

**TOWN OF MEAD, COLORADO  
ORDINANCE NO. 1030**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF MEAD,  
COLORADO APPROVING WITH CONDITIONS THE SUGAR BEET SOLAR  
PLANNED UNIT DEVELOPMENT (PUD) OVERLAY/ZONING MAP  
AMENDMENT**

**WHEREAS**, the Town has enacted certain ordinances pursuant to its authority to authorize planned unit developments in accordance with the Planned Unit Development Act of 1972, C.R.S. §§ 24-67-101 *et seq.*; and

**WHEREAS**, in accordance with C.R.S. § 24-67-105(7), Section 16-3-30(a)(4) of the *Mead Municipal Code* (“MMC”) sets forth that the Board of Trustees may modify otherwise applicable standards of the MMC if a planned unit development is found to be an improvement over what would be required under otherwise applicable standards (collectively, the “Improvement Standards”); and

**WHEREAS**, in accordance with C.R.S. § 24-67-105(6), Section 16-2-120(d)(3) of the MMC sets forth the standards for inclusion of common open space within a planned unit development (“Open Space Requirements”); and

**WHEREAS**, in accordance with Section 16-3-160 of the MMC, Sugar Beet Solar, LLC (the “Applicant”) submitted an application to amend the official Town zoning map to rezone as a planned unit development overlay certain real property consisting of approximately 202.794 acres more or less, as legally described in **Exhibit 1** attached hereto (the “Property”); and

**WHEREAS**, the Applicant is the authorized representative of PK Chavez, LLC, and PK Mead, LLC, the fee owners of the Property (“Owners”); and

**WHEREAS**, the Property is currently zoned Residential Single Family (RSF-4) and General Commercial (GC); and

**WHEREAS**, the Applicant is proposing to rezone the Property to Residential Single Family (RSF-4) and General Commercial (GC), with a Planned Unit Development (PUD) Overlay, as shown on the Sugar Beet Solar Planned Unit Development (PUD) Overlay/Zoning Map attached hereto as **Exhibit 2** (“PUD”); and

**WHEREAS**, the Town’s Community Development staff is proposing certain conditions related to the approval of the PUD in order to ensure that the Board may find that the PUD: (1) represents an improvement over the Improvement Standards, and (2) satisfies the Open Space Requirements; and

**WHEREAS**, Town staff’s recommended conditions of approval are set forth in **Exhibit 3** of this Ordinance (the “Approval Conditions”); and

**WHEREAS**, the Agenda Item Summary prepared for the May 8, 2023 public hearing (rescheduled from April 10, 2023) recommends that the Board of Trustees conditionally approve the PUD, subject to the Town’s standard conditions of approval and the Board’s imposition of the Approval Conditions; and

**WHEREAS**, in accordance with Sections 16-3-160 of the MMC, the Planning Commission held a duly noticed public hearing on November 16, 2022, to review and consider the proposed PUD, which public hearing was continued to December 14, 2022; and

**WHEREAS**, following the conclusion of the Planning Commission hearing on December 14, 2022, the Planning Commission adopted Resolution 12-PC-2022, recommending denial of the PUD to the Board of Trustees; and

**WHEREAS**, the Board of Trustees opened a duly-noticed public hearing regarding the proposed PUD on December 12, 2022 and continued said public hearing to January 9, 2023, which public hearing was continued to January 30, 2023, and then subsequently continued to April 10, 2023 (at 6:00 p.m. at Town Hall), following the Town being advised that Owners had filed an amended petition for disconnection of the Property from the corporate boundaries of the Town with the Weld County District Court on or about January 27, 2023; and

**WHEREAS**, the April 10, 2023 public hearing was closed at Applicant's request; and

**WHEREAS**, specifically, Applicant requested (as permitted under the Town's Remote Participation and Remote Meeting Policy) that the conduct of the hearing be suspended until such time as the Board conducts a regular or special meeting at which a quorum will be physically present at the meeting location; and

**WHEREAS**, following the conclusion of the April 10, 2023 regular meeting, the Town and Applicant determined that the rescheduled hearing would be conducted on May 8, 2023 at 6:00PM at the Town's Public Works Administration Building; and

