

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use Permit to Establish a Photovoltaic Solar Power Generation Facility.

Case File No: Z0461-20-C
(Dublin Solar)

A. SUMMARY

1. The applicant is Dublin Solar, LLC and Conor Grogan. The subject property is an approximately 94-acre parcel owned by James Cross that is primarily used for farming.
2. The subject property is located at 32602 S. Highway 213, about 3 miles southwest of Molalla at the intersection of the Cascade Highway and South Barbara Way.
3. On January 7, 2021, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant's proposal for a conditional use permit for a passive solar power generation facility on approximately 20 acres of the property that is not in farming use.
4. County staff recommended approval of the conditional use permit, subject to certain conditions. The Hearings Officer approved the application, subject to conditions of approval.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the January 7, 2021 public hearing about this application. 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 County's 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 related exhibits and recommended approval of the application.
3. Enda James Grogan and Conor Grogan testified in support of the application, providing a written presentation.
4. No one testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open until the close of the business day for submission by the applicant of the written presentation shown at the hearing, which was timely submitted and is included in the record as exhibit 7.

C. FACTS

1. The subject property is an approximately 94-acre parcel zoned Exclusive Farm Use (EFU). The subject property is located at 32602 S. Highway 213, a location within Clackamas County along the easterly side of Highway 213, near the city of Molalla, also known as T5S, R2E, Section 18, Tax Lot 900. Prior land use actions on the property include a farm management plan approving an accessory dwelling, which is now the primary dwelling (single-family

- residence) on the property, and a homestead lot division. The site also has outbuildings and is used for hay production and pasture, along with an area of woodlot.
2. Applicant's proposal is to construct a photovoltaic solar power generation facility (passive solar, panels) on 20-acres located on the 94-acre property. The solar facility will consist of solar panels, racking, invertors, overhead poles and lines, perimeter fencing and internal driveway access. The photovoltaic modules will be supported by stationary piles driven six to ten feet into the ground. Each row of panels will be strung together in an east-west/north-south orientation and the panels will face south with a tilt of approximately 25 degrees (or tracking.) The facility as proposed will be unoccupied except for occasional maintenance visits.
 3. The majority of the property is working farmland/wood lot, and generally devoid of natural features. An exception is Kaiser Creek, in the northeast corner of the property. This feature is included on the County's map of River and Stream Corridors (RSCA).
 4. This portion of the County south of Molalla is generally in farm use, with scattered rural residential parcels throughout. Area property size ranges from two-acres up to approximately 120-acres.
 5. The application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use and vicinity map. Preliminary Statement of Feasibility relative to surface water management is included. All the submittal requirements under Subsection 1203.04 are included in the application. The application was submitted on November 5, 2020 and deemed complete November 20, 2020.
 6. County planner Clay Glasgow summarized the County's review of the application and presented the County's staff report, related exhibits, and findings. He noted that the area of the property chosen for the proposed conditional use is well outside the buffer zones for Kaiser Creek and will not impact any wetlands. Mr. Glasgow also noted that the area of the property chosen for the proposed conditional use consists largely of hardscrabble soils and is not in farm use. Mr. Glasgow further noted that the County's proposed conditions of approval require the applicant to remove the solar power generation facility from the property at the end of its useful life, returning the area to its former condition.
 7. Enda James Grogan presented a PowerPoint (Exhibit 7) providing additional detail concerning the applicant and its proposal, how the site was appropriately selected to meet the applicant's criteria and fit within the requirements of the County for approval. Mr. Grogan provided testimony concerning the benefits of solar to the property owner and to the community, and the low impact the project will have, with no identified changes to common farming practices, access points, or costs, to surrounding farming uses. Mr. Grogan reviewed the other various submittals by the applicant, including a soil erosion and compaction report with details on mitigation measures, weed control, and other related information.

D. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III Permit, pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. The Type III procedure is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed

to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision. This application is subject to the standards and criteria of Clackamas County ZDO Section 1203, et al. This application is also subject to Clackamas County ZDO Sections 401, 704, 1005, 1006, 1007, 1015, 1203, ORS 215.296 and OAR 660-033-0130 (5) and (38); and the County's Comprehensive Plan. The Hearings Officer has jurisdiction to hear and decide applications for conditional use permits pursuant to Section 1307 as shown by Table 1307-1.

PART 1. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT

1. Subsection 1203.02 of the Zoning and Development Ordinance lists the information that must be included in a complete application for a conditional use permit.

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use and vicinity map. Preliminary Statement of Feasibility relative to surface water management is included. All the submittal requirements under Subsection 1203.04 are included in the application. The application was submitted on November 5, 2020 and deemed complete November 20, 2020 (Exhibit #1.)

The submittal requirements of Subsection 1203.04 are met.

PART 2. CONDITIONAL USE PERMIT

1. **Subsection 1203.03** of the Zoning and Development Ordinance lists six criteria that must be satisfied in order to approve this Conditional Use.

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

1. The subject property is zoned EFU, Exclusive Farm Use. Section 401 of the ZDO controls land uses in the underlying EFU zoning district. Table 401-1, lists the conditional uses which are allowed. Under Table 401-1, page 401-9 “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)”. Subject to 401.05(A)(1). This proposal is for Photovoltaic solar power generation facility. The proposed use qualifies as a listed conditional use under Section 401, Table 401-1.

This criterion is met.

B. **Section 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.*

1. **Size:** The subject property is approximately 94-acres in size (see submitted site plans). This proposal involves converting 20-acres of the site to photovoltaic solar. Submitted

application materials demonstrate the property is of sufficient size to accommodate the proposed facility.

2. Shape: The shape of the property proposed for use is irregular, though combined with size is not a limiting factor.
3. Topography: The portion of the site proposed for use has slope and aspect suitable for the proposal.
4. Location/Use: This area south of Molalla is generally in farm use, with scattered rural residential parcels. Not limiting factors.
5. Improvements: the property itself is in farm use, and includes a farm dwelling and outbuildings.
6. Natural Features: staff has searched available information and finds:
 - a. Floodplain: FEMA Floodplain maps do not show designated floodplain on the property. Kaiser Creek is not part of the FEMA mapping. Area proposed for use here is well south of and above that watercourse.
 - b. Geologic Hazards: The DOGAMI maps do not show any hazards on site. The site slopes generally east to west, with that portion proposed for use here meeting necessary topographic requirements.
 - c. River and Stream Conservation Area (RSCA): The County has designated certain river and streams with minimum setbacks from the mean high water line for all structures. Kaiser Creek is shown as a “Small Stream” on the RSCA maps. Required buffer for small stream is met with this proposal.
 - d. Wetlands: applicant includes information from National Wetlands Inventory (see map earlier in this report.) There are mapped wetlands in the NE corner of the property. Applicant includes these features on plot plans to show required setback/buffers/protections are met.
- A. Summary: The shape, use, natural features and location characteristics of the property are suitable to accommodate the proposed use. Therefore, this criterion is met.

C. **Section 1203.03(C)**: *The proposed use is consistent with Subsection 1007.09, and safety of the transportation system is adequate to serve the proposed use.*

1. Subsection 1007.07: Transportation Facilities Concurrency
 - a. Subsection 1007.07(B): *“The purpose of Subsection 1007.07 is to ensure that transportation infrastructure is provided concurrent with the new development it is required to serve or, within a reasonable period of time following the approval of new development.”*

The applicant has proposed construction of a photovoltaic solar power generation facility on 20 acres of a 94-acre property that is located on the easterly side of Highway 213 south of Molalla. In addition to the solar panels, the applicant proposes a gated driveway approach intersection with S. Highway 213, an onsite perimeter access road, and an onsite parking area. Based on ZDO subsection 1007.07.B3, the hearings officer agrees that this unoccupied facility qualifies for an exemption regarding transportation facilities concurrency.

- b. Subsection 1007.07(A): *Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.” Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner*

This proposal involves a conditional use; therefore, this subsection applies.

