

September 1, 2024

To:

Park County Planning and Zoning Department

P.O. Box 1598

856 Castello Avenue

Fairplay, CO 80440

ATTN: Jennie Gannon, Planner II

ATTN: Mike Smith, Park County Planning Director

FOR: Delivery to the Park County Planning Commission for review and inclusion into the record.

From:

Thousand Peaks Ranch Association (TPRA)

P.O. Box 817

Fairplay, CO 80440

Submitted By: Kevin Spencer, TPRA President

Re:

Case #, A24-0037

Case Name, RWE Battery Energy Storage Facility CUP

Applicant, RWE Solar Development, LLC

Request, Applicant is requesting approval of a Conditional Use Permit for a major utility facility (Battery Energy Storage System) on Thousand Peaks Ranch Lot #026.

TPRA BESS Planning Commission Conditional Use Permit Presentation

My name is Kevin Spencer and I am the Thousand Peaks Ranch Association President as well as the land owner of TPRA Lot #092A. As the current TPRA President, I represent 331 ranch owners that comprise the membership of Thousand Peaks Ranch Association which was established in December of 1985 as a residential community. We have 58 miles of privately owned roads that are jointly owned by the land owners of record and managed by the TPRA Board of Directors (both roadways and easements). The Association does not receive any Park County support for the maintenance of the roads in the summer or winter timeframes. The Association builds and maintains its roads in the summertime, and clears the roads of snow in the wintertime without Park County support. The Association is autonomous where the maintenance and control of the roadways are concerned and it is the TPRA Board of Directors who determine the maintenance schedule and easement control parameters. In preparation for this process, I have witnessed numerous Park County Planning Commission Meetings, as well as Board of County Commissioners Meetings, and have noted that the format can be limiting on highly contested issues that are both complex and impactful to all Park County residents. These meetings appear to be more aligned to record public comments as they are stated toward the Planning Commission (or the BOCC) than to allow the free flow of information between participants to adequately determine if what is being proposed is beneficial to Park County and its residents. With the amount of information being evaluated with respect to the BESS proposal, and the relevant strong positions of those in favor and those in opposition, the existing meeting format can become a hindrance to the open discussion such that the required review and challenge of needed materials with which to make an informed decision can be lost in the back and forth discussion format.

I realize this format is required to maintain control of the meeting and to adequately document the meeting minutes for historical maintenance and review. With an issue of this magnitude that can effect the historical nature of our County and community, I feel certain that whatever

recommendation or decision that is rendered by the Park County Government process will be extensively reviewed by all relevant parties. That decision must be able to be systematically defended and proven that it was based on a comprehensive review of all the relevant data, and that it met the stated criteria with which to render the decision. With this in mind, I have provided the Association's presentation to the Commission for your review so that when the Association's time of public comment is provided, the Association can highlight the relevant issues and the Planning Commission can be prepared to ask clarifying questions to better understand and comprehend this complex and highly debated issue.

What the Park County Land Use Regulations say:

The overall purpose and guidance of the Park County Land Use Regulations is to represent the residents of Park County by fully examining the needed material to properly evaluate various requests that are presented to the Park County Government and render supported decisions while ensuring the protection of the public health, safety, and welfare of the residents they represent. The Park County representatives are given "unlimited power" to request needed information and data from applicants in order to render a decision that meets the high bar of "clear and convincing evidence" with respect to the overall guidance of the regulations. The applicant is afforded the opportunity to prepare and present the specified request and to provide any and all needed materials to support their request, and prove it is in line with all relevant Park County Land Use Regulation requirements.

ARTICLE IV, DIVISION 1, Section 4-100 Interpretation, Part A states "The interpretation and application of the provisions of these Land Use Regulations shall be regarded as minimum requirements for the protection of the public health, safety, and welfare." This criteria provides the needed weight placed upon process participants to ensure that the primary focus of the intent and execution of the process is geared to serve the residents of Park County first and foremost. This includes the Section 5-501 Application for Conditional Use Permit contents and the Section 5-503 Standards for Approval of Conditional Use Permit evaluation criteria. These can be regarded as minimum requirements in the application of the process, and as such can be expanded to what is needed to properly evaluate the applicant's request as it relates to the residents of Park County. The "member position" on the Planning Commission provides members the authority to represent Park County residents while the Park County Land Use Regulations procedure gives the members the power to protect those Park County residents to include requesting whatever material is required to render an informed decision.

