

4.3.5. WSE-O, Wind and/or Solar Energy Generation Plan Overlay District

(A) General

(1) Purposes

(a) General

- To regulate wind and/or solar energy generation facilities which are not subject to C.R.S. § 40-1-103 and C.R.S. §30-28-110 and Section 5.3.3. of this Code.
- To site wind and/or solar energy generation facilities where they are most appropriate, considering impacts to the environment, visual corridors, existing infrastructure, and the established development pattern.
- To ensure the preservation of public health, safety, and welfare.
- To provide a regulatory scheme that is designed to address certain standards regarding setbacks, height restrictions, and other requirements for wind and/or solar power energy generation facilities.
- To provide mitigation measures for impacts associated with large-scale wind and/or solar energy generation facilities.
- To provide greater design flexibility and efficiency in siting wind and/or solar energy generation facilities.

(2) Application, Review, and Fees

(a) Application

- An application for rezoning is required in order to obtain wind and/or solar energy generation plan overlay district (WSE-O) zoning.
- The submittal and review process for a WSEO application shall follow the provisions outlined in Section P-AR-034-11, Wind/Solar Energy Generation Plan Overlay (WSEO) Rezoning (Map Amendment), and Section S-PL-023-011, Wind/Solar Energy Generation Overlay (WSEO) Plan, of the Procedures Manual.

(b) Review

- The El Paso County Planning Commission shall review and make recommendation on all WSE-O rezoning applications.
- The El Paso County Board of County Commissioners shall review and take final action on all wind/solar energy generation plan overlay rezoning applications.

(c) Fees

- The application fee associated with a WSE-O rezone request shall be calculated based on cost of service.
- The application fee associated with administrative site development plan requests shall be determined by the Development Services Department adopted fee schedule.
- For those projects that, because of their size, type of operation, or technical details which are beyond the technical expertise of the El Paso County staff and require review and the provision of appropriate technical expert testimony at any required public hearing(s) before the County's governmental bodies or contracted employees of the County, the costs for said review and the provision of said expert shall be paid by the applicant. The extent and nature of said costs shall be established between the applicant and El Paso County prior to formal submittal.

(3) Applicability

(a) General

- A WSE-O functions in combination with base zoning districts to both modify the existing standards associated with the base zoning districts and to impose additional requirements and standards on specific properties.

(b) Zoning Requirements

- The WSE-O district can be applied in all zone districts.

(4) Definitions

(Also added to Section 1.14.7., DEFINITIONS OF SPECIFIC TERMS AND PHRASES, of the Land Development Code)

(a) Wind Energy Generation Facility

A large-scale electrical energy generation facility with a minimum energy generation capacity of 500 kilowatts typically consisting of wind turbines, meteorological data gathering devices, collection lines, electrical substation(s), transmission line(s), and other appurtenant facilities.

(b) Solar Energy Generation Facility

A large-scale electrical energy generation facility with a minimum energy generation capacity of 500 kilowatts typically consisting of photovoltaic panels, heliostats (mirrors), collection tower(s), turbine(s), collection lines, electrical substation(s), transmission line(s), and other appurtenant facilities.

(c) Private Electric Transmission Line

An electric transmission line, that is not regulated pursuant to C.R.S. § 40-1-103 and C.R.S. §30-28-110 , with a minimum capacity of 69 kV, located above or below ground, and intended to convey electricity generated by an electrical energy generation facility.

(d) Private Electric Substation

An assemblage of equipment and appurtenant facilities, that are not regulated pursuant to C.R.S. § 40-1-103 and C.R.S. §30-28-110, that are designed for voltage transformation, switching, or control of electricity.

(e) Private Energy Generation Maintenance Facility

A facility used for the ongoing maintenance and operations of an energy generation facility, typically including finished office and employee space, outside storage, and storage of vehicles and equipment associated with the maintenance and operation of the energy generation facility.

(5) Compliance with County, State, and Federal Laws and Regulations

The WSE-O district and WSE-O plan shall comply with all applicable County regulations and ordinances, State laws and statutes, and federal law and regulations, except as otherwise modified within.

(B) Development Standards

(1) Establishment and Applicability of Standards

(a) Established Purpose and Intent of WSEO Plan

The WSE-O plan shall include a statement establishing the purpose and intent of the WSE-O zoning district.

(b) Use, Dimensional, and Development Standards Included

Use, dimensional, and development standards are intended to create a regulatory scheme necessary for development within the WSE-O zoning district. The use, dimensional, and development standards for a WSE-O district shall be set forth in the approved WSE-O plan, and shall include: uses, maximum structure height(s), minimum setbacks, structure elevations, access, accessory structures, signage, lighting, project phasing, and other standards necessary to administer the plan.

An application for WSE-O zoning district shall consider the following standards:

(i) Allowed Principal Uses

Includes the following: wind turbines, solar panels, transmission lines, substations, meteorological monitoring devices, and energy generation facility-related temporary batch plants.

