

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

Regarding an application by Dolphin Solar, LLC for conditional use approval for a 12-acre photovoltaic solar power generation facility located on a 79.53-acre parcel located at 20428 SE Curtis Road in unincorporated Clackamas County, Oregon ) **FINAL ORDER**  
)  
) **Case No. Z0404-23-C**  
) **(Dolphin Solar)**

**A. SUMMARY**

1. The applicant, Dolphin Solar, LLC, requests conditional use approval to place a photovoltaic solar power generation facility consisting of solar panels, racking, invertors, overhead poles and lines, and perimeter chain-link fencing on 12-acres of a 79.53-acre parcel located at 20428 SE Curtis Road; also known as tax lot 1600 Section 16 and tax lot 1700 Section 17A, Township 2 South, Range 3 East, of the Willamette Meridian, Clackamas County (the “site”).

a. The eastern portion of the site (Tax Lot 1600) and properties abutting the east and north boundaries of Tax Lot 1600 are zoned EFU (Exclusive Farm Use). The western portion of the site and all other abutting properties are zoned TBR (Timber).

b. The site is currently developed with a dwelling, and other accessory buildings supporting farming operations. Approximately 20 acres of the site is currently in use for farming, and the remainder of the site is largely left forested. There are no mapped wetlands, steep slopes, water quality resources or other environmental hazards on the subject property regulated by the Zoning and Development Ordinance (the “ZDO”).

c. The applicant proposed to locate the solar facility near the center of the site, with six acres of the facility in the EFU zone on Tax Lot 1600 and six acres in the TBR zone on Tax Lot 1700.

2. Clackamas County Hearings Officer Joe Turner (the “hearings officer”) held an online public hearing about the application. County staff recommended that the hearings officer approve the application, subject to conditions. See the Staff Report and Recommendation to the Hearings Officer dated March 7, 2024, (the “Staff Report”). The applicant accepted the findings and conditions of approval as recommended by County staff, without exceptions. Two person testified orally in support of the application. One person testified in writing in opposition. Contested issues include:

- a. Whether the proposed solar facility is allowed in the EFU and TBR zones; and
- b. Whether facilities alleged impact on property values is relevant to the applicable approval criteria.

4. Based on the findings provided or incorporated herein, the hearings officer finds that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the “ZDO”), provided the applicant complies with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use does comply in fact with those standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order based on the findings and conclusions incorporated herein.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The hearings officer received testimony at the public hearing about this application on March 14, 2024. All exhibits and records of testimony are filed at 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 following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Melissa Lord summarized the Staff Report and her PowerPoint presentation (Exhibit 9).

a. She noted that the eastern portion of the site is zoned EFU and the western portion TBR. The applicant proposed to construct a 12-acre solar power generation facility located near the center of the site, with six-acres located in the EFU zoned portion of the site and six acres in the TBR zoned portion. The solar facility will consist of solar panels, racking, invertors, overhead poles and lines. The applicant will install chain-link fencing around the perimeter of the facility to separate it from the existing uses on the site.

b. The site is suitable for the proposed facility. The facility will not impact existing farming operations on the site and it will not be visible from any public rights-of-way. The site does not contain any wetlands, streams, steep slopes, or other environmentally sensitive areas.

c. The proposed facility will be unmanned. Traffic will be limited to occasional maintenance trips. The site will not be accessible by the public.

3. Planner Jonathan Nelson and attorney Ken Pearson appeared on behalf of the applicant, Dolphin Solar, LLC.

a. Mr. Nelson summarized his PowerPoint presentation (Exhibit 7) and the construction and operation of the proposed facility. The applicant will locate the facility near the center of the site, setback 75 feet or more from all property boundaries. No clearing is proposed outside of the 12-acre facility beyond what may be required to

comply with fire-break requirements in the TBR zoned portion of the site. The remaining trees will screen views of the facility from surrounding properties. The facility will not generate any vibration impacts detectable offsite. Noise from the facility is limited to inverter fans that generate minimal noise at levels well below the limits imposed by state law. The applicant will fence the facility to limit opportunities for trespass and vandalism. The panels are designed to absorb, rather than reflect, light and they are angled to direct any glare upwards, away from adjacent properties. Construction of the facility will take place over a three to six month period.

b. Mr. Pearson summarized the application's compliance with the applicable County approval criteria. The proposed facility will assist in meeting County and state clean energy goals.

4. Fred and Sybil Ackerman-Munson testified in support of the application. They noted that the northeast corner of the site abuts the southeast corner of their property.