ARTICLE V, DIVISION 5, Section 5-500 Conditional Uses Generally states "A Conditional Use is a use of land that may be found generally compatible with the permitted uses in a zone district, but which requires site-specific review of the use location, design, intensity, density, configuration and operating characteristics, and which may require the imposition of appropriate conditions in order to ensure compatibility of the use at a particular location, and mitigate its potentially adverse impacts." This statement clearly identifies the requirement of site-specific reviews of identified procedure parameters to determine the request's compatibility. It also identifies the imposition of appropriate conditions to mitigate any potentially adverse impacts identified by the site-specific reviews. In almost any application, reviews are required to be systematically documented such that they are reviewable and can be directly tied to the appropriate conditions to which the conditions are designed to mitigate any potential issues identified in the site-specific reviews. The only method of systematically ensuring that the "appropriate conditions" do in fact mitigate the identified issues associated with the site-specific reviews, is if those reviews are properly documented such that the relevant issues are identified and specifically tied to the developed "appropriate conditions". Only then can the required stated actions of the "appropriate Conditions" be evaluated as being an effective guard against the issues identified in the required site-specific reviews.

ARTICLE V, DIVISION 5, Section 5-501 Application for Conditional Use Permit under Contents states "All applications for a Conditional Use Permit shall be made on forms prepared by and available from the Planning Department and shall contain the following information:", followed by a listing identifying the "shall contain" material. A cursory review of the listed material would identify no required data or information regarding the ultimate goal of the Park County Land Use Regulations which is stated to be: "for the protection of the public health, safety, and welfare." This omission alone would indicate the listing is a minimum and requires expansion to ensure that the overriding guidance in the Regulations is accommodated. This has routinely been procedurally provided by the Planning Director through "the position" requirements to review and augment the material with additional information such that "the position" arrives at a point where he/she is satisfied with all provided content and deems the "package complete". This requirement is procedurally provided for in ARTICLE V, DIVISION 5, Section 5-502 Procedure for Conditional Use Permit Review. But this augmentation of the material is based on one individual's experience with input from Planning Department personnel and is solely tied to the aspects of assembling a "complete package". The Planning Commission and BOCC members are not constrained by prior decisions as to "package completeness", as they will be called upon to perform a different function of evaluating all package material, as well as issues and/or questions that arise along the process, and to cast a vote based upon their understanding of all available data and information and how it relates to the Applicant's request. If the needed information is not available in the package before the Planning Commission to make an informed decision, then they are obligated to request additional information and/or data from the Applicant. The Government's process allegiance is to the residents of Park County as stated in the Regulations and not to the Applicant who is merely using the process to facilitate an exception with which to support their objective or goal. It is Park County Government's stated goal to ensure that the residents of Park County are protected, and that their decisions are based on a complete review of the "required" material, both provided and requested, to ensure that the decisions are based on a complete and accurate review. The ultimate goal of Park County Government's actions should be to facilitate a correct decision and not to accommodate an Applicant's request and/or timeline with an unsupported decision at the expense of Park County residents. It is far more important to take the time needed to reach the correct decision that is supported by the "needed" information, then it is to meet any schedule and/or timeline desires of the Applicant.

ARTICLE V, DIVISION 5, Section 5-503 Standards for Approval of Conditional Use Permit states "In considering any application for Conditional Use Permit, the following standard shall govern. The applicant for the proposed permit shall bear the burden of proof and the resolution approving the application shall be approved and adopted only if it appears by clear and convincing evidence presented during the public hearing that the following conditions or circumstances exist:" The list that follows is regarded as the minimum requirements for a successful evaluation and can also be expanded to what is necessary to ensure the protection of human health, safety, and welfare of Park County residents in particular and persons that may come in close proximity to the facility while visiting Park County. This list must be regarded as a minimum since there exists no explicit criteria for the protection of human health, safety, and welfare as required by the overall governance of the Park County Land Use Regulations. This section also identifies the applicant's responsibility of bearing the burden of proof such that the criteria presented is evaluated as clear and convincing evidence in support of the parameters of the proposal. If at any time during the process, new questions arise and/or presented information becomes questionable, the representatives of Park County Government have the obligation to request additional information and/or issue clarification from the Applicant in support of providing protection to the residents of Park County. If the required additional information does not have a specific "standard for approval" as designated in Section 5-503, then the material should be evaluated based on the merits of the information presented such that the discussion has provided clear and convincing evidence that the additional condition is beneficial for the residents of Park County. The decision should be able

to be systematically defended to Park County residents by a comprehensive review of the information provided with which to base the ultimate decision.