2 Subsection 1007.02, Safety:

- a. Subsection 1007.02(D): *“Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:*
 - i. *No planting, signing, or fencing shall be permitted which restricts motorists’ vision; and*
 - ii. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.”*

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 S. Highway 213. Based on ODOT comments, Engineering staff’s site visit, and the concurrency exemption, this proposal is able to comply with the requirements of ZDO subsection 1203.03 C

This criterion is met as conditioned.

- D. **Section 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.”*

1. The applicant is proposing a use that under applicable Oregon Administrative Rule (Division 33, et al) and EFU zoning district is allowed through the conditional use process. Staff directs reader to discussion in the submitted application materials, and throughout this report, relative to this criterion.

2. Properties adjacent and in larger area are in the EFU Zoning District, Exclusive Farm Use. Typical use is farm and/or small woodlot along with scattered rural residential homesites.

This criterion does not require the use not have any impacts, rather the impacts must not substantially limit, impair or preclude the use of adjacent properties for the allowed primary uses.

The applicant provides discussion on area properties, with regards to size, use, zoning, etc. Throughout submitted application materials the applicant contends the proposed photovoltaic solar power generation facility is a passive use that does not emit odors, dust, vibrations or a significant amount of noise. Staff agrees and the hearings officer concurs. This type of use has not been shown to preclude farm uses. There is no evidence in the record to suggest a freestanding solar array will substantially limit impair or preclude surrounding farm operations.

3. The potential impacts on the area include noise, traffic, dust and lighting. Planning staff finds the following:
 - a. Noise: Once site development is complete, any noise heard relative to the facility will be in the form of infrequent visits from maintenance personnel, along with operation of the inverter fan (centrally located within array, unlikely to be heard from offsite.) Impacts of this minor noise would be mitigated by distance, size of properties and only limited visits by maintenance personnel. Noise should not be an issue.
 - b. Traffic: The proposed development will access S. Highway 213 as shown. Once the development is in place traffic impacts will be limited to infrequent arrival and departure of maintenance vehicles.
 - c. Light: no lighting is associated with the proposed use.
 - d. Dust, other: applicant states the grounds will be continually maintained and kept in good condition and free of weeds. Any dust resulting from the operation of the project is expected to be less than that which occurs from the existing farming operations.
4. Summary: Based on submitted materials and the above analysis, Planning staff is able to find the proposed use will not substantially limit, impair or preclude the use of surrounding properties for the primary uses allowed in the underlying zones.

The hearings officer agrees with these findings and concurs that this criterion is met.

E. **Section 1203.03(E)**: *“The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.”*

1. Staff has reviewed this proposal relative to the Comprehensive Plan and finds goals and policies from the following Sections apply: Chapter 3, Natural Resources and Energy; Chapter 4, Agriculture; and Chapter 5 Transportation. The applicant discusses applicable Plan policies in submitted materials.

a. 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.

b. 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. Applicant contends the facility will promote solar energy, jobs etc. all while conserving and protecting farm land for further farm uses by maintaining the site for resource use.

OAR 660 Division 33 provides for photovoltaic solar in EFU zones. To, a condition will be required that no farm soils will be permanently removed from farm use, e.g. all equipment be removed once use ceases. As an essentially temporary use, this solar power generation facility is not expected to conflict with existing or future EFU related uses on the subject property. With regards to impact on area farm uses – this is a relatively inert use. No noise, dust, activity, etc will occur that might conflict with farm use on other area properties.

c. Chapter 5, Transportation:

Policy 2.0 appears to apply in this case: “... anticipated off-site impacts caused by new development...”. Information provided by applicant and comments submitted from the Traffic Engineering Department indicate only minor additional traffic (approximately one vehicle trip per month) will be generated by the proposed use once construction is complete, and the area road network is adequate.

Based on information in the file and elsewhere on record, and the relevant findings by staff, it appears to the hearings officer this criterion can be met.

F. **Section 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, Section 800, and Section 1000.*

Sections: 1002, 1006, 1007, 1009, 1015; 401 were reviewed.