5. Marguerite Truttman testified in writing in opposition to the proposed facility (Exhibit 8). She argued that the proposed facility is inconsistent with the rural nature of the site and surrounding area and should not be allowed. She argued that the facility will reduce the value of surrounding properties. She is a real estate broker and recently had a buyer bypass two potential homes due to solar panels on neighboring properties.

6. At the end of the public hearing, the hearings officer held the record open for one week, until March 21, 2024, to allow the applicant an opportunity to submit a final written argument as required by ORS 197.767(6)(e). However, the applicant submitted their final argument on March 14, 2024. Therefore, the hearings officer closed the record on that date.

### **C. DISCUSSION**

The hearings officer adopts the following findings as his own.

#### **1. ZDO SECTION 1203.02 CONDITIONAL USES**

##### **1203.02: Submittal Requirements**

***Finding:** This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on October 11, 2023, and additional materials received were on January 12, 2024. Following submission of additional requested information, the application was deemed complete on January 12, 2024.*

b. **1203.03(A):** The use is listed as a conditional use in the zoning district in which the subject property is located.

**Finding:** *The subject property is located in the Exclusive Farm Use (EFU) district and the Timber (TBR) district. ZDO Section 401, Table 401-1, and Section 406, Table 406-1 of the ZDO controls land uses in the underlying EFU and TBR districts, respectively.*

*Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(38) is listed as a conditional use in Table 401-1. This use is subject to Section 401.05(A)(1) as well.*

*Commercial utility facilities for the purpose of generating power is listed as a conditional use in Table 406-1. This use is subject to Section 406.05(A)(1), (6) & (H)(2) as well. A photovoltaic solar power generation facility is a commercial utility facility if the facility generates power for public use by sale. ORS 215.447(5).*

*Opponents argued that this type of facility should not be allowed in the rural area. However, Sections 401 and 406 expressly allow this type of use in the EFU and TBR zones, provided the use complies with all applicable approval criteria. State law expressly authorizes the county to allow such uses in the EFU and TBR zones. See ORS 215.283(2)(g) and OAR 660-006-0025(4)(j). In addition, the County's comprehensive plan encourages this type of alternative energy source development, as discussed below. The decision to allow this type of use in these zones was a policy choice by the Board of County Commissioners, which the hearings officer has no authority to review or reconsider in this proceeding.*

*The proposed use is a conditional use in both underlying zoning districts. This criterion is met.*

- c. **1203.03(B):** The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

**Finding:** *The subject property is approximately 80 acres in size and is gently sloped. There are no steep slopes (over 20%), mapped environmental hazards, or other natural features that would hinder development.*

*68 acres of the site will remain either undeveloped, or as-is. Due to the proposed location of the solar array, trees will need to be removed to site the array. The property owner intends on harvesting as much of the timber from this area where possible to prepare the site. The solar array will be located in an area on the site that will not disturb any of the existing farmed land.*

*When considering the characteristics of the subject property, this criterion is met.*

- d. **1203.03(C):** The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

**Finding:** County transportation staff reviewed the proposal for compliance with 1007.07. The findings are included below.

- e. **1203.03(D):** 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.

**Finding:** The site is in the Exclusive Farm Use (EFU) district and the Timber (TBR) district and is surrounded by other properties in EFU and TBR districts. Permitted uses in the EFU district are included in ZDO Section 401, and permitted uses in the TBR district are included in ZDO Section 406.

*This criterion does not prohibit the proposed use from having any impacts, rather the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.*

*Lands in the surrounding area are in farm use, forestry, and area rural residential home-sites.*

*SE Dolphin Road and SE Curtis Road are classified as a rural local public roadway, and the site an existing driveway will provide access to the site. A recommended condition of approval will require that the applicants pave the first 20 feet of the driveway with the remainder of the driveway remaining gravel surfaced. This will limit impacts from dust or dirt entering the public roadway from the site when occasionally visited by maintenance/operational vehicles.*

*The applicant provided details regarding the sound emissions of the solar array, and determined that “the only noise produced from the project comes from the fan on the inverters during daytime production. Noise ratings from manufacturers for the type of inverter the project will use indicate that noise levels are comparable to the perceived ambient noise of a quiet rural or suburban setting at nighttime – about 35-40 decibels within 5 meters”.*

*Alleged property value impacts of the facility are not relevant to the applicable approval criteria. The Land Use Board of Appeals (“LUBA”) held that “[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . .” Tylka v. Clackamas County, 34 Or LUBA 14 (1998). The hearings officer agrees with and adopts that conclusion.*

