

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CLACKAMAS COUNTY, OREGON**

Regarding an Application for a Conditional	)	<b>Case File No.</b>
Use Permit to Establish a Photovoltaic	)	<b>Z0012-19-C</b>
Solar Power Generation Facility.	)	<b>(Marquam Creek Solar)</b>

**A. SUMMARY**

1. The applicant is Marquam Creek Solar LLC. The owners are Harold and Verla Stetson.
2. The subject property is located southeast of Highway 213 and south of Marquam Circle. The legal description is T6S, R1E, Section 03, Tax Lot 300 W.M. The subject property is approximately 44.10 acres and is zoned EFU – Exclusive Farm Use.
3. On March 7, 2019, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on March 7, 2019. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Clay Glasgow discussed the staff report and recommended approval of the application.
3. Troy Snyder, Sarah Sayles, and Lauren Peterson testified in support of the application.
4. Craig and Marcie Djoseland testified in opposition to the application.

5. At the conclusion of the public hearing, the Hearings Officer closed the record.

### **C. FACTS**

The subject property is an approximately 44.10-acre parcel zoned EFU. The subject property is located southeast of Highway 213 and south of Marquam Circle. The subject property is in an area of EFU-zoned properties with scattered residential home sites. The property is vacant and in farm use. The application proposes to construct a 12-acre photovoltaic solar power generation facility on the eastern portion of the property.

### **D. DISCUSSION**

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. Most of the findings in the staff report are not challenged. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the findings in the staff report and agree with those findings. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.

The only opposition to the proposal is from Craig and Marcie Djoseland (Djoselands), who live to the west of the property on EFU land. The Djoselands are concerned that the proposed solar farm would negatively affect their views and property values. Clackamas County Zoning and Development Ordinance (ZDO) Chapter 1203 provides the approval criteria for conditional uses. Although the Djoselands do not raise any specific approval criteria, their objections implicate ZDO 1203.03(D), which requires that:

“The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.”

The Djoselands' property is also zoned EFU. The primary uses on EFU land are farm and farm related uses – not residential use. I do not see, and the Djoselands do not argue, that the proposed solar farm would have any effect on farm uses. Therefore, even if the proposed solar farm would affect the Djoselands' views that would not substantially

limit, impair, or preclude a primary use of the property.<sup>1</sup> Furthermore, while the parties dispute the effect of solar farms on surrounding property values, it is irrelevant because property values are not an approval criterion or even a consideration under ZDO 1203.03(D). *Morton v. Clackamas County*, 70 Or LUBA 7, 13-14 (2014); *Tylka v. Clackamas County*, 34 Or LUBA 14, 29 (1998).

ZDO 1203.03(D) is satisfied.

All of the applicable approval criteria are satisfied.

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0012-19-C, with the following conditions of approval.

#### **F. CONDITIONS OF APPROVAL**

##### **I. General Conditions:**

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s) submitted January 14, 2019. The application was deemed complete on January 22, 2019. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you'd like to take advantage of this meeting please contact Deana Mulder, at (503) 742-4710 or at [deanam@co.clackamas.or.us](mailto:deanam@co.clackamas.or.us).
- 3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Development Agency. Wendi Coryell can be contacted at 503-742-4657, or [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us). The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the

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<sup>1</sup> Even if impacts to the Djoselands' views could be considered, the proposed solar farm would be located on the opposite side of the property from the Djoselands and I do not see that merely seeing the solar farm would rise to the level of substantially limiting, impairing, or precluding the Djoselands' residential use of their property.

final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.

- 4) Developer to satisfy any requirements from ODOT regarding access to/frontage along Hwy 213.
- 5) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
  - a) A building permit for a new primary structure that was part of the conditional use approval; or
  - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 6) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.
- 7) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

**II. Planning and Zoning Conditions:** Clay Glasgow, (503) 742-4520, [clayg@clackamas.us](mailto:clayg@clackamas.us)

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited

to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.

- 2) Prior to commencement of use the project owner shall sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).
- 3) Developer/owner is responsible for retiring the facility. At the end of the life of facility all non-utility owned equipment, conduits, structures, and foundations will be removed to a depth of at least three feet below grade.
- 4) Applicant to implement soil compaction and weed control plans, as submitted with application.

**III. Building Code Division Conditions:** Andy Anderson, (503) 742-8742, [aanderson@clackamas.us](mailto:aanderson@clackamas.us)

- 1) All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.
- 2) Compliance with the following conditions is required prior to the commencement of any new use or occupancy:
  - a. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.
  - b. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.
  - c. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.
  - d. All necessary permits and approved plans must be issued and maintained onsite as required.
  - e. All required inspections, corrections, and final approval must be obtained.

**IV Engineering Division Conditions:** Ken Kent; (503) 742-4673, [kenken@clackamas.us](mailto:kenken@clackamas.us)

- 1) All frontage and onsite improvements shall be in compliance with *Clackamas County Roadway Standards*.

- 2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
- 3) The applicant shall provide written approval from ODOT, in the form of a permit to access Highway 213 and for all work within ODOT right-of-way. Construct a 20 feet wide paved approach intersecting Highway 213 at a 90° angle with a grade not to exceed  $\pm 5\%$ . Minimum driveway length shall be 20 feet from existing pavement from Highway 213, meeting Clackamas County Roadway Standards Drawing D500, or as required by ODOT.
- 4) The applicant shall design and construct a minimum 12-foot wide access road in accordance with Standard Drawing R100 with turnouts approximately every 400 feet. If the access roadway is constructed at least 20 feet in width, turnouts are not required. At or near the end of the access road, a fire turn-around shall be constructed. Turnouts and turn-around shall be designed and constructed in accordance with Clackamas County Standard Drawing C350.
  - a) For road widths less than 20 feet, the minimum turn centerline radius is 50 feet. For road widths greater than or equal to 20 feet, the minimum centerline radius is 40 feet.
- 5) The applicant shall provide construction plans showing planned access, circulation and fire lanes stamped for approval by Silverton Fire District #2.
- 6) The applicant shall submit a Stormwater Management Plan to DTD Engineering for review. The Stormwater Management Plan shall comply with the requirements of Clackamas County Roadway Standards Chapter 4.
- 7) The applicant shall obtain a NPDES 1200-C Erosion Control Permit through Oregon Department of Environmental Quality prior to Development Permit issuance.
- 8) If the applicant chooses to gate the driveway approach serving the solar facility, the applicant shall design and construct the gate a minimum of 30 feet from the edge of pavement of Highway 213.
- 9) The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar facility. A minimum 24-foot of back up maneuvering room for all 90 degree parking spaces.
- 10) Parking spaces for the solar facility shall meet *ZDO* section 1015 dimensional requirements.
- 11) The applicant shall provide and maintain adequate intersection sight distances at the driveway approach intersection with Highway 213. In addition, no plantings, at

maturity, retaining walls, embankments, rock outcroppings, fences or any other objects shall be allowed to obstruct minimum sight distance requirements. Minimum intersection sight distance at the driveway approach with Highway 213 shall be 555 feet in both directions.

DATED this 13<sup>th</sup> day of March, 2019.

  
Fred Wilson  
Clackamas County Hearings Officer

### **ENDANGERED SPECIES ACT NOTICE**

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

### **APPEAL RIGHTS**

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).