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TO: PLANNING AND ZONING COMMISSION

FROM: TAMMY LEONARD, ADMINISTRATIVE ASSISTANT

RE: XCEL ENERGY – COLORADO’S POWER PATHWAY PROJECT

1. APPLICATION TO SITE AND CONSTRUCT A MAJOR FACILITY OF A PUBLIC UTILITY (“1041 PERMIT APPLICATION”)
2. APPLICATION FOR A USE BY SPECIAL REVIEW

PLANNING AND ZONING COMMISSION HEARING DATE: SEPTEMBER 19, 2022

DATE: 09/02/2022

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## **I. INTRODUCTION**

Public Service Company of Colorado (dba Xcel Energy) has filed two applications seeking approval of its electric transmission line project commonly referred to as “Colorado’s Power Pathway” (the “Project”). The applications are for approval of a use by special review (“USR”) and for approval of what is referred to as a 1041 Permit, which is for the siting and construction of a major facility of a public utility. The USR application is subject to the County’s special use regulations. The 1041 Permit application is subject to the Regulations for Areas and Activities of State Interest of Washington County. Copies of both sets of these regulations have been provided to the members of the Planning Commission along with the full USR and 1041 Permit applications filed by Xcel.

Because the application materials required for submittal under the USR and 1041 Permit regulations are similar, Xcel’s 1041 application references the material provided by Xcel in its USR application and the applications are being reviewed concurrently. This report will summarize the Project and the criteria pursuant to which it is reviewed under both the USR and 1041 Permit regulations. It will address whether the Project has satisfied the applicable criteria, and it will propose specific conditions that will facilitate its compliance with the applicable criteria.

After reviewing all the application material and completing the public hearing, the Planning Commission will determine whether the Project meets the criteria for approval of a USR permit and a 1041 Permit with or without additional conditions. During the public hearing,

the County Attorney will be available to provide legal advice and direction relating to the public hearing procedures and to answer questions from the Planning Commission members. Upon a vote, County staff will prepare a resolution reducing the decision of the Planning Commission to writing, which shall be subject to Planning Commission review and approval at a subsequent meeting. With respect to the USR, the Planning Commission will be making a recommendation to the Board of County Commissioners (“BOCC”) who will render a final decision after the BOCC holds a public hearing. With respect to the 1041 Permit, the Planning Commission renders the final decision, which is subject to appeal to the BOCC.

The following is a summary of the public hearing process:

1. Announcement of title of project
2. Request that Planning Commissioners disclose any conflicts of interest and recuse themselves if necessary
3. Open public hearing
4. Presentation by County Planning staff
  - a. Confirmation of property notice
  - b. Summary of application and staff review
5. Questions for staff
6. Presentation by Xcel representatives
7. Questions for Xcel representatives
8. Open public comment
9. Public comment
10. Questions for members of public who presented comments
11. Close public comment
12. Response to public comment by Xcel representatives
13. Questions for Xcel representatives
14. Motion and second
15. Discussion by Planning Commission members

In the motion, the moving member should address the criteria and indicate “findings”& to support the motion. The motion needs “second” from another member. After there has been a second, the decision makers can discuss the motion and agree or disagree with it. After discussion, there will be a verbal vote, the decision will be made on the project, and the hearing for a particular project will be complete.
16. Vote by Planning Commission
  - a. Recommendation regarding USR application
  - b. Decision regarding the 1041 Permit application

The Project is described by Xcel Energy as an investment to improve the state’s electric grid and enable future renewable energy development around the state. The Project involves the installation of approximately 560 to 650 miles of new 345-kilovolt (kV) double-circuit transmission line, four new substations, and four expanded substations that serve as endpoints for the transmission line segments. It is Xcel’s intent to construct the Project in five segments, with an optional sixth segment:

- Fort St. Vrain – Canal Crossing (Segment 1)
- Canal Crossing – Goose Creek (Segment 2)
- Goose Creek – May Valley (Segment 3)

- May Valley – Tundra (Segment 4)
- Tundra – Harvest Mile (Segment 5)
- May Valley – Longhorn (Extension)

The facilities proposed in Washington County include approximately 53 miles of 345-kV transmission line within Segment 2. No substations will be located in the County, but there may be a repeater station. The transmission line generally routes from the northwestern to southeastern portions of Washington County. The proposed route crosses Highway 36 between London and Anton. A map of the transmission line's proposed route is included in Xcel's application materials. The right-of-way for the lines is 150 feet. Depictions of the lines and towers are included in Xcel's application.

