

**PARK COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS  
RESOLUTION NO. 2021-\_\_\_**

**A RESOLUTION DENYING THE APPLICATION OF HARTSEL SOLAR LLC FOR A  
1041 WILDLIFE HABITAT AREAS PERMIT FOR THE HARTSEL SOLAR PRESERVE,  
LOCATED IN PARK COUNTY, COLORADO**

WHEREAS, the Board of County Commissioners of Park County, Colorado, pursuant to Colorado statute is vested with the authority of administering the affairs of Park County, Colorado; and

WHEREAS, the Park County Board of County Commissioners ("BOCC"), pursuant to C.R.S. §24-65.1-101 et seq., have designated Wildlife Habitat Areas as an area of state interest; and

WHEREAS, the BOCC has adopted guidelines for the regulation of this designated area of state interest known as the Park County Regulations for Wildlife Habitat Areas (the "Regulations"); and

WHEREAS, the BOCC, pursuant to section 24-65.1-301, C.R.S., has the power to hold hearings on applications for permits for development in areas of state interest and grant or deny applications for permits for development in areas of state interest; and

WHEREAS, the Board of County Commissioners held a public hearing on the 2<sup>nd</sup> day of March 2021, for the purpose of hearing the application of Hartsel Solar LLC (the "Applicant"), for a Wildlife Habitat Areas Permit for a utility-scale solar facility project to be located on 595 acres north of Highway 24, approximately 11 miles east of Hartsel, Colorado in Park County (the "Project"), being more particularly described in the application filed by the Applicant (the "Application"); and

WHEREAS, the Board of County Commissioners continued the hearing for the purpose of deliberations to the 9<sup>th</sup> day of March 2021; and

WHEREAS, all applicable notice and public hearing requirements have been followed; and

WHEREAS, the BOCC has received letters and exhibits including but not limited to a letter dated January 6, 2021 from Mark Lamb, an Area Wildlife Manager with Colorado Parks and Wildlife ("CPW Letter") and a letter dated February 4, 2021 from Joshua Voorhis, a District Ranger with the South Park Ranger District ("South Park Ranger District Letter"); and

WHEREAS, during the public hearing on March 2, 2021 the Applicant presented slides and testimony, Mark Lamb and Ian Petkash also with Colorado Parks and Wildlife and Mr. Voorhis and members of the public presented testimony; and

WHEREAS, during the public hearing on March 2 the BOCC heard all of the testimony and statements of those present and those attending online via Zoom who commented, studied the request of the Applicant and the Park County Development Services Staff Report and all of the exhibits and evidence presented in this matter and, having been fully informed, deny the 1041 Wildlife Habitat

## Areas Permit.

The BOCC bases this denial on the following findings:

1. The Project area covers 595 acres in portions of Sections 30 and 31, Township 11 South, Range 73 West of the 6th Principal Meridian in Park County, Colorado (Figure 1). The UTM coordinates for the approximate center of the Project area are 448650mE, 4323649mN, Zone 13 North (the “Proposed Development Area”). The longitude/latitude of the Project area is 105.593516°W/39.060420°N. The elevation of the Project is approximately 8,890 to 9,100 feet above sea level.
2. During the hearing and in the Applicant’s consulting biologist’s report the Applicant has asserted that Colorado Parks and Wildlife and the County’s consulting biologist did not find that Project will have a significant impact on wildlife and therefore the BOCC must approve the Application. The BOCC disagrees with the Applicant that the standard of approval for a 1041 Wildlife Habitat Areas Permit is a finding of no significant impact from the Colorado Parks and Wildlife or any other outside agency or consulting biologist. As stated in Section 2-404 of the Regulations, “A Permit application shall be denied if the applicant fails to demonstrate to the Permit Authority’s satisfaction that the proposed Project will not have a significant adverse net effect on wildlife species within the Proposed Development area.” Thus, the burden is on the Applicant to present evidence that satisfies the BOCC that the Project will not have a significant adverse net effect on wildlife species within the Proposed Development area. The Applicant has failed to do so.
3. The BOCC finds that the Applicant has failed to demonstrate to the BOCC’s satisfaction that the proposed Project will not have a significant adverse net effect on wildlife species within the Project Development Area. The BOCC sets forth the following findings in support:
  - a. **Section 2-401(1).** The Project, as evaluated after implementation of all mitigation measures will have a significant adverse net effect on wildlife species within the Project Development Area.