**WHEREAS**, notice of the May 8<sup>th</sup> hearing has been provided in accordance with applicable provisions of the MMC; and

**WHEREAS**, the administrative record for this matter includes, but is not limited to, the Town of Mead Land Use Code (including subdivision and zoning amendment regulations), the Town of Mead Comprehensive Plan, all other applicable ordinances, resolutions and regulations, the staff files and reports of the Community Development Director and Town Engineer related to the PUD, any and all submittals by the Applicant and members of the public, and the audio recordings and minutes of both the Planning Commission and Board of Trustee meetings at which this application was considered; and

**WHEREAS**, the Board of Trustees has reviewed the Approval Conditions and finds that the application of the Approval Conditions is necessary in order to ensure that: (1) the PUD represents an improvement over the Improvement Standards, and (2) the PUD satisfies the Open Space Requirements; and

**WHEREAS**, the Board of Trustees has determined that the PUD satisfies at least one of the review criteria applicable to amendments to the Town's official zoning map set forth in Section 16-3-160(e) of the MMC, and the MMC criteria applicable to the PUD, and desires to approve the PUD, subject to the conditions set forth below.

**NOW THEREFORE, BE IT ORDAINED** by the Board of Trustees of the Town of Mead, Weld County, Colorado, that:

**Section 1.** The above recitals are incorporated herein as findings of the Board of Trustees.

**Section 2.** The Board finds that the public hearing on the proposed PUD was conducted in accordance with Section 16-3-160 of the MMC.

**Section 3.** The Board of Trustees approves the PUD, in substantially the form attached hereto as **Exhibit 2**, based on a determination that the applicable standards set forth in MMC Sections 16-3-30 and

16-3-160(e) have been satisfied, and subject to the following conditions of approval:

- (a) The Applicant/Owners shall pay all fees and costs incurred by the Town and its consultants, including without limitation legal fees and costs, for review and processing of the PUD application within forty-five (45) days of receiving an invoice from the Town. The Applicant/Owners shall pay all such fees and costs prior to the Town recording the PUD in the Weld County real property records (“Records”).
- (b) The Applicant/Owner shall resolve and correct any technical issues as directed by Town staff prior to the recording of the PUD in the Records.
- (c) The Approval Conditions in the form attached hereto as **Exhibit 3** shall be fully incorporated into the PUD in a form acceptable to the Community Development Director and Town Attorney prior to recording the PUD in the Records or, alternatively, the Applicant/Owners shall finalize and execute a development agreement in a form acceptable to the Community Development Director and Town Attorney (“Development Agreement”) which memorializes all of the Approval Conditions, which fully executed Development Agreement shall be recorded in the Records together with the PUD.

**Section 4. Execution of Certificate of Approval of Board of Trustees.** The Mayor and Town Clerk shall be authorized to execute the “CERTIFICATE OF APPROVAL BY THE BOARD OF TRUSTEES” appearing on the PUD following the date on which all conditions set forth in Section 3 of this Ordinance above have been satisfied.

**Section 5. Authority to Execute Development Agreement.** The Town Attorney, in consultation with the Community Development Director and Town Manager, shall be authorized to finalize the Development Agreement contemplated in Section 3(c) of this Ordinance above and shall also be authorized to make non-material formatting changes to the Development Agreement, as may be necessary prior to execution. The Town Attorney shall not be authorized to alter or modify the Approval Conditions set forth in **Exhibit 3** unless such alterations or modifications have been reviewed and approved by the Board of Trustees at a public meeting of the Board. The Mayor, Mayor Pro Tem, or Town Manager shall be authorized to execute the Development Agreement on behalf of the Town when in final form.

**Section 6. Effective Date.** This Ordinance shall be published and become effective as provided by law.

**Section 7. Severability.** If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more part, section, subsection, sentence, clause or phrase is declared invalid.

**Section 8. Repealer.** All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

**Section 9. Certification.** The Town Clerk shall certify the passage of this Ordinance and make not less than one copy of the adopted Code available for inspection by the public during regular business hours.