## II. ANALYSIS

The application submittals required by the County's USR and 1041 regulations have been provided by Xcel and the Planning and Zoning Department has deemed the applications complete.

As an initial matter, the Washington County USR (Section 2(a) of application requirements for industrial uses by special review) and 1041 Permit regulations (Section 3.402(2)) require property owners of the subject properties to approve the use of their property for the proposed project. Xcel has not obtained approval of all such landowners. To do so, would require Xcel to obtain property rights for every property upon which the transmission line would be located. The portion of the Xcel Project in Washington County involves more than 80 potential parcels. Xcel has the authority to condemn property, which means that Xcel has the legal authority to acquire the rights needed to complete the Project on the property that is the subject of the application. Xcel is seeking a waiver of this requirement due to the nature of the Project and its authority to obtain the property once the final route of the transmission line is determined. Planning staff is recommending that the Xcel application be permitted to proceed through the USR and 1041 hearings, subject to a condition that Xcel acquire all property rights necessary to complete the Project prior to commencing construction on any portion of the project in Washington County.

### A. Use by Special Review

The Project is an industrial use under the County's USR regulations. The USR regulations require that industrial uses are compatible with surrounding uses. See USR Regulations, Policy section and Industrial Uses – Intent section. Applications for USR permits are reviewed to determine whether they have adverse impacts such as traffic congestion, noise, visual and aesthetic impacts which could undermine the integrity of the area in which the proposed activity would be situated and therefore could jeopardize the health, safety and welfare of the existing citizens of Washington County. Id.

1. Traffic congestion.
2. Noise.
3. Visual and aesthetic impacts.
4. Compatibility with surrounding uses.

### B. 1041 Permit

Chapter 3 of the County's 1041 regulations govern Xcel's application for the Project. The overall purpose of the 1041 Permit regulations for a major facility of a public utility is as follows:

- To void conflict with master plans
- To promote orderly development
- To promote orderly interaction between utilities
- To provide accessible information about location of utilities
- To protect agricultural interests
- To minimize public health and welfare hazards

See 1041 Regulations § 3.101.

The criteria the Project must meet for approval of a 1041 Permit are as follows:

1. Agricultural activities shall not be significantly affected in an adverse manner;
2. Appropriate environmental restraints shall be adhered to so as to cause minimum effect upon the existing environment including but not limited to air, water, and wildlife species;
3. No significant effect upon the tributary and non-tributary waters of Washington County shall be allowed;
4. Location of a facility shall be reasonably consistent with the Washington County, municipalities, state, and national master plans when in effect, and as stipulated in §30-28-110, C.R.S.;
5. The socio-economic environment Washington County shall be protected and enhanced;
6. All alternative locations shall have been presented and assessed such that the best interests of the people are represented and the best utilization of all affected resources are accomplished;
7. No non-mitigated adverse impact upon community and government services shall be allowed;
8. A satisfactory program (including any necessary "front monies") to mitigate and minimize adverse impacts has been presented;
9. No adverse effect upon any existing water right;
10. All buried facilities shall be buried in a manner as to not interfere with existing and continuing land use. Such depth shall not be less than thirty-six (36) inches and a suitable program of surface stabilization shall be employed; and
11. No pollution which exceeds that allowed by State and Federal environmental laws will be allowed.

See 1041 Regulations § 3.201.

Because the criteria for review of a USR are encompassed within the criteria for a 1041 Permit, this staff report will address the 1041 Permit criteria and this analysis shall be considered to also be an analysis of the USR criteria.

1. *Agricultural activities shall not be significantly affected in an adverse manner.*

The Washington County Master Plan sets forth important objectives and policies

for maintaining agriculture in the County. These include the following: (a) maintaining and enhancing the environmental quality of agricultural areas; (b) preserving the long-term agricultural production of the County; (d) protecting the visual and other perceptual amenities of the County's agricultural areas; (e) preserving high-quality soils available for dry or irrigated farming for long-term cropland uses; and (f) encouraging uses that maintain and support the environmental and amenity value of all agricultural areas. In reviewing the Project in relation to these objectives and policies, staff finds that it will have limited impact on the environmental quality of area, long-term agricultural production, or the soils in which the transmission lines are located. Although the bases of the towers will be removed from agricultural use, the remaining areas under the lines and in between the towers can continue to be used for agriculture. There is some risk of runoff and drainage-related concerns. However, Xcel is required to control drainage and restore areas disturbed by construction activity (see Item #2 below).