The Regulations, Section 2-401(1) provides:

“A permit application may be approved if the applicant demonstrates to the Permit Authority’s satisfaction that the net effect of the Proposed Development Project, as evaluated after implementation of all mitigation measures:

(1) Will not have a significant adverse net effect on wildlife species within the Proposed Development Area. Assessment of net effect on wildlife species shall be based on the following:

(a) The resultant disturbance or harassment to individual animals, groups of animals or wildlife species.

(b) Site development or activities that disrupt necessary life-cycle functions resulting in stress to the extent that

physiological damage is done to an individual animal, group of animals or wildlife species. Examples include, but are not limited to, introduction of non-native vegetation, excessive use of fertilizers and other chemicals, placement of structures in close proximity to nesting and feeding areas and excessive exterior lighting.

(c) Species' reliance on specific, unique habitat features that may be affected.

(d) Uniqueness of species to area of Proposed Development within Park County.

(e) Uniqueness of species to Park County.

(f) Mitigation efforts that directly address the negative effects of the proposed land use on wildlife species or specific wildlife species impacted.

(g) Any other significant factor(s) the Permit Authority deems relevant.”

The CPW Letter states that the Project Development Area may host species such as pronghorn, mule deer, and elk. The Project Development Area is “an important migration route for pronghorn to summer and winter ranges.” To mitigate this life-cycle function of migration, the Applicant has proposed installing three wildlife migration corridors that are each 300 feet wide. These corridors will be at ground level and bordered by fabric-covered chain link fence for pronghorn to move through the Project Development Area. In support of the success of these corridors, the Applicant shared a video of pronghorn using raised walkway corridors that traverse over highways.

However, there is a difference between pronghorn traveling over something like an above-grade highway crossing and pronghorn traveling through something like a large solar farm. There is no conclusive data about pronghorn utilizing at-grade migration corridors. The South Park Ranger District Letter stated that “it will be interesting to see how much utility these corridors have when they are surrounded by 7-foot-high chain link fencing given pronghorn’s avoidance of areas that do not have an open view.” Further, the South Park Ranger District Letter and the CPW Letter both stated that it is essential for these corridors to be open on either end or the pronghorn movement will be further limited.

Due to the above, the net effect of the Project will have a significant adverse net effect on wildlife species within the Project Development Area. The proposed corridors have not been proven to be effective and the Project will disrupt necessary life-cycle functions by limiting or eliminating movement and migration through the Project Development Area. Relying on camera monitoring after construction would indicate whether the corridors are effective or not, but if they are not effective the damage to pronghorn herds will have already occurred.

b. **Section 2-401(2).** The Project, as evaluated after implementation of all mitigation

measures will have a significant adverse net effect on wildlife habitat within the Project Development Area. The BOCC sets forth the following findings in support:

The Regulations, Section 2-401(2) provides:

“A permit application may be approved if the applicant demonstrates to the Permit Authority’s satisfaction that the net effect of the Proposed Development Project, as evaluated after implementation of all mitigation measures:

(2) Will not have a significant adverse net effect on wildlife habitat within the Proposed Development Area. Assessment of net effect on wildlife habitat shall be based on the following:

- (a) The amount of vegetation/habitat removal and/or alteration within the development site.
- (b) The amount of habitat of similar type and quality within the Development that remains contiguous.
- (c) The existing and proposed amount of lot coverage.
- (d) The existence of contiguous habitat of similar type and quality on adjoining land.
- (e) The effect on surface and subsurface water quantity and quality.
- (f) Uniqueness of habitat to the Proposed Development within Park County.
- (g) Uniqueness of habitat to Park County.
- (h) Mitigation efforts that directly address the negative effects of the proposed land use on wildlife habitat.
- (i) Any other significant factor(s) the Permit Authority deems relevant.”

The Applicant is proposing fenced development of 448 acres out of a 595-acre property. The CPW Letter states: “The project area includes riparian habitat and small drainage crossings in the form of four riverines and two wetlands as documented by the National Wetlands Inventory.”