1. Section 1002, Protection of Natural Features:

Section 1002 of the ZDO sets forth the standards to implement policies of the Comprehensive Plan for the protection of natural features.

This relatively large property includes wetlands, and potential habitat along Kaiser Creek. That said, the 20-acre project area as proposed is on relatively flat slope, empty of wetlands, and otherwise free of protected natural features and/or buffers.

2. Section 1006, Water Supply, Sanitary Sewer, Surface Water; and Utilities Concurrency:

Section 1006 of the ZDO sets forth the standards, requirements and considerations that pertain to utility lines and facilities.

a. Subsection 1006.05 – Water Supply Standards Outside The Portland Metropolitan Urban Growth Boundary And Mount Hood Urban Area.

- i. Applicants for any development permit 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.

The facility as proposed will not require water service.

This criterion is not applicable.

b. Subsection 1006.07 - Subsurface Sewage Disposal Standards:

All development proposing subsurface sewage disposal shall receive approval for the system from the Clackamas County Septic & Onsite Wastewater System Programs prior to submittal of a land use application to the County for development. Said systems shall be installed pursuant to ORS 454.605-454.745 and Chapters 171, 523 and 828, Oregon Administrative Rules 340, Divisions 71 and 73 and the policies of the Clackamas County Septic & Onsite Wastewater System Programs.

The proposed use does not require subsurface sewage disposal. This criterion is not applicable.

c. Subsection 1006.08 - Surface Water Management Standards:

- i. *“All developments shall provide for positive drainage and adequate conveyance of storm and surface water runoff from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point and shall:*

1. *Comply with the requirements of any special districts with surface water management regulatory jurisdiction; or*
2. *The requirements of Section 1008 and the County Roadway Standards in areas not under the jurisdiction of a surface water management regulatory authority.*

- ii. *Installation of stormwater management and conveyance facilities shall be coordinated with the extension of necessary water and sanitary sewer services.*

- iii. *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. *In those areas that are not within a surface water management district, the preliminary statement of feasibility shall be signed by the Clackamas County Engineering Division.*
3. *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.*

Clackamas County is the surface water management authority for the area including the subject site. 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. Based on the size of the property, adequate storm water management is feasible. The applicant will be required to address storm drainage as part of the Development Permit. Any storm water directed to the County road rights-of-ways will require approval through Traffic Engineering. Engineering signed off on the required “Statement of Feasibility” indicating adequate surface water treatment and conveyance is available to serve the development can be made available through improvements completed by the developer or the system owner.”

The standards of Section 1006 can be met.

3. Section 1007, Roads and Connectivity:
 - a. Subsection 1007.03 – General Provisions:
 - i. *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.*
 - ii. *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.*

The applicant has proposed construction of a photovoltaic solar power generation facility on 20 acres of a 93.79 acre property that is located on the east side of Highway 213. In addition to solar panels, the applicant proposes access via an existing driveway on Highway 213, and an onsite perimeter access road. The applicant is subject to the provisions of *Clackamas County Zoning and Development Ordinance (ZDO)* section 1007, pertaining to roads and connectivity, section 1015 pertaining to parking and loading, section 1203 pertaining to conditional uses, and Roadway Standards Chapter 4 pertaining to surface water management. Additionally, the applicant is subject to other *ZDO* requirements, the *Clackamas County Comprehensive Plan* and *Clackamas County Roadway Standards*. State Highway 213 is classified as a major arterial roadway and is under the jurisdiction of the Oregon Department of Transportation (ODOT). Approval of access is subject to ODOT standards and permitting requirements. Access to the solar site is proposed from an existing driveway on Highway 213 that is located approximately 145 feet south of the S Barbara Way intersection. ODOT will determine whether the location of the proposed driveway is consistent with spacing standards, based on the proposed use. This 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.

This criterion can be met with conditions.

4. Section 1015, Parking and Loading:

A. Section 1015.04 Automobile Parking Area Standards:

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, with turnouts every 400 feet. Where an access road is at least 20 feet wide, turnouts are not required. Designated vehicle parking spaces will be required to comply with *ZDO* section 1015 dimensional requirements and require a surface of screened gravel or better.

