

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

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

Case File No: Z0220-24-C  
(Crawford Solar)

**A. SUMMARY**

1. The applicant is Crawford Solar LLC. The subject property is an approximately 80-acre parcel owned by Avery Smith. The subject property is zoned Exclusive Farm Use (EFU) zone and is currently developed with a dwelling and accessory building and is primarily in farm use.
2. The subject property is located at 32998 S Hwy 213, Molalla, OR 97038, also known as T5S, R2E, Section 19, Tax Lot 102, W.M., a location with frontage on State Hwy 213 and an existing access that was previously upgraded and approved by ODOT for an adjacent solar farm to the southeast.
3. On September 5, 2024, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant’s proposal for a conditional use permit for a photovoltaic solar power generation facility on 12 acres of the subject property, with a perimeter sight-obscuring fence. 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 September 5, 2024 public hearing about this application and during a subsequent open record period, including submittals identified as Exhibits 1-11. 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 Senior Planner Melissa Lord discussed the staff report and related exhibits, providing a presentation and related discussion, and recommended approval of the application. Bruce Moreira of Hawthorne Renewable Energy testified in support of the application, providing a presentation and testimony on behalf of the applicant. Several other individuals were present, including several on behalf of the applicant, Crawford Solar LLC, who did not provide testimony.
3. At the conclusion of the public hearing, the Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. The applicant affirmed that they wished to waive the period for final written argument. The hearings office closed the hearing, leaving the record open until 4:00 p.m. September 5, 2024 (the day of the hearing) to submit the exhibits and documents discussed at the hearing.

**C. FACTS**

1. The subject property is an approximately 80-acre parcel owned by Avery Smith. The subject property is zoned Exclusive Farm Use (EFU), is generally rectangular in shape, and is improved with a single-family residence and an accessory structure. The subject property is located at 32998 S Hwy 213, Molalla, OR 97038, also known as T5S, R2E, Section 19, Tax Lot 102, W.M., a location with frontage on State Hwy 213 and an existing access that was previously upgraded and approved by ODOT for an adjacent solar farm to the southeast.
2. The applicant is requesting the review and approval of a conditional use permit to establish a 12-acre photovoltaic solar power facility. The subject property is approximately 80 acres in area and is currently developed with a dwelling and accessory building. The majority of the property is being used for farming. 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. However, there are water features identified on the Department of State Lands (DSL) Wetland Inventory map. Notice of this land use application was sent to DSL through their online portal. The County did not receive any written comment pertaining to this proposal.
3. 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. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on May 29, 2024 and additional materials received were on July 15, 2024. The application was deemed complete on July 1, 2024.

**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 Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 401, 1005, 1006, 1007, 1009, 1015, 1203 and 1307; and the Comprehensive Plan. Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics:

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## 1) **PROJECT OVERVIEW:**

The applicant is requesting the review and approval of a conditional use permit to establish a 12-acre photovoltaic solar power facility.

The subject property is approximately 80 acres in area and is currently developed with a dwelling and accessory building. The majority of the property is being used for farming.

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. However, there are water features identified on the Department of State Lands (DSL) Wetland Inventory map. Notice of this land use application was sent to DSL through their online portal.

**Public Comment:** At the time of this staff report, Planning and Zoning has not received any written public comment pertaining to this proposal.

***Hearings Officer: No written public comment were received prior to the close of the record.***

## 2) **ZDO SECTION 1203.02 CONDITIONAL USES**

### A. **1203.02: Submittal Requirements**

*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 May 29, 2024 and additional materials received were on July 15, 2024. The application was deemed complete on July 1, 2024.*

***Hearings Officer: The submittal requirements of Subsection 1203.04 are met.***

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. ZDO Section 401, Table 401-1, of the ZDO controls land uses in the underlying EFU district. 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.*

*The proposed use is a conditional use in the underlying zoning district. This criterion is met. **The Hearings Officer concurs.***

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 (i.e. slopes over 20%), mapped environmental hazards such as floodplain or landslide hazards, or other natural features such as rivers or streams regulated by Section 704 that would hinder development on this property. The 12-acre portion of the site that would be developed with the solar array is generally flat. The applicant states that the property is located near to the proposed utility interconnection point, which would make the location suitable for this use.*

When considering the characteristics of the subject property, staff finds that this criterion is met. **The Hearings Officer concurs in this staff finding.**

- 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:** Staff reviewed the proposal for compliance with 1007.07. The findings are included in the staff report below. **The Hearings Officer reviewed the staff report and concurs in the related staff findings.**