*2. Appropriate environmental restraints shall be adhered to so as to cause minimum effect upon the existing environment including but not limited to air, water, and wildlife species.*

There will be impacts during construction of the Project, including increased construction equipment impact, noise, and dust. There could be sediment run off from the construction activities into irrigation ditches and other waterways. However, Xcel represents that it will implement best management practices to control sediment and runoff into canals and waterways during construction. Xcel will be regulated by CDPHE and is required to follow state standards to control fugitive construction dust. Once operational, most environmental impacts will be limited.

Xcel has conducted studies on the impact of the Project on avian species in the area and has been engaged with Colorado Parks and Wildlife regarding the routing and related impacts of the transmission lines on birds in the area. Xcel will be required to comply with all applicable federal and state laws regarding impacts on bird life. No federal or state managed conservation areas or federal critical habitat are within one-mile of the transmission line route. However, there is special-status wildlife and avian habitat in the vicinity of the transmission lines and 17 special-status species were identified as potentially being in the pathway of the line. Please see Section 1.3c of the application for more information on this matter.

In its Impacts Evaluation, which is Attachment F to its application, Xcel has provided an analysis of the impacts of the Project on various aspects of the County. Included in this evaluation is information regarding electric and magnetic fields. Xcel will be required to meet the standards set forth in the National Electric Safety Code, which has been adopted by the State of Colorado. The County Planning Department currently has no information that contradicts the representations in Xcel's Impacts Evaluation, which indicate there are no substantial negative environmental impacts.

*3. No significant effect upon the tributary and non-tributary waters of Washington County shall be allowed.*

No permanent source of water is required for the Project. All canals and waterways will be spanned and not interrupted by the Project. Xcel represents that it will

implement best management practices to control sediment and runoff into canals and waterways during construction.

*4. Location of a facility shall be reasonably consistent with the Washington County, municipalities, state, and national master plans when in effect, and as stipulated in §30-28-110, C.R.S.*

The most recent version of the Washington County master plan is dated September 16, 2002. As addressed in criterium number 1, above, the Washington County Master Plan sets forth important objectives and policies for maintaining agriculture in the County. These include the following: (a) maintaining and enhancing the environmental quality of agricultural areas; (b) preserving the long-term agricultural production of the County; (b) protecting the visual and other perceptual amenities of the County's agricultural areas; (c) preserving high-quality soils available for dry or irrigated farming for long-term cropland uses; and (d) encouraging uses that maintain and support the environmental and amenity value of all agricultural areas.

As addressed in criterium number 1, above, the Project is reasonably consistent with the Washington County master plan. To staff's knowledge, there are no municipal, state, or national master plans governing the area of the Project in Washington County.

The Project has limited impact on agricultural activities in the County as further addressed in criterium number 1, above.

In addition to agricultural uses, the County's Master Plan establishes long-term objectives for industrial uses, which are (a) to encourage industrial development and redevelopment which meets market demand and contributes to the county's employment and tax base; (b) to support industrial development which maximizes accessibility to regional transportation systems, compatibility with adjacent land uses, and applicability of energy conservation measures; and (c) to mitigate any negative environmental impacts resulting from the interface of industrial uses, other land uses, and the natural features of an area. There may be some small increase in economic activity at local businesses as constructions crews are in the area working on the Project, but the crews are relatively small and therefore, the impact will likely be small and temporary. However, the Project will provide opportunities for connecting power generation facilities to the electrical grid that would otherwise be unavailable. This would include solar and wind facilities, which provide a renewable source of energy and can be economically beneficial to owners of land on which such projects are sited. That said, these types of power generation facilities have their own drawbacks, including impacts on agricultural activities, wildlife, and noise and visual concerns. The impact of the project on transportation systems is not expected to be significant other than potential public road impacts (increased traffic and potential heavy vehicle damage), which can be addressed via a condition requiring Xcel to enter into a road use agreement (see Recommended Condition No. 5, below). The environmental impacts are addressed in criteria numbers 2 and 3, above.

The County's Master Plan includes a number of policies related to industrial uses, including: (a) Appropriate industry should be encouraged to locate in Washington County; (b) Industrial land uses should be located near major transportation facilities such as airports, railroads, freeways, and major arterial streets; (c) Industrial land uses

shall be located and adequately buffered to minimize impacts resulting from the interface of industrial uses, adjacent land uses, and the natural features of an area; and (d) Industrial developers should be strongly encouraged to interact during the site planning process with existing residents or neighborhood associations in the immediate vicinity of proposed industrial developments. The Master Plan encourages non-polluting industry that provides good employment opportunities. The Project is designed to aid in the State's transition to clean energy. However, its job creation will be minimal. Xcel has sited the project to be near existing roads. The transmission lines do not substantially interfere with agricultural activity, but they are visually unappealing and do interfere with the open vistas and natural features of the area, including open skies unimpeded by man-made industrial objects. Xcel has engaged in significant interaction with the public, including three virtual meetings in June of 2021 and two more in October 2021. Xcel's efforts to publicize the project have been substantial. Publicity and attendance figures are shown in Section 3.4.3 of Xcel's Routing and Siting Study included with Xcel's application as Exhibit C.