*As proposed, this criterion can be met with conditions.*

- f. **1203.03(E):** The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

**Finding:** *The hearings officer finds the goals and policies from the following Sections apply: Chapter 3, Natural Resources and Energy; Chapter 4, Agriculture and Forest; and Chapter 5, Transportation. The applicant discusses applicable Plan policies in submitted materials.*

Chapter 3, Natural Resources and Energy:

*Policy 1 from “Agriculture, Energy Sources and Conservation” encourages alternative energy source development. Development of renewable energy sources such as photovoltaic solar as proposed through this application satisfies many Plan policies.*

Chapter 4, Land Use:

*The subject property is designated Agriculture on the Comprehensive Plan map. The Agriculture Land Use Section in Chapter 4 of the Comprehensive Plan implements the Agriculture Plan Designation. The Forest Land Use Section in Chapter 4 of the Comprehensive Plan implements the Forest Plan Designation. Applicant contends the facility will promote solar energy, jobs etc. all while conserving and protecting farm land for further farm and forestry uses by maintaining the site for resource use. As an essentially temporary use, this solar power generation facility is not expected to conflict with existing or future EFU- or TBR-related uses on the subject property or surrounding lands.*

Chapter 5, Transportation:

*Information provided by applicant and comments submitted from the Traffic Engineering Department indicate only minor additional traffic will be generated by the proposed use and the area road network is adequate.*

*Based on the information presented in the application, this criterion is met.*

- g. 1203.03(F):** The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, and Section 1000 Development Standards.

**Finding:** *As noted above, the proposed solar facility is allowed as a conditional use in the EFU and TBR zones, subject to the criteria addressed below. Applicable section 1000 Development Standards are also addressed below.*

**2. ZDO Section 1000 Development standards**

**Finding:** *Not all review subsections in ZDO Section 1000 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use*

*Sections 1002, 1003, and 1004 are not applicable to the subject property.*

*Section 1005 relates to the design of the buildings and the site. The proposal does not involve the construction of any buildings; Subsection 1005.02 and 1005.03 are not applicable.*

*Subsection 1005.04 provides requirements for outdoor lighting; no outdoor lighting is proposed. This section is not applicable to this specific development.*

- a. **1006.03(E) Water Supply.** The following standards apply outside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

1. Applicants shall specify a lawful water source for the proposed development, such as a public or community water system, certificated water right, or exempt-use well.

***Finding:*** *The site is not within a public or private water district, and is within a groundwater limited area. The proposed development does not propose using any water use as this is an unmanned photovoltaic (solar) array. The Clackamas Fire District #1 reviewed the application and determined that no water supply is necessary. This section is not applicable.*

- b. **1006.05 Onsite Wastewater Treatment.**

- A. All development that requires onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Onsite wastewater treatment systems shall be installed pursuant to: Oregon Revised Statutes 454.605 through 454.745; Oregon Administrative Rules chapter 340, divisions 71 and 73; and the policies of the County.

***Finding:*** *The proposed development does not propose generate any wastewater as this is an unmanned photovoltaic (solar) array. This section is not applicable.*

- c. **1006.06 Surface Water Management and Erosion Control.** The following surface water management and erosion control standards apply:

The following surface water management and erosion control standards apply:

- A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.

- B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply
- C. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.
  - 1. The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility
  - 2. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

***Finding:*** *In those areas that are not within a surface water management district, the preliminary statement of feasibility shall be signed by the Surface Water Management Agency of Clackamas County (SWMACC).*

*Clackamas County is the surface water management authority for the area including the subject site. The applicant has submitted a Preliminary Statement of Feasibility signed by Development Engineering indicating that adequate surface water management, treatment, and conveyance is available to service the development or can be made available through improvements completed by the development or the system owner. The proposed site development is subject to compliance with Clackamas County Roadway Standards, Chapter 4 and will be required to provide a stormwater management plan that provides positive drainage to an existing storm drainage system capable of accommodating the estimated contribution. As conditioned, this criterion is met.*

**d. 1007 Roads and Connectivity.**

**1007.01 GENERAL PROVISIONS**

- A. The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway



Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.

- B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards.

#### 1007.07 TRANSPORTATION FACILITIES CONCURRENCY

Transportation Facilities Concurrency applies to the following development applications, with exceptions: design review, subdivisions, partitions, and conditional uses.