- 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) zoning district and is surrounded by other properties in EFU district. Permitted uses of the EFU district are included in ZDO Section 401. This criterion does not require the proposed use to not have 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.*

*The applicant provided an analysis of uses in the surrounding area and determined that the area is predominately in farm use, and many of those farms also include a dwelling. Two properties within close proximity also include a solar array (map and tax lot numbers 51E15 01100 and 52E19 00100). The applicant states that the proposed solar use will not create any noise, water runoff, glare, or traffic-related impacts to the surrounding farm uses.*

*The applicant states that “the only source of noise from the solar project is from the inverter cooling fan. The technical specifications for a typical model of string inverters have a stated noise emission level of less than 33dB. Noise levels of this low order of magnitude are at or below that of a typical rural background noise level and are not expected to be audible outside the project fence line. The project only generates electricity during the day and the inverters only operate when the project is generating electricity. Peak generation and noise levels are expected between 12:30 pm and 1 pm.”*

*As proposed, staff finds this criterion is met. **The Hearings Officer concurs in the above analysis and staff finding.***

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

**Finding:** Staff has reviewed this proposal relative to the Comprehensive Plan and 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 proposed solar array will be located in the corner of the property, allowing for the maximization of the site to be used for agricultural purposes. Applicant contends the facility will promote solar energy, jobs etc. all while conserving and protecting farm land for farm uses. 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 or surrounding lands.*

Chapter 5, Transportation:

*A review of the application was completed by the County's Development Engineering division; they indicate only minor additional traffic will be generated by the proposed use and the area road network is adequate. Their review of the application determines compliance with Chapter 5 of the Comprehensive Plan. Based on the information presented in the application, this criterion is met.*

**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:*** *Staff reviewed compliance with ZDO Section 1000, as applicable. The findings are included in the staff report below. **The Hearings Officer reviewed the staff report and concurs in the related staff findings.***

**3) ZDO SECTION 1000 DEVELOPMENT STANDARDS**

*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.*

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

B. Section 1005 relates to the design of the buildings and the site.

***Finding:*** *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. **The Hearings Officer concurs.***

C. **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:

- a. 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 property is not within a public or private water district, and is within a groundwater limited area. The proposed development will not require using any water as this application is for a photovoltaic (solar) array. This section is not applicable. **The Hearings Officer concurs.***

D. **1006.06 Surface Water Management and Erosion Control.** 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.
  - i. 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
  - ii. 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. This criterion is met. **The Hearings Officer concurs.***

E. **1007 Roads and Connectivity.** 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.

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.

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:*

*The proposed development has frontage along Stage Hwy 213, which is a major arterial and state highway under the jurisdiction of the Oregon Department of Transportation (ODOT). The applicant has submitted a plan showing the use of an existing access to State Hwy 213. The existing access was previously upgraded and approved for an adjacent solar farm to the south east (map and tax lot number 52E19 00100); the access was approved by ODOT.*

*The applicant has submitted a site and access plan showing the usage of an existing shared access that was previously approved and constructed with ODOT permit 57530 and conditioned by approved land use file Z0399-18.*

*Beyond the shared access to Hwy 213, the applicant will need to design and construct a private emergency access driveway meet the requirement of standard drawing R100, with turnouts and emergency vehicle turnaround at the terminus per standard drawing C350.*

*Presently, Hwy 213 operates during the mid-day one hour peak and first and second hours of the PM peaks at acceptable volume to capacity (v/c) ratios. The additional vehicle trips from the proposed conditional use will not adversely impact the current v/c ratios. Based on ZDO Subsection 1007.07(B)(3), the use qualifies for an exemption regarding transportation facilities concurrency.*

*As proposed, these standards can be met with conditions. **The Hearings Officer concurs, reviewing and adopting related proposed conditions of approval.***

- F. **1009, Landscaping.** Section 1009 seeks to ensure that sites are designed with appropriately selected, designed, installed, and maintained landscape materials and that landscaped areas are used for appropriate purposes.