What additional information is needed to properly evaluate this request as per the overall guidance of the Park County Land Use Regulations:

NEEDS ANALYSIS:

Need Analysis and Evaluation (need versus want); RWE should provide with PSCo and CORE documentation (utility data and information is required to be accurate and truthful as per the reporting requirements of the Colorado Public Utilities Commission, CPUC):

Has Park County Government evaluated the need for this project? They should have an established interface with the electric providers such that they understand the County's electrical grid issues and known deficiencies. With that knowledge, do they think an additional power source will remedy the documented issues and deficiencies?

Has Park County requested RWE to seek information from PSCo and CORE Electric Corporation to provide documentation supporting the need for this project? PSCo and CORE have this data readily available and are required by CPUC to report accurately, where as RWE is not held to the same standard. RWE's generally written documentation states that BESS will improve grid reliability, grid stability, and count as a green energy source in line with Colorado's future energy vision. Forced electrical outages are documented on the various company's websites and the reasons for the outage are listed. A cursory review of the Park County power interruptions indicate the primary causes as antiquated/obsolete equipment and extreme environmental conditions (typically high wind with insufficient tree trimming) resulting in power line impacts. Will BESS resolve these issues?

Has the data been provided and does the data support an additional temporary power source located within Park County as a solution to the County's unplanned outages?

As Park County's future growth is realized, it will no doubt need to include modifications to the electrical grid to support that growth. The key to maintaining Park County as a National Historical Site will undoubtedly rely on striking down projects that are not needed in favor of future projects that will be truly needed and will provide documented improvement. There should be no guessing involved in each of the decisions that are made to expand and maintain Park County's electrical grid for its future growth.

REAL ESTATE VALUES:

Real Estate Impact Evaluation; RWE should calculate and provide this readily available data:

What is the evaluated real estate value impact on local land owners if this project is approved?

What real estate information/data is being reviewed to ensure that the economic welfare of Park County residents is protected as required by the Park County Land Use Regulations?

This first question was posed to the Park County Assessor's Office based on Referral

Response inquiry with the following response: "That is a question that only time will tell. The market will dictate the value of property as sales occur, but I would believe that parcels adjacent to the facility with residential improvements could be affected for a period of time."

RWE bears the burden of proof and additional work load should not be transferred to the Park County Government employees to research and answer any questions relating to the proposed project. RWE should research and provide the requested information and data, and their results should be given to the various Park County Government offices so that they can perform a cursory review to ensure that what is being claimed "makes sense".

A quick review on the internet of transmission line impact on real estate values yielded the following results: <https://www.fastexpert.com> stated "Properties that are very close to high-voltage lines (within 150 feet), may see property values decrease by 10 percent to 30 percent or more." These properties on average took six times longer to sell with an overall loss in property value of between 10 to 30%. The <https://puc.sd.gov> website stated "... overhead transmission lines can, in some instances, reduce the value of nearby properties, but these

effects are generally less than 5% of property value.” The data showed that properties within visual distance of the transmission lines resulted in an average value decrease of 5%. The <https://orchard.com> website conducted an extensive review of vacant lot property values as impacted by transmission line installation and stated “... of Real Estate Research found that vacant lots near high-voltage power lines sell for 44.9% less than equivalent lots that aren’t located near power lines.” All of these sources identify location within the U.S. and magnitude of transmission line voltage as the key drivers to real estate value impact. The magnitude of transmission line voltage is impactful in that the higher the line voltage, the larger the easement that is required to support the higher transmission line voltage (69Kv requires a 50 foot easement while 230Kv requires a 150 foot easement). The research paper further stated that people seeking vacant land in a rural setting are often driven by “visual and natural beauty” when making the economic decision to purchase the property. Transmission line visibility tends to reduce or negate this quest for “visual and natural beauty”. My point is that this information is readily available with a minimum of effort, and it should be requested of RWE to provide the researched data so that the Park County Assessor’s Office can review and comment in an effort to protect the economic welfare of Park County residents.