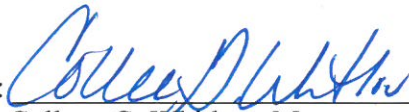
**INTRODUCED, READ, PASSED, AND ADOPTED THIS 8<sup>TH</sup> DAY OF MAY, 2023.**

**ATTEST:**

By:   
Mary E. Strutt, MMC, Town Clerk



**TOWN OF MEAD:**

By:   
Colleen G. Whitlow, Mayor

**Exhibit 1**  
**PROPERTY LEGAL DESCRIPTION**

*[Attached.]*

**Exhibit 2**  
**SUGAR BEET SOLAR PLANNED UNIT DEVELOPMENT (P.U.D.) OVERLAY/ZONING**  
**MAP**

*[Attached.]*

**Exhibit 3**  
**APPROVAL CONDITIONS**  
[recommended by Town Staff]

[Attached.]

### **Proposed Conditions of Approval (Sugar Beet Solar PUD Overlay)**

Developer = Sugar Beet Solar, LLC, a subsidiary of Enyo Power Partners, LLC, a Delaware limited liability company (“Developer” or “Enyo”).

- Approved length/term of Project. Add language to PUD to clarify that the operational life of solar project (“Project”) limited to forty (40) years from the date the Project first generates electricity (“Commencement Date”).
- Clarify Project approval process. Add language to PUD to clarify the process for solar project approval by Town (post conditional approval of the PUD), including:
  - Minor Subdivision Plat review under *Mead Municipal Code* (“MMC”) Sec. 16-4-40(b)(2). Minor Subdivision Plat requires Planning Commission recommendation and Board of Trustees review/approval, both at public hearings.
  - Administrative Site Plan submittal under MMC Sec. 16-4-100. Requires Staff approval, followed by ratification by the Board of Trustees.
  - PUD language to confirm that Minor Subdivision Plat and Administrative Site Plan may be processed simultaneously.
  - Dedication of right-of-way for CR 34 and CR 5 accomplished via Minor Subdivision Plat.
  - A landscape covenant on the Property through decommissioning. A Final Landscape Plan will be included as part of the Administrative Site Plan.
- Decommissioning plan. Add language to PUD to require a detailed decommissioning plan (“Decommissioning Plan”) and the posting of financial assurance with the Town sufficient to fund the estimated decommissioning/reclamation costs net of salvage value required by the Decommissioning Plan, which costs shall be set forth with specificity in the Decommissioning Plan (the “Security”).
  - The Decommissioning Plan shall be required to be submitted for approval as a component of the Administrative Site Plan.
  - Prior to issuance of a certificate of completion for the Project, the Security in an amount sufficient to fund the estimated decommissioning/reclamation costs required by the Decommissioning Plan will be posted with the Town.
  - The Security shall: (i) name the Board of Trustees of the Town of Mead as the sole beneficiary, (ii) shall include automatic extension language (or an “evergreen clause”) in a form acceptable to the Town Attorney, and (iii) be “bankruptcy remote,” meaning that the Security will be unaffected by the bankruptcy of the Developer or any of its successors or assigns.
  - The Town will have the right to draw upon the Security to pay for decommissioning in the event that Developer has not commenced decommissioning/reclamation activities within one year after the 40th anniversary of the Commencement Date.
  - The Security will be in a form acceptable to the Town Attorney with consideration of credit worthiness, financial strength, credit history, credit rating and debt and may be in the form of: (A) Surety bond with a corporate surety registered in Colorado; (B) Certificate of deposit in the name of the Town of Mead with a state or federally insured financial institution in Colorado (Enyo will be entitled to all interest payments); (C) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, or other forms as may be acceptable to the Town Attorney.
  - On the twentieth (20th) anniversary of the Commencement Date and every five (5) years thereafter until the 35th anniversary of the Commencement Date, the Town and Enyo will jointly select a an independent Colorado-licensed engineer to prepare an update to the Decommissioning Plan that reflects the then-current costs to decommission the Project facilities, net of recycling and salvage value of the Project



facilities, and the cost to restore the land to a condition substantially similar to its condition prior to development of the Project, for review and approval by the Town (“Required Decommissioning Plan Updates”). The amount of the Security shall be modified to equal 100% of the costs set forth in the Required Decommissioning Plan Updates. The Decommissioning Plan approved by the jointly selected Colorado licensed engineer shall be binding on Developer.