As stated in the CPW Letter, “The wetlands within the project area are two of the only naturally occurring water sources for wildlife in the area.” Additionally, the scarcity of water sources in the Project Development Area was addressed by Mark Lamb, Area Wildlife Manager and Ian Petkash, Lake George District Wildlife Manager during the hearing. Further, the CPW Letter stated: “[The wetlands within the project area] are of particular concern given the limited availability of this habitat in the area and the proportionally high use by many different species.” CPW goes on to recommend “that these wetlands will be completely avoided and incorporated into the wildlife corridors.”

The BOCC finds that the Project Development Area does not completely avoid these wetlands. The Project Development Area surrounds the north and west sides

of a wetland on the northeast portion of the Project. There is a proposed wildlife corridor allowing some access to the west side of this wetland, but as stated above, the corridor may or may not be utilized by wildlife due to the unproven corridor design, the unproven effectiveness for wildlife, especially pronghorn, the 7-foot high fence on either side of the corridor, and the fabric on the fence that eliminates line of site and will make noise in the wind. It is unclear how wildlife can access this wetland from the east, as the two portions of proposed “undeveloped wildlife mitigation area” (parcel nos. 26898 and 26900) to the east of the wetland are not contiguous. If the only access to these water sources is through the Applicant’s proposed wildlife migration corridors that are not proven to be effective it could put wildlife species at risk by eliminating a life-sustaining water supply. Access to precious water supplies is extremely important in many climates, but especially a high-altitude climate.

An additional element that will inhibit wildlife species from accessing this life-sustaining water source is the fabric that is proposed to be placed on the chain link fences. The Project Development Area is located in a very windy portion of Park County. Fabric on a fence in a windy area will degrade and flap in the wind, deterring wildlife, especially pronghorn, from traveling to the area in search of available water or vegetation. This fabric will also eliminate line of site in this critical habitat.

In regard to the Applicant’s proposed “undeveloped wildlife mitigation areas,” the BOCC acknowledges the effort made by the Applicant in negotiating to purchase this land. If the effort is successful, the purchase of these additional parcels brings the total project area to 715 acres. However, as of the date of the hearing, the majority of the parcels were not under contract (“signed”). Furthermore, the purchase of these non-contiguous parcels does not solve the overarching problem of wildlife access on either end of the migration corridors nor the sheer size of the solar development and the amount of habitat that will be impacted as a result.

The Project Development Area includes important winter habitat and is mapped by CPW as winter range, severe winter range, and a winter concentration area. In the winter, the wind scours the snow, providing uncovered vegetation for wildlife when most of their winter habitat is covered in snow. This provides a vital food resource for wildlife and is a unique characteristic of the property within the Project Development Area.

The Project Development Area lies between 8,890 to 9,100 feet above sea level. Every blade of grass is very delicate in the County. Due to the high altitude and climate, it is difficult for vegetation to grow here. Fencing off and developing a large portion of this already limited vegetation eliminates a vital resource for wildlife in the area.

The CPW Letter states: “habitat loss and fragmentation are significant concerns caused by habitat conversion to solar development; therefore, minimizing the

project footprint can help maximize available lands for wildlife species to meet their year-round and seasonal needs.” (Emphasis added.)

The BOCC finds that the Project footprint is significant in scale compared to the private parcel on which it is proposed to be located. The Project Development Area consists of a footprint of 448 fenced acres on a 595-acre parcel of land. Moreover, the Project footprint is significant in scale compared to critical habitat area for wildlife, especially pronghorn, and virtually wipes out a very large area of that critical habitat.

- c. **Section 2-401(3).** The Project, as evaluated after implementation of all mitigation measures will have a significant adverse net effect on wildlife movement patterns within the Project Development Area. The BOCC sets forth the following findings in support:

The Regulations, Section 2-401(3) provides:

“A permit application may be approved if the applicant demonstrates to the Permit Authority’s satisfaction that the net effect of the Proposed Development Project, as evaluated after implementation of all mitigation measures:

(3) Will not have a significant adverse net effect on wildlife movement patterns/displacement and adaptation of wildlife populations within the Proposed Development area. Assessment of net effect on wildlife movement patterns/displacement and adaptation of wildlife populations shall be based on the following:

(a) Proposed Development’s effect on preventing wildlife from using a habitat they would normally use, such as blocking migration patterns from summer to winter range.