***Finding:*** *The Clackamas County Development Engineering division reviewed the application materials and provide the following comments:*

*SE Dolphin Road and SE Curtis Road are classified as a rural local roadways. Per Clackamas County Roadway Standards, the minimum right-of-way width for a rural collector is 60 feet. The existing right-of-way width of SE Dolphin Road and SE Curtis Road appears to be 40 feet, based on the County Assessor's map. Although, substandard in width, based on the minimal traffic generated by a solar facility, the existing right-of-way is adequate to serve the proposed development.*

*Access to the solar site is proposed from an existing driveway at the corner of SE Dolphin Road and SE Curtis Road. The existing driveway is improved with a gravel approach. The Clackamas County Roadway Standards requires the first 20 feet of a private road to be paved per Standard Drawing D500. The remainder of the roadway can be gravel.*

*The applicant is required to provide adequate on-site circulation for the parking and maneuvering of all vehicles anticipated to use the solar site in accordance with ZDO section 1015 and applicable Roadway Standards requirements. The minimum access road includes a 12-foot wide gravel surface, within a minimum 20-foot wide, unobstructed clear zone. For roadways less than 20 feet in width, turnouts are required every 400 feet.*

*The applicant will be required to upgrade the existing driveway, and the driveway extension to the project site, consistent with county standards.*

*Section 470 of the Roadway Standards requires erosion control measures meeting county standards are provided during construction when a development disturbs between 800 square feet and one acre. When more than one acre is disturbed, a 1200-C permit is required through the Department of Environment Quality (DEQ). Based on the 12 acre solar facility area, a 1200-C permit will be required.*

*Based on ZDO subsection 1007.07.B3, the use qualifies for an exemption regarding transportation facilities concurrency. The principal safety concern relates to the site driveway approach with SE Dolphin Road and SE Curtis Road. The proposed access meets sight distance standards, meeting minimum safety standards, in compliance with the requirements of ZDO subsection 1203.03 C.*

*The hearings officer adopts the above findings as his own.*

*As proposed, these standards are met with conditions.*

- e. **1010 Signs; 1010.07 Signs in Natural Resource Districts.** Section 1010 regulates the size, type and location of signs.

***Finding:*** *No signage is proposed with this application. This section is not applicable.*

- f. **1015 Parking and Loading.** Section 1015 is designed to ensure that developments in Clackamas County provide sufficient and properly designed parking for motor vehicles and bicycles as well as appropriate off-street loading areas. Outside the UGB, areas used for parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage [1015.01(B)]. Parking and loading requirements for uses and structures not specifically listed in Tables 1015-1 shall be subject to the requirements for the most similar use.

***Finding:*** *The applicant plans to use the existing driveway access from SE Dolphin Road/SE Curtis Road to access proposed development. An “optional” 20-foot by 20-foot parking area is shown on the submitted site plans.*

*The land use categories in Table 1015-1 do not provide a similar use to the proposed photovoltaic array; however, the parking demand is most similar to “on-site vehicular parking for employees, customers and visitors, determined through Conditional Use process” like the surface mining standards.*

*The development proposal will operate as an unmanned facility. There is a need to accommodate at least one vehicle for occasional maintenance and inspection needs of the*

unmanned facility. At least one 8.5 feet wide by 16 feet long parking space shall be provided. Designated vehicle parking spaces will be required to comply with ZDO section 1015 dimensional requirements and require a surface of screened gravel or better. As conditioned, this criterion can be met.

- g. **1021 Solid Waste and Recyclable Material Collection.** Outlines the standards for refuse and recycling for commercial developments.

**Finding:** *The requirements and standards of Section 1021 are applicable to conditional uses; yet since the development site does not include any administrative office, workshop, or other area for employees to work, it is unlikely that there is any garbage or recycling generated by this development site. Moreover, the photovoltaic array will operate as an unmanned facility and will not generate waste production. Based on the scope of the proposed developed that there is no need for solid waste and recycling material collection on site, and therefore compliance with Section 1021 is not inapplicable.*

### 3. **ZDO Section 401 EFU district**

- a. **401.04 Uses Permitted.** Table 401-1 lists “Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(38)” as a Conditional use.

**Finding:** *As established in Table 401-1, “photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(38)” is a conditional use in the EFU zone. This land use application is for a conditional use permit to operate a photovoltaic solar power generation facility. This criterion is met.*

- b. **401.05(A)(1):** The use may be approved only where such uses: (A) Will not force a significant change in farm or forest practices on surrounding lands devoted to farm or forest use; and (B) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

**Finding:** *The hearings officer incorporates the findings made by the applicant in their submitted written narrative in direct response to OAR 660-006-0025(5) and finds that this criterion is met.*

- c. **401.07 Dimensional Standards.** New development is subject to the dimensional standards of Subsection 401.07.