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- Developer shall decommission the Project and complete restoration of the Property, within twelve (12) months following the earlier of either: (a) the 40th anniversary of the Commencement Date; or (b) after power production has permanently ceased for a period of 365 consecutive days.
- All non-utility owned equipment, conduits, structures, fencing, and foundations to a depth of at least three (3) feet below grade will be removed. This requirement shall be set forth in the Decommissioning Plan and all Required Decommissioning Plan Updates.
- The Decommissioning Plan will require the property to be restored to a condition substantially similar to its condition prior to development of the Project. This requirement shall be set forth in the Decommissioning Plan and all Required Decommissioning Plan Updates.
- If prior to completion of decommissioning the Town reviews and approves a separate land use application to transition the Property to residential and/or commercial uses, the Decommissioning Plan will be revised to require the property be restored to a condition compatible with construction of residential and commercial uses.
- Public dedications – ROW and Open Space Requirements.
  - PUD shall be amended to show dedication of additional right-of-way for a “rural” cross-section, in accordance with the Transportation Master Plan, for CR 34 and CR 5. As set forth above, dedication of right-of-way for CR 34 and CR 5 accomplished via Minor Subdivision Plat. The Minor Subdivision Plat will be recorded following a determination by staff that the building permit is eligible for approval.
  - Dedication of a total of 38.4 acres required to satisfy the open space requirements under MMC Sec. 16-2-120 (equivalent to 20% of the 185 acres of RSF-4 zoned property included in the PUD and 8% of the 17.7 acres of GC zoned property in the PUD) (“Open Space Requirements”). PUD shall be amended to show, in graphic form, a preliminary park, open space and trails plan (“Preliminary Open Space Plan”). The PUD shall also be amended to show the park, open space and trails to be dedicated to the Town to satisfy the Open Space Requirements. The Preliminary Open Space Plan shall be substantially in accordance with the following:
    - Park dedication (of approximately 12 acres in size) to be located east of the existing Mead Ponds park.
    - Trail easement dedications of approximately 17.6 acres in size.
    - The remaining open space dedication requirement will consist of approximately 8.8 acres located at the corner of CR 34 and CR 5, to be used at the Town’s discretion in accordance with Mead Municipal Code (“MMC”) Section 16-2-120.
  - Dedication of all property necessary to satisfy Open Space Requirements will be accomplished via Minor Subdivision Plat. The Minor Subdivision Plat will be recorded following a determination by staff that the building permit is eligible for approval.
  - Public dedications of right-of-way and Open Space Requirements will be credited to then owner of the property for any future dedication requirements upon decommissioning and redevelopment of the property.