Vehicle parking spaces shall meet minimum *ZDO* Section 1015 dimensional requirements. Table 1015-1 lists the minimum a number of parking spaces by use category. The proposed use of unoccupied photovoltaic facility is not included in the Table. The use is expected to generate less than one vehicle trip per month, by maintenance personnel. Submitted application materials show area for on-site vehicle parking space, along with perimeter access drive. Staff is able to find this is adequate and the intent of Section 1015 is met as proposed, and the hearings officer agrees with this finding.

The hearings officer concurs that this criterion is satisfied.

5. Section 401– EFU Zone

The proposed use on the subject property, “Photovoltaic solar power generation facilities.....” is a listed conditional use in the underlying EFU zoning district.

The minimum yard depths in the EFU zone are:

30 feet from the front property line.

30 feet from the back property line.

10 feet from the side property lines.

Whether or not the solar modules are structures for purpose of setback may be arguable, but applicant plans to meet the EFU Zone setbacks, regardless.

The standards of Section 401 –EFU Zone can be met.

Subsection 401.05(A)(1) (see also OAR 660-33-0130-(5)(a)(b)) – Approval Criteria for Specific Uses:

“Uses may be approved only where such uses:

- a. *Will not force a significant change in accepted 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.”*

(see also 1203.03(D), above.) Throughout submitted application materials the applicant contends the proposed photovoltaic solar power generation facility is a passive use that does not emit odors, dust, vibrations or a significant amount of noise. The applicant provides discussion on area properties with regards to size, use, zoning, etc. and how these factors and others create a situation in which the proposal will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest, use; and will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. See application materials for detail.

This type of use has not been shown to preclude or otherwise interfere with farm or forest uses. There is no evidence in the record to suggest that a freestanding solar array will substantially limit or impair surrounding farm operations

Applicant further notes that the land under the 20-acre project area can be converted back to suitable farm land after the lifespan of the facility and will not permanently be taken out of resource use. Once construction is completed, the proposed facility is essentially unoccupied. Only an occasional equipment inspection is required. The solar project is compatible with farming and other uses in the area by not creating air or noise quality or glare issues. Because of the

location of the subject property, land use pattern in the area, operational characteristics, confined footprint, and site location, the proposed solar facility will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on any surrounding lands devoted to farm or forest uses.

Essentially the applicant is stating the proposal will not force a significant change in accepted farm or forest practices on surround lands devoted to farm or forest use; and the proposal will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The project area will remove 20-acres from the tract that is currently in farm use. There will be no impacts to other farm uses occurring in the area. The facility will meet site development requirements and will not discharge air emissions or water offsite.

Based on submitted information, staff is able to find the proposal would not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and, will not significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use. Further, staff is able to find that the use will not materially alter the stability of the land use pattern in the area, and the land under the 20-acres project area can be converted back to suitable farm land after the lifespan of the facility and will not permanently be taken out of resource use. Construction and maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production after the lifespan of the facility.

Summary: The proposal can comply with applicable provisions listed under Section 1000, along with applicable criteria found in the underlying Exclusive Farm Use Zone at Section 401. The hearings officer agrees with this analysis and concurs that this criterion is met as shown.

- G. Oregon Administrative Rule, 660 Division 33 applies to Agricultural Land generally and as such is lengthy. Staff has culled through the material and addresses only provisions relevant to this proposal. At 660-033-130 (38), the Rule contains provisions specific to photovoltaic solar power generation facilities, arrived at in this case through conditional use criteria in the EFU Zone Table 401-1, Utility and Solid Waste Disposal Facility Uses.

The subject property is not predominantly Class I, II, Prime or Unique Soils; rather, it is predominantly comprised of “arable-soils” and therefore considered “arable-land” as meant by Division 33. Further discussion here is with arable lands in mind.

OAR 660-033-0130(38): *A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:*

(f) *“Photovoltaic solar power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting*

and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.”