5. *The socio-economic environment of Washington County shall be protected and enhanced.*

Some relatively minor temporary economic benefits are expected as the construction crew works on the Project. However, because the crew is relatively small (25 workers are anticipate) and the construction will be temporary, the direct economic benefits are not anticipated to be substantial. However, the installation of the transmission lines will provide additional opportunity for power generation projects to connect to Xcel's system. Landowners may benefit by contracting for the use of their land for solar and wind generation projects that would otherwise not occur. These generation projects will come with benefits and drawbacks. New jobs will be available and construction crews will use local businesses. However, wind and solar projects have additional impacts on the area, including use of agricultural land, and noise, visual, and wildlife impacts.

6. *All alternative locations shall have been presented and assessed such that the best interest of the people are represented and the best utilization of all affected resources is accomplished.*

Xcel has provided a Routing and Siting Study as Exhibit C to its application. Xcel undertook substantial efforts to engage with the public. Please see Section 3.4.3 of the Routing and Siting Study for more information. Section 3.5 of the Routing and Siting address how Xcel has considered a variety of factors in selecting the route of the transmission lines and the route has been modified to address these factors.

7. *No non-mitigated adverse impact upon community and government services shall be allowed.*

There is no anticipated non-mitigated adverse impact on the community and government services, other than the potential impact on County roadways, the potential for construction-related pollution of irrigation ditches, canals, and waterways, and unremediated land subsequent to construction activity. These concerns could be mitigated with agreements between the County and Xcel requiring Xcel to return any damaged

County roadways to their condition prior to Xcel-caused damage and requiring Xcel to fully remediate land, including irrigation ditches, damaged by its construction activities.

8. *A satisfactory program (including any necessary "front monies") to mitigate and minimize adverse impacts has been presented.*

Please see analysis of Section 7, above. Xcel's obligations to remediate damage to roadways, irrigation ditches, and agricultural land could be addressed in an agreement, which would require Xcel to provide reasonable security to ensure Xcel complies with its obligations.

9. *No adverse effect upon any existing water right.*

No water rights will be impacted by the Project.

10. *All buried facilities shall be buried in a manner as to not interfere with existing and continuing land use. Such depth shall not be less than thirty-six (36) inches and a suitable program of surface stabilization shall be employed*

There will be no buried facilities other than foundations for the poles.

11. *No pollution which exceeds that allowed by State and Federal environmental laws will be allowed.*

Xcel will be required to comply with all state and federal environmental laws. The only sources of pollution would emanate from construction activities, but that is expected to be limited. There could be sediment run off from the construction activities into irrigation ditches and other waterways. However, Xcel represents that it will implement best management practices to control sediment and runoff into canals and waterways during construction. Xcel will obtain a permit from CDPHE if necessary. Xcel will be regulated by CDPHE and is required to follow state standards to control fugitive construction dust. Once operational, most environmental impacts will be limited. Some of these potential impacts could be addressed via an agreement with reasonable security to ensure that Xcel.

### Security

Section 1.410 of the 1041 Permit Regulations allows the Planning Commission, at its discretion, to require Xcel to file security prior to issuance of a permit. The purpose of the security is to ensure that Xcel performs the conditions of the permit. The amount is to be the greater of \$15,000 or the estimated cost of returning the site to its original condition or the estimated cost of completing the permitted development. For the Project, the County will have no authority to complete the Project. Moreover, unlike some development projects, there will be no public improvements dedicated to the County, which the County would have an interest in being completed because the County would assume ownership of them.

Therefore, if the Planning Commission determines that security is necessary, it should be an amount that is equal to a reasonable estimate of returning the site to its original condition if Xcel fails to complete the Project. The amount could be required based on segments under construction from time-to-time rather than for the entire portion of the Project. This security



could be in the form and amount required by roadway or nuisance mitigation agreements, or it could serve as general security that also serve as security required by such agreements in addition to securing other permit obligations of Xcel.