**Finding:** *The minimum setback standards in the EFU zone are applicable to the proposed solar panel array. Panels must be a minimum of:*

*30 feet from the front property line*

10 feet from the side property lines

30 feet from the rear property line

*These dimensional standards are met as shown on the applicant's site plan.*

**4. ZDO Section 406 TBR district**

- a. **406.04 Uses Permitted.** Table 406-1 lists “Commercial utility facilities for the purpose of generating power” as a Conditional use.

***Finding:*** *As established in Table 406-1, a commercial utility facilities for the purpose of generating power is a conditional use in the TBR zone. This land use application is for a conditional use permit to operate a utility facility for power generation. This criterion is met.*

- b. **406.05(A)(1):** The use may be approved only where such uses: (A) Will not force a significant change in farm or forest practices on surrounding lands devoted to farm or forest use; and (B) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

***Finding:*** *The hearings officer incorporates the findings made by the applicant in their submitted written narrative in direct response to OAR 660-006-0025(5) and finds that this criterion is met.*

- c. **406.05(A)(6):** A land division for the use may be approved pursuant to Subsection 406.09(D).

***Finding:*** *A land division is not proposed with this application. This criterion is met.*

- d. **406.05(H)(2):** Commercial utility facilities for the purpose of generating power - A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4.

***Finding:*** *The portion of the project sited on lands in the Timber (TBR) zoning district (forest lands) will not exceed ten acres. The portion of the photovoltaic array on TBR forest lands is about six acres. Therefore this criterion is met.*

- e. **406.07 Dimensional Standards.** New development is subject to the dimensional standards of Subsection 406.07.

***Finding:*** *The minimum setback standards in the EFU zone are applicable to the proposed solar panel array. Panels must be a minimum of:*

*30 feet from the front property line*

*10 feet from the side property lines*

*30 feet from the rear property line*

*These dimensional standards are met as shown on the applicant's site plan.*

- f. **406.08(A) Development Standards.** Fire-siting standards apply to new structures and shall be as follows:
1. A primary fuel-free break area shall be maintained surrounding any new structure, including any new dwelling.
  - ...
  4. The fuel-free break standards shall be completed and approved prior to issuance of any septic, building, or manufactured dwelling permits. Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner.

***Finding:*** *The applicant did not demonstrate compliance with this criterion in the submitted application materials; however, there is adequate space on the site for this to be achieved. A condition of approval is warranted to ensure compliance with this criterion. As conditioned, this criterion can be met.*

## **5. OAR 660-033-0130(38)**

A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions. This section of the OAR applies only to the portion of the subject property located within the EFU zoning district.

- a. 660-033-0130(38)(g)(A) for high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless the provisions of paragraph (h)(H) are satisfied.

***Finding:*** *Under OAR 660-033-0130, a site falls in only one of the three categories: high-value farmland, arable land, or non-arable land. Whichever one category the site falls into determines which portion of OAR 660-0030-0130 contains the rules that apply to developing a photovoltaic solar facility on that site. In this case, the site must follow the high-value farmland rules found in (g). No more than 12 acres of solar power generation facility is permitted pursuant to provision (g).*

*The proposal does not involve more than 12 acres of photovoltaic solar panels located on high-value farmland. The proposal involves approximately six acres of solar panels*

located on high-value farmland. The soil type is Bornstedt silt loam, 8 to 15 percent, which is Class III soil. This standard is met.

- b. 660-033-0130(38)(h) The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10):

**Finding:** Staff incorporates the findings made by the applicant made in their submitted written narrative that is in direct response to the provisions of this OAR subsection. In addition, staff recommends a condition of approval ensuring the implementation of the Erosion and Soil Compaction Plan and the Weed Control Plan to satisfy this criterion.

Based upon the review of aerial photographs, the location of the solar facility will not be on high-value farmland as described in ORS 195.300(10) or ORS 215.710. The solar array will be located on Bornstedt silt loam soil, 8 to 15 percent, which is a Class III soil. Therefore, the project will not be located on the high-value farmland soils listed in OAR 660-033-0020(8)(a).

- c. 660-033-0130(38)(l) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner 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).

