. My client finds this odd as Code Section 2-30-30, One-Step Review Procedure clearly states:

(10) Location and Extent Review: (a) The purpose of the location and extent review is to determine whether any proposed road, park, or other public way, ground, or space, or public building or structure or public utility, whether publicly or privately owned is in conformance with the applicable County Comprehensive Plan or Master Plan [emphasis supplied],

and in your letter of October 9 you state:

"The Project on its face is a privately owned, public utility..."

However, my client and the Applicant, ACSD remain willing to consider the County's suggestion, if the County can provide some clear, written direction on the subject. I recall that in our conversation we agreed that this direction could be provided in the form of a revised Pre-Application Letter from Community Development Director Cindy Houben and that Ms. Houben would provide a revised Pre-Application Letter before the scheduled time for tonight's hearing. At the time of this letter, my client and I have not received any revised Pre-Application Letter or any other communication from Ms. Houben on the subject whatsoever.

The purpose of this letter is to request once again the revised Pre-Application Letter. Once we have received the promised Pre-Application Letter and formal notice of the continuance of the hearing to a date certain, my client can consider your recommendations and those of the Community Development Department. Until that time, and until express, written action by the Applicant, it is our position that the Application remains open and unamended.

Please contact me at your earliest convenience so we can discuss how we can move forward in cooperation with the County. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eben P. Clark', is written over a light blue horizontal line.

Eben P. Clark
Counsel

cc: client, John Ely, Esq.

PITKIN COUNTY PRE-APPLICATION CONFERENCE SUMMARY

LOCATION: No address

ZONE: RS-20

OWNER: Aspen Consolidated Sanitation District (ACSD)

APPLICANT: Aspen Consolidated Sanitation District

REPRESENTATIVE: Pitkin County Solar, LLC (c/o Bara Jacobsma)

PHONE: 720-509-8718

EMAIL: Bara.Jacobsma@res-group.com

PLANNER: Mike Kraemer

PHONE: (970) 920-5482

E-MAIL: michael.kraemer@pitkincounty.com

DATE: February 7, 2018, updated March 13, 2018

PARCEL ID: 264327200851

PARCEL SIZE: 55 acres

Type of Application: Location and Extent Review and Review for Activities of State Interest

Description of Project/Development: The Applicant's Representative proposes to develop approximately 33 acres of the above-mentioned property, a former sewage sludge disposal site located to the east of the Rio Grande Trail, with a solar facility that is classified as a "Power Plant" as defined in Sec. 12.10.90 of the Land Use Code. A "Power Plant" is considered a "Major Facility of a Public Utility", also pursuant to Sec. 12.10.90, and construction of a Major Facility of a Public Utility is an "Activity of State Interest." The Representative represented that the solar facility will off-set Aspen Sanitation District energy use and will also generate electricity for transmission back to the grid for commercial purposes.

Land Use Code Sections to be addressed in letter of request (application):

2-30-30(h)(10): Location and Extent Review – 1987 Down Valley Master Plan

<http://www.pitkincounty.com/DocumentCenter/Home/View/809>

Chapter 12, Activities of State Interest

- 12.30.60 – Application Submittal Requirements
- 12.30.170 – Additional Submittal Requirements Applicable to Site Selection and Construction of Major Facilities of a Public Utility
- 12.40.10 – Basic Permit Application Approval Criteria for Matters of State Interest
- 12.40.120 - Additional Criteria Applicable to Site Selection and Construction of Major Facilities of a Public Utility.

Review by: Planning and Zoning Commission and BOCC (two – step review)

- Location and Extent Review - final decision Planning and Zoning Commission
- Activities of State Interest – P&Z recommendation and BOCC – final decision.

Public Hearing: Yes at both P&Z (Location and Extent Review) and at BOCC. Notice is required via **posting, mailing and publication**. The Applicant shall post a public notice sign on the property at least 15 days prior to the date specified for the hearings pursuant to Sec. 2-20-100(a)(3) of the Land Use Code. In addition, the Applicant shall mail notice at least 30 days prior to the public hearings (by first class mail) to all property owners within 300' of the subject property with the return address of the Community Development Department (form of notice to be obtained from the Community Development Department). The names and addresses shall be those on the current tax records of Pitkin County, as they appear no more than 60 days prior to the date of the public hearing.

Staff will refer the application to the following agencies: Brush Creek Village Metro District, Brush Creek Village HOA, Pitkin County Airport (Fil Meraz), Planning Engineer (Catherine Christoff), County Engineer (G.R. Fielding), Pitkin County Attorney (Richard Neiley), Colorado Parks and Wildlife (CPW), Pitkin County Open Space and Trails (Jessie Young), Woody Creek Caucus and Planning Commission, W/J Metro District, W/J HOA, Snowmass Water and

Sanitation District, Community Office of Resource Efficiency (CORE – Mona Newton), City of Aspen Electric (Tyler Christoff and David Hornbacher)

FEES: \$6,957 (make check payable to “Pitkin County Treasurer”)