PROMISED TAX REVENUES:

Tax Revenue Evaluation; RWE should provide in conjunction with PSCo estimated tax revenues out to 20 years (the initial life of the project) with a total tax payment estimate:

What amount of tax revenue is Park County expected to receive over the 20 years of the project, if approved? Several differing statements have been made by RWE as to how much the County is going to receive in tax revenues as a result of project approval. In the South Park Gazette dated August 7, 2024 in an article titled “RWE Renewables Americas, LLC Provides Update on BESS” Johnathan Berry, Utility Scale Development Manager for RWE stated “South Park Battery Energy Storage System (BESS) will provide approximately \$402 thousand dollars per year in property taxes, over the project’s 20-year lifetime, with the majority expected to go toward the fire department.” In the Park County Republican and Fairplay Flume dated May 24, 2024 in an article titled “South Park may get an energy boost” Johnathan Berry also stated when referring to the BESS project, “This includes millions of dollars in tax revenue for the county.” In several of the RWE public outreach forums (in person open house conducted on May 21, 2024 at the Park County Government Offices, and the virtual public open house on July 17, 2024), the statement has been made that this project over its 20 year life span will generate between \$8 and \$9 million dollars in tax revenues for Park County (the basis being \$402,000 per year times 20 years equals \$8,040,000). In the current BESS application package on page 1 of the Alternatives Report the following statement is made: “the project would result in \$402,254 in tax payments to Park County.” This is a drastic change in that RWE has dropped the “per year” clarifier from all of their previous tax revenue declarations. In previous RWE declarations there was no requirement to be truthful and exact with a signature designating that all the provided information is “accurate to the best of my knowledge”. In official communications with the Park County Government for the CUP application process, the material being presented by RWE is followed by a statement of accuracy with a signature in witness. Could this be the reason behind the change?

Is this an accurate estimate? How much tax revenue does Park County get currently from utility owners? Are the current and “promised” tax revenue values out of line with history?

The Park County Assessor’s Office provided the following input in 2008 with respect to the Hartsel Substation Project, Case # C.U.P. 08CUP-09, IREA - Hartsel Substation, in a letter from Dave Wissel, the Park County Assessor at that time, stated “Public utilities are regulated by the State of Colorado, and valued for property tax purposes by the State Assessed section of the Division of Property Taxation, also a state agency. We are provided the total actual and assessed values of each public utility, by tax area, each year. Additional improvements in the delivery and distribution systems are reflected in future year appraisals. The methods of appraisal utilized are somewhat technical, but the bottom line is the local Assessor’s Office is

not directly responsible for determining those amounts. We simply administrate the distribution of the total value to our annual tax roll. Public Utilities represents approximately 3% of our total tax roll, for the 2007 tax year.”

With respect to the BESS project, the Assessor’s Office provided the following data and comments: “I was asked two specific things regarding this project. The first was on page 1 of the Alternatives Report which states “the Project would result in \$402,254 in tax payments to Park County”. This facility would be a State Assessed account and currently Park County receives about \$86,000 in taxes from Public Service of Colorado and about \$145,000 from CORE and an additional \$302 from the improvements on Hwy 9. I do not know who would finally be responsible for the payment of taxes for this facility. If the end owner is Public Service Company, I do not believe that projection is accurate. If the end owner is CORE and the project is inclusive of the completion of both the Wandcrest project and this project it could be closer to the projection, but the one project alone would not support that increase.” RWE has stated that the BESS will be purchased by PSCo upon construction completion and successful testing of the facility. That means that year 1, and maybe year 2, taxes will be paid by RWE and then the subsequent years up to year 20 will be paid by PSCo. The current combined Park County tax burden of PSCo and CORE amounts to \$231,000 and encompasses approximately 20 to 25 substations and support facilities throughout Park County. It is unreasonable to think that the BESS facility alone will provide almost twice the current tax burden per year of both PSCo and CORE with all the current facilities that they own within Park County. The projected numbers do not line up with the current numbers and more exact information is required. If the ultimate decision is partially based on the project’s projected tax revenues, shouldn’t Park County Government have a reasonable estimate based on analysis of what those revenues will be? Since Park County would be using up some of its historical and visual capital to support this project, wouldn’t it be prudent to understand what amount of future tax revenues is being traded for this historical and visual capital consumption?