### **III. RECOMMENDED CONDITIONS**

If the applications of Xcel are approved, Planning staff recommends that approval be subject to the following conditions:

1. Prior to commencement of construction of any portion of the Project in Washington County, Xcel shall provide proof to the satisfaction of the County Administrator that Xcel has obtained the property rights necessary to construct the entire portion of the Project that is located in Washington County.

2. All necessary land use, environmental, and construction permits, approvals and authorizations must be obtained prior to and maintained during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, and stormwater permits.

3. A site plan, drainage plan, and other County submittal requirements for a transfer station must be provided to the County Administrator for review and approval prior to construction of the transfer station. All necessary permits shall be obtained prior to approval of the transfer station. To the extent not required by other County regulations, the transfer station shall be designed and landscaped in such a manner as to blend in with the surrounding area.

4. No poles shall exceed a height of 140 feet. Any poles that exceed this height require prior approval from the County, upon a showing by Xcel that such height is necessary. Such additional height may be approved by the County Administrator upon application and request from Xcel. The County Administrator may request any additional information necessary to determine whether approval should be granted.

5. Prior the commencement of construction on a segment in the County, Xcel shall enter into a road use agreement for the use of any public road during construction which shall include the following:

a. A map showing which County roads will be used during construction.

b. A pre-construction baseline survey of County roads to be used during construction to document their pre-construction condition, obtained by and paid for by the applicant and prepared by a Colorado licensed engineer.

c. A mitigation plan to address traffic congestion, control, and potential impacts to County roads to be used during construction. The mitigation plan shall also include any dust mitigation activities.

d. A requirement that the applicant to return any County roads to their pre-construction baseline condition.

e. A requirement to post financial security in an amount not less than one hundred

fifteen percent (115%) of the estimated cost to complete all road restoration, in the form of an irrevocable letter of credit or cash escrow. Cost estimates shall be provided by a licensed Colorado engineer. Upon preliminary acceptance of the restored public road, the County shall release all but fifteen percent (15%) of total actual costs of restoration of the public roads, so long as Xcel is not in default of any provision of the public improvement's agreement. The County shall inspect the restored roads and Xcel shall pay to the County the cost incurred by the County in conducting such inspections. These costs shall be due and payable upon demand of the County. Xcel shall be responsible for correcting or properly completing the restoration.

f. The residual fifteen percent (15%) retained by the County shall act as security for Xcel's guarantee that the restoration remains free of defects during a two-year warranty period. Xcel may at any time during the preliminary acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the County. The County may accept substitute or supplemental forms of security in its sole discretion.

6. Prior the commencement of construction on a segment, Xcel must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.

7. Prior the commencement of construction on a portion of the Project, Xcel must execute an agreement with the County agreeing to not create nuisances, to reclaim all land, public and private and to restore any ditches, canals, or waterways disturbed by its Project activities. The agreement shall require Xcel to document the condition of all land in the segment's right-of-way prior to commencement of construction, the condition immediately after completion of construction activities, and the condition upon completion of remediation. The agreement shall include a requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to reclaim all disturbed land plus an amount deemed reasonable by the County to remediate any nuisances and to restore damages to ditches, canals and waterways in the form of an irrevocable letter of credit or cash escrow (the "Performance Guarantee"). Cost estimates for the land reclamation, including the remediation of nuisances and damages to ditches, canals and waterways shall be provided by a qualified expert in land reclamation. The letter of credit or cash escrow shall be maintained until completion of the remediation, approval by the County, and issuance by the County of a written acknowledgement of satisfactory reclamation, at which time the security may be released. Xcel shall be responsible for correcting or properly completing all land reclamation.

8. Prior to use of any helicopters in connection with the Power Pathway project, Xcel shall provide at least thirty (30) days' written notice to the County Administrator of the location of the helicopter fly yard and dates and hours of helicopter use. Xcel shall comply with all FAA requirements, including but not limited to, notice of evacuation to residences.

9. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m. and shall cease at sunset.

10. Xcel shall comply with all applicable laws and regulations related to safety and emergency management during construction and on-going operations.

#### **IV. CONCLUSION**

Planning staff has determined that the application is complete and with the recommended conditions would meet the criteria for issuance of a USR and 1041 Permit. In general, the Project will have limited negative impacts on agriculture in the County and will have limited impact on the general health safety and welfare of the County's residents and business. The Project is generally consistent with the County's Master Plan.

Upon conclusion of the public hearing, the Planning Commission will need to decide whether to recommend approval of the USR permit and whether to approve the 1041 Permit. The votes will be reduced to writing in resolutions, which will be brought back to the Planning Commission for approval at a subsequent meeting.