The proposal meets applicable definition of “photovoltaic solar power generation facility.”

From OAR 660-033-0130(38)(i) *“For arable lands, a photovoltaic solar power generation facility shall not use, occupy or cover more than 20 acres. The governing body must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land the governing body or its designate must find that:*

- (A) *“Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);”*
- (B) *“The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-c or arable soils unless it can be demonstrated that: (i) non arable soils are not available on the subject tract; (ii) siting the project on non-arable soils present on the subject tract would significantly reduce the project’s ability to operate successfully; or (iii) the proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those composed of nonarable soils.”*

The *photovoltaic solar power generation facility* is proposed to occupy 20-acres of the property, identified as arable lands as meant by Division 33. No high value farmland soils will be impacted.

This criterion is met.

- (C) *No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10).*

No high-value farmland soils are involved with the project. See soils map at page 8 of this report.

This criterion is met.

- (D) *“A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:*
- (i) *If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.*
 - (ii) *When at least 80 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.”*

Exhibit #5 shows approved photovoltaic project sites in Clackamas County, with further detail provided on page 10 of this report. Within one-mile of the subject, there have been land use approvals granted for three (3) photovoltaic solar projects, each at 12-acres in size. Two (2) of these have also received building permits (Z0440-17; Z0399-19), making for 24-acres of photovoltaic solar power generation facilities that have received land use approval AND building permits (constructed) within one-mile measured from the center of this proposal. This is less than 80-acres.

The proposed project satisfies OAR 660-033-0130(38)(f)(A), (B), (C) and (D).

Further from OAR 660-033-0130(38):

- (A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing

- photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices; and
- (B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual showing how unnecessary soil erosion shall be avoided or remedied. The approved plan shall be attached to the decision as a condition of approval; and
 - (C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and
 - (D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds or other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

The proposed project satisfies OAR 660-033-0130(38) (A), (B), (C) and (D) as submitted and conditioned.

OAR 660-33-130(38)(i) *“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).”*

If this application is approved this required condition will be included.

OAR 660-33-130(38)(j) *“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.”*

Staff suggests this be conditioned to the effect – “land owner is responsible for retiring the facility. Given the salvage value at the end of the useful life, a bond or other security for retiring the components isn’t necessary. At the end of the life all non-utility owned equipment, conduits, structures, and foundations will be removed to a depth of at least three feet below grade.”

The hearings officer concurs that this criterion can be met as conditioned.

Section 704, River and Stream Conservation Area (RSCA): "...to maintain rivers and streams in their natural state to the maximum extent practicable; to maintain water quality and habitat."

As noted elsewhere in this report, Kaiser Creek traverses the far northeast portion of the subject property. This feature is categorized as a "small stream" on the RSCA maps. Area proposed for development here is 1000-ft plus to the south of Kaiser Creek, well outside any impact area or required buffer.

Applicable provisions of Section 704 are met with this proposal.

E. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0461-20-C for a conditional use permit for a passive solar power generation facility on the subject property, subject to the following conditions of approval:

F. CONDITIONS OF APPROVAL

I. General Conditions:

- 1) Approval of this land use permit is based on the written narrative and plan(s) originally submitted November 5, 2020 and deemed complete November 20, 2020. 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) **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.
- 3) 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.
- 4) 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) 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

- 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

- 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 213 right-of-way.
- 4) The applicant shall design and construct a minimum 20-foot wide paved driveway approach onto Highway 213 in conformance with ODOT standards, but no less than 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 213, 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. 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 213 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. Proposed use does not involve onsite septic facilities.

VI. Molalla RFPD #73

No comment received as of this staff report.

VII. ODOT conditions (informational)

State Highway Approach Road Upgrade Permit is required, along with Misc. Permit. *See Exhibit 2*

VIII. Oregon Department of Aviation (informational)

Developer to file FAA Form 7460-1/Aviation safety. *See Exhibit 3*

Dated: January 13, 2021



Carl D. Cox
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 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 is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.