**Finding:** The applicant has not recorded a document with the above statement, but this can be met through a condition of approval. As conditioned, this criterion can be met.

- d. 660-033-0130(38)(m) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

**Finding:** A condition of approval is warranted recognizing that the developer or property 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. As conditioned, this criterion can be met.

#### **D. CONCLUSION**

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0404-23-C (Dolphin Solar) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies.

## **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 Z0404-23-C (Dolphin Solar) subject to the following conditions:

### **Conditions of Approval:**

The following conditions are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on October 11, 2023 and additional materials received on January 12, 2024. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). 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.

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension

3. If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void. [1203.06]
4. **Prior to obtaining a building permit**, the landowner for the project shall sign and record in the deed records for Clackamas County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest

practices for which no action or claim is allowed under ORS 30.930(2) and (4). A sample of the required document may be obtained from Planning and Zoning. **A copy of the recorded document shall be submitted to Planning and Zoning.** [OAR 660-033-0130(38)(l)]

5. The following fire fuel break standards shall be required. Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner. **Prior to a building permit,** the applicant shall submit a signed and notarized form acknowledging compliance with the fuel-free fire break standards. A copy of the Fuel-Free Break Standards Compliance Form may be obtained from Planning and Zoning. [ZDO 406.08(A)]
  - a. The primary safety zone is a fire fuel break extending a minimum distance around structures. The minimum distance is established by Table 406-2, *Minimum Primary Safety Zone* and Figure 406-1, *Example of Primary Safety Zone*. Vegetation within the primary safety zone may include green lawns and shrubs less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the structure. As slope increases, the primary safety zone shall increase away from the structure and down the slope at a 45-degree angle from the structure, in accordance with Table 406-2 and Figure 406-1.
6. Applicant shall implement soil compaction and weed control plans, as submitted with application. [OAR 660-033-0130(38)(h)]
7. The developer or property 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. [OAR 660-033-0130(38)(m)]
8. All frontage and onsite improvements shall comply with *Clackamas County Roadway Standards*.
9. 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.
10. The applicant shall design and construct a minimum 12-foot wide, paved driveway approach onto SE Dolphin Road/SE Curtis Road, per Clackamas County Roadway Standards Drawing D500.
11. The applicant shall design and construct a minimum 12-foot wide, gravel access road from the paved approach onto SE Dolphin Road/SE Curtis Road to the solar facility site. The access road shall be consistent with Roadway Standards Drawing R100 with a surface of 6 inches of screened gravel or better. Turnouts shall be constructed every 400 feet, per Standard Drawing C350.



12. Within the site, a minimum 12-foot wide access road shall be constructed, providing adequate access for service vehicles and emergency vehicles. An emergency vehicle turnaround shall be constructed, per Standard Drawing C350. The on-site access road shall be consistent with Roadway Standards Drawing R100, with a surface of 6 inches of screened gravel or better.
13. Adequate storm drainage facilities shall be provided. A storm water management plan shall be provided and shall comply with the requirements of Roadway Standards, Chapter 4. Erosion control measures shall be addressed with a 1200-C permit, approved by DEQ.
14. The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar facility. At least one parking space, 8.5 feet wide by 16 feet long, shall be provided. Parking spaces for the solar facility shall meet *ZDO* section 1015 dimensional requirements, and Roadway Standards, Drawing P100/P200.
15. Primary Inspector:
  - a. The applicant shall enter into a Developer/Engineer Agreement for primary inspection services per Section 180 of the Roadway Standards. This form will be provided to the applicant and shall be signed and returned to County Plans Reviewer.
  - b. Prior to final plat, the applicant shall provide a Certificate of Compliance signed by the Engineer of Record stating all materials and improvements have been installed per approved plans and manufacture's specifications.
16. Prior to the issuance of a building permit or the initiation of any construction activities associated with the solar facility, the applicant shall submit to Clackamas County Development Engineering:
  - a. Written approval from the local Fire District for the planned access, circulation, fire lanes. The approval shall be in the form of site stamped and signed by the Fire Marshal.
  - b. Written approval of a 1200-C permit from DEQ.
  - c. A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.
    - i. The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.
    - ii. The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.

The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.

DATED this 27<sup>th</sup> day of March 2024.

A handwritten signature in black ink, appearing to read 'Joe Turner', with a long horizontal flourish extending to the right.

Joe Turner, Esq., AICP  
Clackamas County Land Use Hearings Officer

### **APPEAL RIGHTS**

ZDO 1307.14(D)(6) 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).