- Developer shall provide a final park, open space, and trails plan, including detailed programming and design for same (“Final Open Space Plan”), as a component of the Administrative Site Plan. The Developer will pay for the design and construction of 1) an improved parking lot for at least 20 vehicles, a crusher fines loop trail, and xeric groundcover within the park and 2) approximately 1.8 linear miles of trails. All trail easements shall consist of a 10-foot wide concrete trail and a crusher fines “recovery zone” of 5-feet wide, on either side of the trail. The recovery zone width will vary depending on curvature of the trail.
- The timing of Developer’s construction of all improvements shown in the Final Open Space Plan shall be set forth with specificity in the subdivision improvement agreement or site plan agreement as required by the MMC. The Town shall accept the park, open space and trails detailed in the Final Open Space Plan for maintenance on the date of the Town’s final acceptance of same and following the end of the two-year warranty period.
- Developer will establish a general improvement district (GID) to establish a source of funding to assist the Town with defraying the ongoing maintenance costs associated with the park, open space, and trail improvements described within the subdivision improvement agreement (SIA) or the Site Plan Agreement (SPA) and the Parks and Open Space Plan. The GID will be organized to generate tax revenue sufficient to offset the Town’s ongoing maintenance costs. The minimum level of GID funding (subject to inflationary adjustments) shall be set forth with particularity in the Subdivision Improvement Agreement or Site Plan Agreement.
- Developer agrees to provide/dedicate adequate water shares and infrastructure construction to provide irrigation for the landscaping. Any water shares that are dedicated will be credited to the then record owner of the property for any future redevelopment of the property.
- Noise study and mitigation requirements. Developer and Town will jointly select an independent noise consultant paid for by the Developer to provide a noise study (decibel contour study) demonstrating compliance with MMC Article 13 for commercial premises for the Project in a form acceptable to the Town as part of the Administrative Site Plan submittal. If required in order to comply, Developer agrees to incorporate noise mitigation techniques acceptable to the Town, as may be recommended by the noise study as specific requirements of the Administrative Site Plan. Acceptable noise mitigation techniques will include techniques that ensure acceptable noise levels at the Project property lines and along internal trail corridors.
- Requirement to maintain all equipment in good repair. Developer shall maintain in good repair and working condition the solar arrays, underground collection system, substation, battery energy storage system, transmission line and all other equipment appurtenant to the Project. Enyo shall remove all non-functioning or obsolete equipment from the Property within three (3) months, subject to force majeure delays. Town chief building official or designee (Inspector) shall have the right to access the Property for inspection on no less than quarterly basis. Language setting forth these requirements shall be added to the PUD and Administrative Site Plan.
- Landscaping plan. A detailed landscaping plan, along with fencing specifications (including a detailed graphic/map detailing proposed fence height and fencing materials) (“Final Landscape Plan”), will be added to the PUD and included in the Administrative Site Plan submittal.
  - Outside the security fence adjacent to CR 34 and CR 5: Ornamental trees, xeric shrub and perennial forbs and grasses following xeriscape design principles to facilitate

water conservation per MMC Sec 16-2-150 Landscape Design and an eight foot wide concrete sidewalk per MMC Sec 16-2-100. A shading study will be submitted to demonstrate trees 1) will avoid shading solar panels, and 2) will provide summer shade on sidewalk along CR 34.

- Inside the security fence: establishment and maintenance of a non-irrigated pollinator ground cover.
  - Outside the security fence where not adjacent to CR 34 and 5: establishment and maintenance of a non-irrigated native prairie.
  - Irrigation: Water rights will be obtained and dedicated to the Town to provide for the long-term irrigation of street trees.
  - Weeds will be prevented, treated, and maintained according to a Property Maintenance Plan as part of the Administrative Site Plan.
  - Fencing adjacent to CR 34 and CR 5 will meet MMC Sec. 16-2-170 and Homeland Security requirements as a minimum eight feet decorative metal or cast iron.
  - Fencing adjacent to private or Town owned lands will meet Homeland Security requirements as a minimum eight feet chain link.
  - In addition, Developer will propose a landscape covenant to be recorded on the Property which covenant shall require a minimum level of landscape maintenance through decommissioning of the Project ("landscape covenant"). The landscape covenant shall be in a form acceptable to the Community Development Director and Town Attorney and shall be recorded against the Property concurrently with recordation of the Administrative Site Plan.
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- Transmission lines/equipment. A description, plan, and drawing of the equipment needed (high tension poles, wires, other equipment) to transfer energy from the Project arrays and batteries to their ultimate substation (PRVPA substation on adjoining property, or other), will be added to the PUD and included in the Administrative Site Plan submittal.
  - Location of onsite substation. Developer shall modify the PUD to clearly show (in map or graphic form) the location of the proposed onsite substation. The substation shall be setback a minimum of 180' from any Town (or County) ROW and Mead Ponds Park.
  - Location of battery storage system. Developer shall modify the PUD to clearly show (in map or graphic form) the location of the proposed battery storage system. The battery storage system shall be north of the substation and setback a minimum of 250' from any Town (or County) ROW and Mead Ponds Park. The Battery Energy Storage System will occupy no less than 2 acres and not exceed more than 27 acres.
  - Enyo agrees to actively solicit and offer the electricity produced and stored by the Project to the Town's electrical provider to assist the Town and the Town's electrical provider in meeting their respective sustainability goals.