NATIONAL HISTORICAL SITE:

Historical Impact Evaluation; Park County Historic Preservation Advisory Commission (PCHPAC) should provide its input as to how an industrial facility located in one of the most traveled corridors within Park County could impact our National Historical Site and the economic revenue that it provides:

Has the Park County Historic Preservation Advisory Commission provided input to the project? I did not see their response and input in the “complete package”.

In response to the Hartsel Substation installation in 2008, Case # C.U.P. 08CUP-09, IREA - Hartsel Substation, the Park County Historic Preservation Advisory Commission dated April 19, 2008 stated “The importance of this view corridor to the perception of Park County as a historically authentic destination for heritage visitors is extremely high. A power station would be inconsistent and detrimental to the public’s appreciation of a number of historic ranches in the immediate area. In addition, the economic well being of the county is very dependent upon the county’s carefully laid plans for heritage tourism development, lending not only an esthetic, but also economic importance to the preservation of the open vistas and the historic properties of the county. PCHPAC does not find a plan included in the application for a physical cultural survey of the property, nor for the presence of a qualified archeologist on site during ground disturbance. There have been archaeological finds reported in the area dating back to the early settlers and this area is very likely to yield additional discoveries of historic or pre-historic artifacts that would prove to be important to the history of Park County.” A National Historical Site is very rare (approximately 60) as compared to National Parks (approximately 400) and National Monuments (approximately 160). National Parks and Monuments are owned by the Federal Government, managed by the Federal Government, and protected by the Federal Government. National Historical Sites are owned by the residents, managed by the residents in conjunction with the location’s government, and protected by the location’s government. Here in Park County, the protection of our National Historical Site falls squarely on the shoulder’s of

the Park County Government. The input from the Park County Historic Preservation Advisory Commission is by far the most important perspective that Park County Government obtains with which to make its ultimate decision. They understand the slow erosion process and how it can impact the National Historical Site over the long haul. They were resistant to the Hartsel Substation as identified above, and told that the Hartsel Substation would be a stand alone facility and not be added to or interfaced with another “future” facility. That appears to not be true and now we are facing BESS. The outstanding issue will now be “green energy” since the current proposal espouses green energy for the battery project, but it is just a battery and its true determination of whether it is green energy is the fuel that is used to charge the battery. Leaving the outstanding argument that is lingering just around the corner, well..., to make the battery truly green we now have to add solar panels and/or wind turbines to take advantage of the Federal Tax Credits and for the State of Colorado to claim “green energy” megawatts in support of Colorado’s transition to clean energy. This will just add sequential projects at TPRA’s expense, with the Park County Governments complicity, that will result in a slow erosion of our National Historical Site that feeds us all. The Thousand Peaks Ranch Association has been “given” a substation and two sets of high voltage transmission lines to improve “grid reliability” for the County. Thousand Peaks Ranch Association has received no positive benefit in that 95% of our residents are “off grid” and do not rely on the electrical grid for power, in fact the Association has received negative benefit in that one of PSCo high voltage transmission line supports was placed right in the middle of one of our plotted roads. The Park County Conditional Use Permitting Process was the process used to allow this to happen. As a result, the Association questions the integrity of the process to properly evaluate and implement facility installation of this new and growing battery storage technology.

REQUIRED INDEPENDENT REVIEWS:

3rd Party Reviews for public health, safety, and welfare should be mandatory; RWE should provide for these such that independent reviews are available for effective decision making: Has the Park County Engineering Staff reviewed the project for design, configuration, and operating characteristics as it relates to public health and safety, or been given an independent 3rd party review for consideration?

Has the Park County Emergency Manager, Environmental Health Representative, and the Public Health Representative reviewed the project for public health and safety?

