

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

Regarding an Application for a Conditional)	Case File No.
Use Permit to Establish a Photovoltaic)	Z0366-20-C
Solar Power Generation Facility.)	(Cusack Solar)

A. SUMMARY

1. The applicant is Cusack Solar LLC. The owner is John Knapp.
2. The subject property is located east of Sandy near Shorty’s Corner on the north side of Highway 26. The legal description is T2S, R5E, Section 20, Tax Lot 302, W.M. The subject property is approximately 98 acres and is zoned TBR – Timber.
3. On October 22, 2020, 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 October 22, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the corona virus. 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. Enda Grogan, John Knapp, and Marge Stewart testified in support of the application.
4. No one 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 98-acre parcel zoned TBR. The subject property is located east of Sandy near Shorty's Corner on the north side of Highway 26. The subject property is essentially square shaped with small jut outs, including an area that adjoins Highway 26. The subject property is in an area of mixed zoning and uses. Property to the south was a longtime log processing mill that is now in a different industrial/commercial use. To the north, east, south, and west are other properties in the TBR zone. There are rural residential small acreage homesites to the southwest across Highway 26. The City of Sandy is approximately three miles to the west. The central portion of the property is currently used for growing Christmas trees, while the northeastern portion of the property slopes steeply down towards Cedar Creek. The proposed solar facility would be located on the edge of the flat central portion of the property leading down to the steep slopes. The property has assorted farm/forest outbuildings. The application proposes to construct a 10-acre photovoltaic solar power generation facility.

D. DISCUSSION

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. 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 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.

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 Z0366-20-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) dated 8/20/20. The application was deemed complete on 8/27/20. 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 like to take advantage of this meeting please contact Wendi Coryell at (503) 742-4657 or at wendicor@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. The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the 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) 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.
- 5) 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.

II. Planning and Zoning Conditions: Clay Glasgow, (503) 742-4520,
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) 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.

III. Building Code Division Conditions: Richard Carlson, (503) 742-4769, richardcar@co.clackamas.or.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: Kenneth Kent, (503) 742-4673, kenken@clackamas.co

- 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) Written approval shall be obtained from ODOT, for access and all work in the Highway 26 right-of-way.
- 4) The applicant shall design and construct a minimum 20-foot wide paved driveway approach onto Highway 26 in conformance with ODOT standards but no less that Clackamas County Roadway Standards Drawing D500.
- 5) The applicant shall design and construct a minimum 12-foot wide, gravel access road from the paved approach on to Highway 26 extending 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.
- 6) Within the site, a minimum 12-foot wide perimeter access road shall be constructed with turnouts approximately every 400 feet. If a minimum 20-foot wide perimeter road is constructed, turnouts are not required. Turnaround and curve radii shall comply with local Fire District requirements. The perimeter access road shall be consistent with Roadway Standards Drawing R100 with a surface of 6 inches of screened gravel or better.
- 7) 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.
- 8) The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar facility. Parking spaces for the solar facility shall meet *ZDO* section 1015 dimensional requirements, and Roadway Standards, Drawing P100/P200.
- 9) 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 Engineering Office:
 - 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 from ODOT for all work in Highway 26 right-of-way.

- 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

V. Septic & Onsite Wastewater Systems Programs Conditions: Aaron Dennis, (503) 742-4614, adennis@clackamas.us

No comments received as of this staff report. This type of facility is unoccupied.

VI. Sandy Fire #72

General

1. Construction documents detailing compliance with fire apparatus access requirements shall be provided to Sandy Fire District for review and approval upon building permit submittal.
2. A plan shall be provided to the Sandy Fire District upon building permit submittal that details the applicants plan for mitigating weeds, grass, vines, or other growth that is capable of being ignited and endangering property. OFC 304.1.2

Fire Apparatus Access

1. Photovoltaic solar power generation facilities shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds (gross vehicle weight).

Note: A gravel surface is a less desirable surface material but permitted. Gravel has been prone to problems resulting from extended rainy periods and/or due to the lack of a responsible party to maintain it. Other acceptable surfaces are interlocking pavers, chip seal, oil matting or some design that provides road integrity should be considered. The Fire District may request documentation from a registered

engineer to validate that the road/driveway is designed to sustain the imposed load of 75,000 lbs. (27,240 kg), (OFC) for roads not surfaced with asphalt or concrete.

2. Dead end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved turnaround.
3. Fire apparatus access roadway grades shall not exceed 10 percent. Intersections and turnarounds shall be as level as possible and have a maximum of 5 percent grade with the exception of crowning for water run-off. Considerations of grades up to 15 percent may be allowed with a proposed alternate in accordance with the provisions of ORS 455.610(5).
4. Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 and an unobstructed vertical clearance of 13 feet 6 inches.
5. The inside turning radius and outside turning radius for fire apparatus access roads shall be not less than 28 feet and 48 feet respectively, measured from the same center point.
6. The installation of security gates or barricades across a fire apparatus access road shall comply with the following:
 - a. Minimum unobstructed width shall be 16-feet, or two 12-foot sections with a center post or island.
 - b. Gates or barricades shall be set back a minimum of 30 feet from the intersecting roadway.
 - c. Gates shall be of the swinging or sliding type. Barricades using cables or similar methods may be approved.
 - d. Construction of gates or barricades shall be of materials that allows manual operation by one person.
 - e. Locking devices shall be approved.
 - f. Electric gates shall be equipped with an approved means of emergency operation. A KNOX box or KNOX key switch may be required. To order a KNOX lock box or KNOX key switch please visit Sandy Fire's website (sandyfire.org) for ordering information.
 - g. The security gates or barricades and the emergency operation shall always be maintained in an operative condition and replaced when defective.
7. Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "NO PARKING-FIRE LANE" signs shall be placed on one or both sides of the roadway and in turnarounds as needed.

DATED this 28th day of October, 2020.



Fred Wilson
Clackamas County Hearings Officer

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 the decision (which date appears above my signature).