(b) Proposed Development’s effect on causing wildlife to find new routes that expose them to significantly increased predation, interaction with vehicles, intense human activity, or more severe topography and climatic conditions.

(c) The size of the affected habitat and availability of similarly sized and quality habitat within the surrounding area.

(d) Inability of the specie or species to adapt to significant alteration of their current habitat.

(e) Inability of the specie or species to find a new habitat that is sufficient to sustain the species over the long term.

(f) Mitigation efforts that directly address the negative effects of the proposed land use on wildlife movement patterns, adaptation and/or displacement of wildlife populations.

(g) Any other significant factor(s) the Permit Authority deems relevant.”

The Project Development Area is located on an important migration route for

pronghorn to summer and winter ranges.

The importance of habitat and migration is noted in the CPW Letter which states:

CPW has a statutory responsibility to manage all wildlife species in Colorado; as such we encourage protection for Colorado's wildlife species and habitats through responsible energy development and land use planning. Protection of core wildlife areas, big game winter range, seasonal migration corridors, raptor nesting locations and quality fisheries and aquatic habitats are of extreme importance to CPW. CPW recommends that all proposed projects be assessed to avoid, minimize, or mitigate impacts to sensitive wildlife habitats and species. That includes Federal and/or State listed species, state species of concern, as well as big game wildlife (migration corridors, winter range, breeding areas), breeding and nesting habitats for ground-nesting birds, and nests of raptors sensitive to development in order to prevent loss of habitat or fragmentation of habitat.

The Project Development Area is a migration corridor that is of extreme importance to CPW and therefore it is of extreme importance to Park County. The Applicant's proposed wildlife migration corridors are not proven to be a viable way to mitigate migration disruption to the point where the Park County BOCC could be satisfied that the Project will not have a significant adverse net effect on wildlife species.

There has been no evidence presented that shows that pronghorn will utilize these corridors. The only evidence of successful wildlife corridors depicted above-grade highway crossings. The highway crossings allowed the wildlife to traverse the highway while still allowing for line of site and a 360 degree open view. Comparatively, the proposed at-grade wildlife corridors will be surrounded by a 7-foot fence covered in fabric. The pronghorn will not have a 360 degree open view migrating through the Project Development Area like they would with the highway crossings.

An additional deterrent for the pronghorn in utilizing these wildlife corridors is the fabric that will be installed on the fences. The fabric will work to both eliminate line of site for the pronghorn and make noise when blown in the wind, further limiting the possibility that these untested wildlife corridors will be effective.

The success of the proposed wildlife corridors is crucial for the pronghorn. Habitat fragmentation is a significant concern caused by habitat conversion to solar development. The CPW Letter recommends "minimizing project footprint to help maximize available lands for wildlife species..." The Project Development Area consists of a 595-acre parcel of land with 448 fenced acres. This is a significant development footprint that does not maximize available lands for wildlife species, instead it prevents wildlife from using the area. Moreover, due to reliance on the

untested migration corridors as the only migration mitigation, this large-scale Project has the potential to virtually block the pronghorn's summer to winter range migration.

4. The BOCC disagrees with the conclusion of Applicant's Wildlife Impact Report that "the project will not have a significant adverse net effect on wildlife species, wildlife habitat, and wildlife movement patterns/displacement..." The BOCC concludes that the proposed migration corridors are not a proven effective mitigation measure to ensure that pronghorn and other wildlife have adequate access to food and water sources. Further, the BOCC concludes that the size of the Project Development Area will reduce the crucial winter habitat for the local pronghorn and all but block their east to west/west to east movement from summer to winter range.

**NOW, THEREFORE, BE IT RESOLVED BY THE PARK COUNTY BOARD OF COUNTY COMMISSIONERS THAT THE A 1041 WILDLIFE HABITAT AREAS PERMIT FOR HARTSEL SOLAR PROJECT, PARK COUNTY, COLORADO IS DENIED.**

Moved, seconded, and passed this \_\_\_ day of \_\_\_\_\_ 2021.

PARK COUNTY BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Richard Elsner, Chairperson

ATTEST:

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County Clerk