Has the potential impact to public health been evaluated and independently reviewed with respect to what could potentially occur in the event of catastrophic battery failure? Lithium phosphate batteries burn for extensive periods of time (48 to 72 hours) emitting toxic fumes which can precipitate out onto the surround lands and waterways. The fumes emitted include carbon monoxide, carbon dioxide, hydrogen, hydrogen-fluoride, phosphorus pentafluoride, phosphoryl fluoride, methane, ethane, and other hydrocarbons. Extensive fire fighting efforts for long periods of time could result in heavy metal seepage into the local ground water aquifer to include nickel, cobalt, and manganese. The resulting conditions could promote litigation for damages in areas adjacent to the BESS for the facility owner, and for legal culpability to the local government that permitted the facility’s installation near major drinking water sources. Those experiencing far reaching effects as drinking water sources are potentially contaminated could look to Park County, who permitted facility installation, for restitution. Fourmile Creek and High Creek are in close proximity to the proposed facility’s location and feed into the South Fork of the South Platte River which fills both Spinney Mountain and Elevenmile Canyon Reservoirs. Historical water rights are primarily owned by front range municipalities and they depend upon these reservoirs for their drinking water. Toxic fumes and extensive firefighting water runoff could potentially settle or leach into these water sources which could be problematic for the facility owner and the municipality allowing the facility’s installation.

Has the Park County Assessor’s Office reviewed the proposal for real estate value impacts with an idea of what may happen to local real estate values? Was a 3rd party review performed?

Is the Park County Government going to listen to the Applicant to inform the Government on how safe it is? They will tell you it's safe and provide the manufacturer's design and testing documents.

Are you going to listen to the residents for them to tell you how nervous they are about the project? By anyone's understanding, there is additional risk associated with the project because a battery energy storage system has many magnitudes of elevated risk over vacant land.

At the present time, I have not seen the Applicant's professional engineering (PE) staff document a Safety Evaluation such that RWE is on record as reviewing and evaluating the design, configuration and operating characteristics as safe. This is essential for latent legal issues in that the "continuity of responsibility" must be maintained from the manufacturer to the ultimate operator of the facility (in this case Tesla to RWE, RWE as the builder, RWE to PSCo as the ultimate facility owner and operator; RWE must legally accept Tesla's Safety Evaluation, RWE must provide a Safety Evaluation of its own of the facility, and then PSCo must legally accept RWE's Safety Evaluation of the facility). If an issue arises and measurable damage is sustained by a resident of Park County as a result of the facility, then those individuals have standing to go after the current owner of the facility to recover their damages. If "continuity of responsibility" is not maintained and documented, then accountability avoidance could prove to be a challenging legal argument to overcome while seeking damages.

REQUIRED SITE SPECIFIC REVIEWS:

Site Specific Reviews; Park County Planning should provide:

Are the required site-specific reviews documented in the package and reviewable?

Who performed these reviews and what is their level of professional qualification?

How was the required site-specific review of "use location" evaluated with respect to its location within a National Historical Site and its location within a home owners association?

Did the Park County Historical Preservation Advisory Commission provide input to the required site-specific review of "use location"? Was their input incorporated into the review and subsequent development of the "appropriate condition" to address the identified issues?

Did the Thousand Peaks Ranch Association provide input to the required site-specific review of "use location"? Was their input incorporated into the review and subsequent development of the "appropriate condition" to address the identified issues?

To be blunt with respect to Thousand Peaks Ranch Association (TPRA), the Park County Land Use Regulations only identifies the Covenants, Conditions, and Restrictions to be included in the "complete package". This is all that was included in RWE's application package for BESS. This minimum requirement has been considered "met" in the three previous Conditional Use Permits that have been used to place the Hartsel Substation and two high voltage transmission lines into the Thousand Peaks Ranch Association, and it was again considered "met" in the current BESS package. TPRA has three distinct governing documents and they all place limitations on land ownership within TPRA. TPRA Articles of Incorporation; TPRA Covenants, Conditions, and Restrictions; and TPRA Bylaws are all applicable in this application and should be included in the "complete package". The TPRA Articles of Incorporation requires an affirmative vote from the Board of Directors for any activity that causes an increase in liability risk to land owners specifically, and the Association in general, to assist in the protection of land owners and the Association from legal liability. This important aspect was not included in the BESS package, or prior packages, and does not adequately represent the requirements of land ownership within TPRA. To alleviate this oversight, TPRA requested a condition be placed on the applicant to adhere to all three TPRA governing documents to include our historical interpretations of those documents. This condition would ensure that RWE and subsequent owner PSCo would be required to adhere to the Association's rules and regulations just as every other TPRA land owner. The big difference here is RWE is a \$40 billion dollar company and PSCo/Xcel is a \$65 billion dollar company, and they could use their economic might to

challenge whatever they chose to challenge with the Association being unable to defend in litigation (TPRA's annual budget is approximately \$105,000). This could result in RWE/PSCo as an individual land owner dictating terms to the Association via the legal system instead of the Association "controlling" certain routine aspects of Association life (not that the Association attempts to control a lot, but the Association does control some key aspects vigorously). A condition of this sort would "ensure compatibility" with respect to the site location within the Thousand Peaks Ranch Association. This requested condition does not appear in the Planning Department Staff Report.