(ii) Allowed Accessory Uses

Includes the following: collection lines, maintenance facilities, and any other accessory uses necessary to carry out the intent of the overlay zoning.

(2) Structure Standards

(a) Maximum Structure Height

(i) For the wind turbines, solar panels, meteorological monitoring devices, and substations the height restriction is established by the specific wind/solar energy generation overlay district zoning and development plan. Wind turbine height shall be measured from finished grade to the tip of the blade in the vertical position.

(ii) All other structures shall comply with the height restriction established by the underlying zone district (A-35, A-5, RR-5, etc.) unless otherwise established by the specific wind/solar energy generation overlay district zoning and development plan.

(b) Structure Setbacks

(i) Wind turbines and meteorological monitoring devices shall be setback 1½ feet for every 1 foot of height from all wind/solar energy generation overlay zone district boundaries, existing dwellings, public rights-of-way, and existing above-grade utility facilities unless otherwise established by the specific wind/solar energy generation overlay district zoning and development plan (e.g. the impacts of the setback encroachment can be mitigated by establishing an external easement).

For the purpose of calculating the applicable setbacks, wind turbine height shall be measured from finished grade to the tip of the blade in the highest vertical position.

Wind turbines shall also be sited a minimum of 165 feet from the edge of any ridge with a slope greater than 20 percent.

- (ii) There shall be no setback requirement for the transmission lines.
- (iii) All other structures shall be required to meet the setbacks of the underlying zone district unless otherwise established by the specific wind/solar energy generation overlay district zoning and development plan.
- (iv) Distance from Wetlands and Hazard
 - All development within the wind/solar energy generation overlay district shall comply with separation requirements set forth in this Code to protect and preserve wetlands, stream corridors, wildlife habitat, and hazard areas.

(3) Roadway and Vehicular Access Standards

(a) Road Design and Construction Standards

- (i) Private Access Roads
 - All private access roads shall be designed to ensure that emergency vehicles can gain access to the development. Such design shall be reviewed and approved by the respective fire district, if applicable, and/or the El Paso County Fire Marshal.
- (ii) Upgrading Existing Substandard County Roads
 - The applicant shall be required to upgrade any existing substandard County roadways/rights-of-way that are necessary for access to the development whether for construction or maintenance. Whether a roadway/right-of-way is necessary for access to the development shall be determined by the required Transportation Impact Study and the associated Haul Route Plan. Prior to construction of such upgrades, the applicant is required to submit for review and receive approval by the ECM Administrator of the associated construction drawings, financial assurance estimate, and collateral.
- (iii) Reconstruction of Damaged County Roads
 - Inclusion in Development Impact Mitigation Agreement
 - The associated development impact mitigation agreement shall include language that requires the applicant to rehabilitate all haul route roads impacted by the development. The reconstruction shall

meet the requirements of the El Paso
County Engineering Criteria Manual.

(4) Storm Water Management and Drainage Standards

(a) Design Standards

Storm water and drainage facilities shall meet the standards of the El Paso County Engineering Criteria Manual and the El Paso County Drainage Criteria Manual.

(C) Decommissioning Plan and Agreement

(1) Purpose

A wind and/or solar energy generation facility authorized by this overlay zone district shall provide a decommissioning plan and agreement to ensure that the wind and/or solar energy generation facility, and appurtenant facilities, are properly decommissioned.

(2) Required

A decommissioning plan and agreement shall be required with all wind and/or solar energy generation plan overlay district applications and shall include:

- Provisions describing the triggering events for decommissioning the wind and/or solar energy generation facility and appurtenant facilities;
- Provisions for the removal of structures, debris and cabling, including those below the soil surface;
- Provisions for the restoration of the soil and vegetation;
- An estimate of the decommissioning costs certified by a professional engineer;
- Financial assurance acceptable to the County, secured by the owner, for the purpose of adequately performing decommissioning, in an amount equal to the professional engineer's certified estimate of the decommissioning costs;
- Identification of and procedures for County access to financial assurances;
- A provision that the terms of the decommissioning plan shall be binding on the owner and any of their successors, assigns, or heirs; and
- A provision that the County shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning.

(3) Review and Approval

The Planning Commission shall review and make a recommendation to the Board of County Commissioners on all decommissioning plans as a part of the WSEO rezone application. The Board of County Commissioners shall have final review and approval authority of all decommissioning plans associated with any WSEO application.

(D) Development Impact Mitigation Agreement

(1) Purpose

The construction and operation of large scale wind and/or solar energy generation facilities typically result in external impacts to nearby properties and to the existing infrastructure. The standard method for addressing and mitigating development-related impacts is through a development agreement between the applicant, County, and/or any other party that may be impacted by the development.

(2) Required

A development impact mitigation agreement shall be required with all wind and/or solar energy generation plan overlay district applications.