**Finding:** *There is no minimum landscaping requirement in the EFU district, pursuant to ZDO Subsection 1009.02. However, Section 1009 applies to institutional uses including utility facilities such as this.*

*Subsection 1009.04 pertains to buffering requirements. Buffering is necessary to mitigate adverse visual impacts between the solar array and the neighboring dwelling located northeast of the site at 32232 S Hwy 213 (map and tax lot 52E18 01100). The dwelling is located approximately 500 feet from the proposed solar array and so particular care must be taken to help mitigate visual impacts between the two uses. Staff recommends that a condition of approval be imposed to require a landscape buffer between the solar array and the north east of the property, specifically along the northern property boundary a distance of 200 feet from the northeastern corner of the subject property. A 200-foot-wide landscape buffer should obscure the visual impacts of the facility to the dwelling on the neighboring property. Due to the subject natures of Subsection 1009.04(E)(4), staff recommends that the condition of approval allow the applicant to implement (E)(1 through 3) rather than (4) unless an alternative buffering method is submitted prior to a decision being issued.*

*As conditioned, this criterion is met. **The Hearings Officer concurs in the above analysis and staff finding, reviewing and adopting related proposed conditions of approval.***

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

***Finding:** The written application materials state that “Danger High Voltage” and “Danger – No Trespassing” signs will be fixed to the 6-foot-tall security fence. This type of signage is considered an “incidental sign” since it is generally informational, and has a purpose secondary to the use of the site. Incidental signs are exempt by Subsection 1010.03(B). This standard is met.*

***The Hearings Officer concurs.***

- H. **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:** Applicant’s narrative states that one parking space will be provided within the fenced area. 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 unstaffed facility. There is a need to accommodate at least one vehicle for occasional maintenance and inspection needs of the unstaffed 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. **The Hearings Officer concurs, reviewing and adopting related proposed conditions of approval.***

- I. **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 unstaffed facility and will not generate waste production. Based on the scope of work of the proposed developed staff can construe that there is no need for solid waste and recycling material collection on site, and therefore compliance with Section 1021 is not necessary. **The Hearings Officer concurs.***

#### 4) **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, a photovoltaic solar power generation facility 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. This land use application is for a conditional use permit to operate a photovoltaic solar power generation facility. This criterion is met. **The Hearings Officer concurs.**

- 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:** Staff incorporates the findings made by the applicant in their submitted written narrative: “The property where the project is located plans to continue to farm the remaining areas of the parcel after project installation and all surrounding lands will not see any change to their ability to farm on their property. The project will not impact the ability to plant or harvest crops on adjacent lands in any way. Panels will not shade or block any surrounding property. The project will not impact access to any adjacent or surrounding lands. The project area will be able to return to farmland if the project is decommissioned” This criterion is met. **The Hearings Officer concurs in the above discussion and related staff findings.**

- 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:

- a. 30 feet from the front property line
- b. 10 feet from the side property lines
- c. 30 feet from the rear property line

The dimensional standards were not shown on the applicant’s site plan; however, there is ample space to meet the setbacks. A condition of approval is warranted to ensure this criterion is met. **The Hearings Officer concurs, adopting the related proposed condition of approval.**

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) 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). This standard is met. **The Hearings Officer concurs.**

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- 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; while not directly responding to the provisions of this OAR subsection, they touch on the key elements of these standards. 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 Hardscrabble silt loam soils (2-7% and 7-20% slopes), which are Class III and IV soils. Therefore, the project will not be located on the high-value farmland soils listed in OAR 660-033-0020(8)(a). **The Hearings Officer concurs in the above staff findings and discussion, reviewing and adopting the related proposed condition of approval.***

- 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 already recorded a document with the above statement, but this can be met through a condition of approval. As conditioned, this criterion can be met. **The Hearings Officer concurs, reviewing and adopting the related proposed condition of approval.***

- 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:*** *Staff recommends a condition of approval 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. **The Hearings Officer concurs, reviewing and adopting the related proposed condition of approval.***

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### **Advisory Notes:**

Advisory notes are advisory and informational only but may represent the requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

Planning staff sent a notice of this land use application to the Department of State Lands (DSL) through their online notification system [Exhibit 9]. Once comments are provided by the DSL they will be shared with the applicant. It is the applicant's responsibility to adhere to any State regulations pertaining to this development.

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## E. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0220-24 for a conditional use permit to construct a 12-acre solar power generation facility on the subject property, subject to the following conditions of approval:

## F. CONDITIONS OF APPROVAL

If approved, staff recommends that approval of this application for the Conditional Use permit be subject to the following conditions. The conditions listed 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.