Conditions needed as per the required site-specific reviews to ensure compatibility and minimize potential adverse impacts:

TPRA has specific knowledge regarding the Association's concerns with placing the BESS within the Thousand Peaks Ranch Association. It has communicated those concerns to the Park County Planning Department, but the conditions that appear in the Park County Planning Department Staff Report do not effectively mitigate the Association's concerns. The overall flavor felt by the Association is that the Planning Department feels that it is their responsibility to control and generate any "appropriate condition". This, combined with the seemingly reluctant position of the various Board Commission members to establish "appropriate conditions", results in limited and ineffective protection afforded to the residents of Park County. Since the overall goal of the Park County Land Use Regulations is to protect the public health, safety, and welfare, it would seem that there is a disconnect somewhere in the execution of the process/procedure. Historically, this type of observation is the result of a slow and un-noticed migration away from the source documents that govern and direct the process and/or procedure being implemented. Park County Government should ask itself and reflect if this could be a possibility, this is typically the first step in correcting a migration from the standards. The Planning Department should accept input from invested parties to develop conditions that are more robust at mitigating potential concerns. Those conditions should be placed when and where needed liberally during the process to enhance the protection goals of the Park County Land Use Regulations. Conditions should not be thought of an imposition to the Applicant, because it is the Applicant who is asking for a "favor" and it is the processes goal to protect the residents of Park County. With this in mind, the following conditions need attention:

Condition 1: "All access easements must be signed and recorded prior to the issuance of any building permits." These agreements, whatever they may be, road use or easement, should be completed before the process is advanced to the Planning Commission Meeting. The Government Process serves as a barrier for the protection of Park County residents, and as such should not be breached without any outstanding issues between the project and Park County residents being resolved. If there are any issues, and the Government has advanced the project through the process, the project can then pressure residents to push for a solution since they have already been granted the Conditional Use Permit. When this occurs, the Park County Government has placed the Applicant's desires over the need to protect Park County residents and this is unacceptable.

Condition 4: "A Drainage, Erosion and Sediment Control Plan, Stormwater Management Plan, and a Noxious Weed Plan must all be provided prior to issuance of any building permits." This condition is not effective in that in this situation, the Association must be given appropriate time to effectively rebuild the roads that are adjacent to the proposed location. TPRA Lot #026 is surrounded by three roads that will be required to be rebuilt in order to comply with Colorado Water Runoff Laws since the design of the facility is drastically changing the water runoff characteristics of the location. Road ditches will have to be established and culverts installed to manage the change in water runoff that this facility will initiate. The Applicant will undoubtedly be ready to advance the project when those building permits are granted and if site preparation is not planned out and executed before hand, the roads will not be ready for construction. Association input into the development of this condition would have resulted in a

condition that would better reflect the required sequence of actions prior to the initiation of the construction phase.

Condition not provided: “Initial building entity (RWE) and subsequent owner (PSCo/Xcel) required adherence to the established TPRA Governing Documents as written and interpreted by the Association to ensure compatibility of the proposed project within the Association.” This condition, which would have provided a legal agreement of compliance between the project and the Association with respect to the CUP, was not accepted by the Planning Department as requested by the Association. The Association now will have to negotiate this aspect into any road use and/or easement agreement that is subsequently developed to ensure protection for the Association. This aspect should have been addressed by an effective site-specific review of the site location to include input from the Association. The process should have provided for this condition such that the Association and the Applicant could recognize and discuss the limiting aspects of the CUP during the process such that all parties would understand the need for compliance.

Ultimate decision:

At the TPRA Annual Membership Meeting the Thousand Peaks Ranch Association members voted 107 to 0 to not allow RWE to place the BESS within the Association (since then approximately 45 additional members have included their vote to keep TPRA residential). That initial membership vote included all TPRA Board of Directors members with a 7 to 0 vote. The will of Association membership does not allow the Board of Directors to enter into a Road Use Agreement and/or concede any easement allowances to facilitate the installation of the BESS facility. This fact does not provide clear and convincing evidence that Section 5-503 Standards for Approval of Conditional Use Permit, Part D “The property has a reasonably certain right of permanent legal access permitting vehicular access from the property to the public thoroughfare” has been met. The application should not be approved based on current conditions.