(3) Review and Approval

The Planning Commission shall review and make a recommendation to the Board of County Commissioners on all development impact mitigation agreements associated with all WSE-O applications. The Board of County Commissioners shall have final review and approval authority of all development impact mitigation agreements.

(E) Board of County Commissioner Approval of Major Amendments

A recommendation from the Planning Commission and a final action by the Board of County Commissioners are required for an amendment to the approved WSE-O plan that includes any of the following:

- (1)** The addition of any uses or structures not authorized by the approved WSE-O plan.
- (2)** Modification of any structure siting envelope(s) resulting in noncompliance with the dimensional standards established by the approved WSE-O plan.
- (3)** Modification of the dimensional standards established by the approved WSE-O plan.
- (4)** Modification of the material terms of the associated impact mitigation development agreement, as defined by such agreement.

(F) Administrative Approval of Minor Amendments

Any amendment to the approved WSE-O plan that does not constitute a major amendment, as established in subsection E above, shall be considered a minor amendment and may be reviewed and approved administratively. The DSD Director may, at any time, elevate an application for a minor amendment to the WSE-O plan for hearing by the Planning Commission and Board of County Commissioners.

(G) Review Criteria for Approval of WSE-O Application

(1) Review Standards

In approving a Wind and/or Solar Energy Generation Overlay Plan Map Amendment, the following findings shall be made:

- The application is in general conformance with the El Paso County Master Plan, including applicable Small Area Plans or there has been a substantial change in character of the neighborhood since the land was last zoned;
- The rezoning is in compliance with all applicable statutory provisions, including but not limited to C.R.S. § 30-28-111, § 30-28-113, and § 30-28-116;
- The site is suitable for the intended use(s), including the ability to meet the general development standards of the Land Development Code, except as otherwise amended by the specific overlay zoning district;
- The application is consistent with the specific development standards in the Land Development Code pertaining to wind and/or solar energy generation facilities;
- The application meets the air, water, light, odor or noise standards established by County, State, or federal regulations;
- The proposed use(s) will not be detrimental to the health, safety, or welfare of the inhabitants of the area and the County; and
- The proposed use(s) will not cause undue burden on existing infrastructure.

Additional Land Development Code Amendment:

- Section 5.2.54, Wind Energy Generation Facilities, shall be removed in whole and replaced by the following:
 - o "All Wind Energy Generation Facilities, and appurtenant components, not regulated under Section 5.3.3. of this Code, shall be regulated by Section 4.3.5, WSE-O Wind and/or Solar Energy Generation Plan Overlay District."

REVISIONS TO TABLE 5.2 OF THE LAND DEVELOPMENT CODE

Use Type	Agricultural Zoning Districts			Residential Zoning Districts													Commercial Zoning Districts					Industrial Zoning Districts			Obsolete Zoning Districts				Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?	Site Plan Required to Initiate Use?				
	F-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CN	CO	CC	CR	CS	I-1	I-2	I-3	C-1	C-2	M	R-4							
Smelter																								S			S						YES		
Solar Farm		3																						3									YES		
Solid Waste Disposal Site and Facility		S	S																					S			S					YES	YES		
Stables, Commercial		A ²	S ²	S ²																							A						YES		
Stables, Private	A	A	A	A	A	A ⁵						A ¹																			YES		YES		
Store																	A		A	A	A					A	A	A					YES		
Studio																	A		A	A	A					A	A	A					YES		
Tannery																								S			S						YES		
Temporary Housing	T	T	T	T								T																			YES		YES		
Theater																			S	A	A					A	A	A					YES		
Theater, Outdoor	S		S																S	S	S					S	S	A				YES			
Tower, Commercial		S																	S	S	S		S	S	S	S	S	S			YES	YES			
Trailer Sales																			S	S	A		S				A					YES			
Train Station																			S	S	S					A	A	A					YES		
Trash Transfer Facility																								S			S					YES	YES		
Tree Farm	A	A	A	A																															
Truck and Recreational Vehicle Repair Garage																					A		S	A			A						YES		

Notes:

“A” = Allowed Use, “S” =Special Use, “T”= Temporary Use

¹Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status

²Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status

³Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status

⁴Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.

⁵A minimum of 1acre is required for a private stable.

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Truck Farm		A ²	A																																		
Truck Stop		S ²																			S ²			S ²												YES	
Vehicle Repair Garage																			S	S	A		S			A	A							YES	YES		
Warehouse																			S		A		A	A		A	A								YES		
Warehouse, Flammable Material																								S			S								YES		
Waste Tire Recycling			S																					S			S						YES	YES			
Wholesale Business																			S		A		A	A		A	A								YES		
Wind Energy Generation Facility		S																						S											YES		
Wind/Meteorological Measuring Facilities	S	S	S	S								S												S			S						YES		YES		
Wood Sales (Firewood)	S	S	S																		S													YES			
Yard Sales	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T		T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	YES			

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