- \$5,850** Planning Office flat fee (non-refundable; based on 18 hours of staff time; if staff review time exceeds 21.6 hours, the Applicant will be charged for additional time above 18 hours at a rate of \$325/hour)
- \$108** Public Notice Fee
- \$624** Planning Engineer Fee
- \$375** County Clerk

To apply, submit 4 copies (with 1 unbound copy) of the following information, unless noted otherwise:

1. Summary letter explaining the request, explaining existing conditions, providing background on prior approvals and permits, and addressing compliance with the Code sections listed above.
2. Application Submission Requirements for Location and Extent Review as detailed in Section 2.2.23 of the Pitkin County Application Manual – 24” by 36” and 11” by 17”.
3. If Applicant is obligated to provide notice to the Federal Aviation Administration in accordance with 14 C.F.R. Part 77 as a result of the proximity of the Project to the existing Airport, Applicant shall submit copies of Form 7460-1, Notice of Proposed Construction or Alteration, and accompanying documentation submitted to the FAA and any determination or correspondence received from the FAA in response to such submission.
4. Disclosure and proof of ownership of the property, consisting of a current certificate from a title insurance company or attorney licensed to practice law in the State of Colorado, listing the names of all owners of the property and all mortgagees, judgments, liens, easements, contracts and agreements affecting use and development of the parcel and proof of the owner’s right to use the land for the purposes identified in the development application or lease agreement for use of the property.
5. Legal Description of the property.
6. Consent from the owner of the property for the representative to process the application and represent the owner;
7. Letter from Holy Cross Energy acknowledging the construction of the proposed solar farm and stating that it can accommodate the additional energy production.
8. Street address and parcel description, including legal description, and 8-1/2”x 11” vicinity map locating the subject property within Pitkin County;
9. Executed Pitkin County Community Development Agreement for Payment of Land Use Application Fees form (1 copy – form attached);
10. List of all property owners within 300’ of the subject property (1 copy); and
11. Copies of this pre-application Conference Summary Sheet.
12. **Provide all documents in PDF format as one combined file on a flash drive or email to planningapps@pitkincounty.com**

NOTES:

- PLEASE SUBMIT ONE UNBOUND AND ONE-SIDED COPY OF YOUR COMPLETE APPLICATION. PLEASE SUBMIT TWO-SIDED COPIES OF ALL REMAINING COPIES OF YOUR APPLICATION (IF POSSIBLE). THE PARCEL IDs SHOULD BE INCLUDED ON ALL DOCUMENTS INCLUDED IN YOUR APPLICATION.*
- ALL MAPS SHALL BE FOLDED.*
- This pre-application conference summary is advisory in nature and not binding on the County. The information provided in this summary is based on current zoning standards and staff’s interpretations based upon representations of the applicant. Additional information may be required upon a complete review of the application.*
- The Pitkin County Land Use Code can be found at the following link:*
<http://pitkincounty.com/468/County-Code>
- The Pitkin County Land Use Application Manual can be found at the following link:*
<http://www.pitkincounty.com/DocumentCenter/Home/View/248>

**PITKIN COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
AGREEMENT FOR PAYMENT OF LAND USE APPLICATION FEES**

PITKIN COUNTY (hereinafter COUNTY) and Aspen Consolidated Sanitation District (hereinafter APPLICANT) AGREE AS FOLLOWS:

1. APPLICANT has submitted to COUNTY an application for Pitkin County Solar Project (hereinafter, THE PROJECT).
2. APPLICANT understands and agrees that Pitkin County Ordinance No. 012-2016 establishes a fee structure for land use applications and the payment of all processing fees is a condition precedent to a determination of application completeness. The fee structure is based on the County's policy that development shall pay, in full, the cost of development review in Pitkin County. Fees have been set to be consistent and fair to the public and to reflect the expense incurred in providing such services to the public.
3. APPLICANT and COUNTY agree that because of the size, nature or scope of the proposed project, it may not be possible at the time of application to ascertain the full extent of the costs involved in processing the application.
4. *APPLICANT and COUNTY agree that fees charged for the processing of land use applications shall accumulate if an application includes more than one type of land use review.*
5. COUNTY and APPLICANT further agree that it is impracticable for COUNTY staff to complete processing or present sufficient information to the Planning Commission and/or Board of County Commissioners to enable the Planning Commission and/or Board of County Commissioners to make legally required findings for project approval, unless current billings are paid in full prior to decision.
6. Therefore, APPLICANT agrees that in consideration of the COUNTY's waiver of its right to collect full fees prior to a determination of application completeness, APPLICANT shall pay a base fee in the amount of \$6,957 which is based on 18 hours of staff time, and if actual time spent by staff to process the application exceeds the average number of hours by more than 20%, then the COUNTY will bill the APPLICANT quarterly for the additional time spent. Such periodic payments shall be made within 30 days of the billing date. APPLICANT further agrees that failure to pay such accrued costs shall be grounds for suspension of processing.

PITKIN COUNTY

Cindy Houben
Community Development Director

APPLICANT

Bruce Matherly
Print Name
Bruce Matherly
Signature

Date: 4-2-18

Mailing Address:
565 North Mill Street
Aspen, CO 81611