Additional review material viewed as needed to make an informed decision:

- 1) A “Needs Analysis” should be requested from RWE to ensure that this facility is needed and will provide positive benefit to the residents of Park County. This analysis should focus on what improvements will be the results of facility installation and what benefits can the residents expect. The identification of a “need” versus a “want” is important for the welfare protection of Park County residents since the area is designated a National Historical Site. True need projects will be coming in the future and Park County’s historical capital should only be expended for those true need projects that will bring measurable benefits to its residents.
- 2) A “Real Estate Value Impact Evaluation” should be requested and performed by RWE to ensure real estate values are not negatively impacted by the installation of this facility harming the welfare of Park County residents. The facility will be considered a “large industrial facility” and connected to the Hartsel Substation via a 0.33 mile 230Kv above ground transmission line. Both of these facts result in a negative impact on local real estate values, and that impact should be known with some certainty prior to moving forward with the application.
- 3) A “Projected Tax Revenue Evaluation” should be provided by RWE with input from PSCo covering the 20 year lifespan of the facility. If the ultimate decision is going to be partially based on projected tax revenue in exchange for historical capital, then it is important to be accurate regarding the amount of tax revenue the County is expecting to receive. It is equally important to require the Park County Historic Preservation Advisory Commission (PCHPAC) to provide its input since the exchange involves the surrender of historical capital. An accurate PCHPAC position is vital in every CUP application to ensure a slow erosion of our historic heritage does not go unchecked.
- 4) The “National Historical Site” designation and the natural beauty of Park County must be protected at all costs, and it is the job of Park County Government to perform that protective function. This is where “need” versus “want” is critical in that Park County has limited historical

capital to expend, and it is undoubtedly obvious that future “needs” are coming to provide true benefit to Park County residents which will require the trade off of historical capital for the needed projects. Input from the Park County Historic Preservation Advisory Commission (PCHPAC) is necessary to properly evaluate the trade off that ultimately occurs with the acceptance of needed projects. Not only does the PCHPAC provide input on a project’s impact on the historical nature of Park County, but it also puts in place measures to monitor the disturbance of lands that may unearth relics of Park County’s past that need to be preserved and that can provide more historical information regarding Park County’s past. The welfare of every resident of Park County depends on the protection of Park County’s past and its current beauty. This is why people come to Park County and every business and resident depends upon the economic flow stream that is dependent on maintaining Park County’s historical past and beauty.

5) Independent Reviews are required to remove the inherent perspectives of invested parties of whatever is being evaluated. If the overriding goal of the Park County Land Use Regulations is to protect the public health, public safety, and public welfare of Park County residents, then independent reviews provide a neutral perspective of those parameters with respect to proposed projects. The Applicant will have a perspective, Park County Government will have a perspective, an independent 3rd party review will take into account both of those perspectives and should render a non biased perspective of what is being proposed. That independent review will provide “better” information with which to make a decision. RWE should be required to submit 3rd party reviews if they are seeking to put a BESS into Park County that could possibly disrupt Park County’s lifestyle and potentially impact local water supplies, as well as those of the front range municipalities. This new battery technology is changing at an accelerated rate, and an independent 3rd party review of its documented safety record, along with the potential environmental impacts, could arrest the fears that many residents voice if a catastrophic battery event were to occur.

6) Required Site Specific Reviews, as they relate to imposed conditions, should be documented with issues identified and available for review by all interested parties. The resulting conditions should be able to be tied back to those reviews such that all issues can be identified as effectively remedied by the proposed conditions. If compatibility can not be assured to the point where an invested party feels that potential issues have been effectively mitigated, additional input from that invested party should be sought and reviewed by the Planning Department for possible condition modification. In fact, an engaged invested party will have more specific knowledge regarding the issues surrounding the required site-specific reviews, where they can better evaluate the potential effectiveness of any proposed condition. This inclusion of an invested party’s input into stated condition effectiveness will also serve to alleviate future potential litigation resulting from an ineffectively established condition.

Respectfully submitted,
Kevin Spencer, TPRA President