*I reviewed and considered the proposed conditions of approval submitted by staff and find the following conditions adequate to ensure that the requirements of this Conditional Use permit are met. I note that 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.*

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on May 29, 2024, and additional materials submitted on July 15, 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:
  - b) A building permit for a new primary structure that was part of the conditional use approval;  
or
  - c) 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 the issuance of a Development Permit or a building permit**, the applicant shall provide the County’s Planning and Zoning division an updated site plan demonstrating compliance with the minimum setback standards of the EFU zoning district. The solar array

shall meet the minimum setback standards of the EFU zoning district: a minimum of 30 feet from the eastern property line (rear), and a minimum of 10 feet from the northern property line (side). [401.07]

5. **Prior to the issuance of a Development Permit or a building permit**, the applicant shall provide the County's Planning and Zoning division an updated site plan demonstrating compliance with the vehicle parking requirement. At least one 8.5 feet wide by 16 feet long parking space shall be provided within the leased area. The designated vehicle parking space requires a surface of screened gravel or better. [1015]
6. **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)]
7. Applicant shall implement soil compaction and weed control plans, as submitted with application. [OAR 660-033-0130(38)(h)]
8. 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)]
9. **Prior to obtaining a Development Permit or a building permit**, a landscaping plan signed by a registered landscape architect shall be submitted to Planning and Zoning demonstrating compliance with the buffering standards of ZDO Section 1009.04(E)(1, 2, or 3) on the northeast corner of the subject property. The landscape buffering shall be located along the northern property boundary for a distance of 200 feet; starting from the northeast corner of the property spanning 200 feet to the west. [1009.04]
10. **Prior to operating the solar facility**, the buffering plantings required in Condition #9 shall be installed to the nursery industry standards. Plants shall be properly guyed and staked to current nursery industry standards as necessary [1009.10(D and E)]
11. **Prior to obtaining a Development Permit**, landscaping materials provided in compliance with Condition #9 shall be guaranteed for a period of one year from the date of installation. The developer shall either submit a signed maintenance contract for the one-year period or provide a performance surety pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, covering the landscape maintenance costs for the one-year period. [1009.10(F)]
12. Where applicable, the following planting standards shall apply to the landscaping required to satisfy the buffering standards on Condition #9 [1009.10(H, I, J, K)]:
  - a. When planted, deciduous trees shall be fully branched, have a minimum caliper of two inches, and have a minimum height of eight feet.
  - b. When planted, evergreen trees shall be fully branched, have a minimum height of eight feet, and have only one leader.

- c. Shrubs shall be supplied in minimum one-gallon containers or eight-inch burlap balls with a minimum spread of 12 inches.
  - d. Ground cover shall be planted a maximum of 30 inches on center with a maximum of 30 inches between rows. Rows of plants shall be staggered. Ground cover shall be supplied in minimum four-inch containers, except that the minimum shall be reduced to two and one-quarter inches or equivalent if the ground cover is planted a minimum of 18 inches on center.
13. The applicant shall obtain a **Development Permit** from the Clackamas County Engineering Department for review and approval of, erosion control Best Management Practices implemented, sight distances and the private access improvements. The permit shall be obtained prior to commencement of site work. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit Application.
14. The applicant shall meet the requirements set forth within Section 190 of the Clackamas County *Roadway Standards*.
- 15. Prior to issuance of a Development Permit:**
- a. The applicant shall provide written approval for all required and permitted work with ODOT right-of-way.
  - b. The applicant shall design and construct a private access driveway from State Hwy 213 to the solar site meeting the minimum required widths and structural section of standard drawing R100 with turnouts every 400-feet and an emergency vehicle turnaround meeting requirements of standard drawing C350. If a minimum 20-foot-wide travel surface is provided turnouts are not required. The applicant shall provide written approval from the Fire Marshal for emergency access and circulation of the private improvements.
  - c. A Stormwater Management Plan shall be submitted when more than 10,000 square feet of impervious area is disturbed.
  - d. The applicant shall provide adequate on-site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar facility. Parking and backing areas shall meet minimum dimensions and requirements of ZDO 1015 and standard drawing P200.
  - e. The applicant shall provide and maintain minimum intersection sight distances at the proposed shared private road intersection with State Hwy 213. Intersection sight distance shall restrict plantings at maturity, retaining wall, embankments, trees, fences or any other objects that obstruct vehicular sight distance. Minimum required intersection sight distance is 610-feet north and south bound along State Hwy 213.

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- f. The applicant shall consult with Oregon Department of Environmental Quality for NPDES 1200-C Erosion Control Permitting. Any Oregon DEQ permitting shall be obtained and submitted prior to Development Permit issuance.

Dated: September 12, 2024



Carl D. Cox  
Clackamas County Hearings Officer

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### **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.