

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

Regarding an Application for a Conditional	)	<b>Case File No.</b>
Use Permit to Establish Photovoltaic	)	<b>Z0508-18-C</b>
Solar Power Generation Facility.	)	<b>(Kaiser Creek Solar)</b>

**A. SUMMARY**

1. The applicant is Kaiser Creek Solar LLC. The owner is Marilyn Folwell.
2. The subject property is located at 32012 South Highway 213, Molalla, OR 97038. The legal description is T5S, R2E, Section 18, Tax Lot 300 W.M. The subject property is approximately 32 acres and is zoned EFU – Exclusive Farm Use.
3. On November 29, 2018, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on November 29, 2018. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Clay Glasgow discussed the staff report and recommended approval of the application.
3. Troy Snyder and Sarah Sayles testified in support of the application.
4. No one testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer closed the record.

**C. FACTS**

The subject property is an approximately 32-acre parcel zoned EFU. The subject property is located on at 32012 South Highway 213, Molalla, OR 97038, on the east side of Highway 213 south of the Molalla area. The subject property is in an area of small farms along with scattered rural residential home sites. The City of Molalla is approximately 300 feet north of the property. There is a small airstrip a half-mile to the west. The application proposes to construct a 12-acre photovoltaic solar power generation facility on the northern portion of the property.

**D. DISCUSSION**

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

All of the applicable approval criteria are satisfied.

**E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0508-18-C, with the following conditions of approval.

**F. CONDITIONS OF APPROVAL**

**I. General Conditions:**

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s) dated October 15, 2018. The application was deemed complete on October 16, 2018. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you'd like to take advantage of this meeting please contact Deana Mulder, at (503) 742-4710 or at [deanam@co.clackamas.or.us](mailto:deanam@co.clackamas.or.us).

- 3) **Prior to the issuance of building permits**, the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Development Agency. Wendi Coryell can be contacted at 503-742-4657, or [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us). The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) Developer to satisfy any requirements from ODOT regarding access point to Highway 213.
- 5) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
  - a) A building permit for a new primary structure that was part of the conditional use approval; or
  - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 6) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.
- 7) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

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

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Prior to commencement of use the project owner shall sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).
- 3) Developer/owner is responsible for retiring the facility. At the end of the life of facility all non-utility owned equipment, conduits, structures, and foundations will be removed to a depth of at least three feet below grade.
- 4) Applicant to implement soil compaction and weed control plans, as submitted with application.

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

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

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

- 1) All frontage and onsite improvements shall be in compliance with *Clackamas County Roadway Standards*.
- 2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
- 3) Written approval from ODOT, in the form of a permit for access to Highway 213 and for all work in Highway 213 right-of-way shall be obtained. A paved approach shall be constructed onto Highway 213. The approach shall be 20 feet wide and extend a minimum of 20 feet from the existing edge of pavement. At a minimum the approach shall be constructed per Clackamas County Roadway Standards Drawing D500, or as required by ODOT.
- 4) The applicant shall design and construct a minimum 12-foot wide access road, with turnouts approximately every 400 feet from Highway 213 to the solar facility site. Within the site, a 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. If a turnaround is necessary, it shall be designed and constructed per Standard Drawing C350 or C300. Turn and curve radii shall comply with local Fire District requirements. The access road and perimeter access shall comply with Roadway Standards Drawing R100 in regards to structural section and the required surfacing with screened gravel or better.
- 5) The applicant shall provide a copy of the storm water management plan details to DTD Engineering. The storm water management plan shall comply with the requirements of Roadway Standards, Chapter 4.
- 6) The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar facility. A minimum 24-foot deep backing area shall be provided for each parking stall.
- 7) Parking spaces for the solar facility shall meet *ZDO* section 1015 dimensional requirements.
- 8) 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 and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
  - b) Written approval from ODOT in the form of a permit for access to Highway 213.

- c) A set of site improvement construction plans, for review, 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 fee for the Development Permit will be calculated in accordance with the current fee structure existing at the time of the Development Permit application.

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](mailto:adennis@clackamas.us)

No comments received as of this staff report/proposed use does not involve onsite septic facilities.

**VI. Molalla Fire #73**

Mike Penunuri, comments via e-mail dated October 30, 2018. See Exhibit #4  
Generally speaking, Molalla Fire has no issues with the proposal as long as the developer provides access in accordance with Chapter 5 and Appendix "D" of the 2014 Oregon Fire Code.

**VII. ODOT**

Comments dated November 16, 2018 (see exhibit 6). A state highway approach road permit from ODOT for access to the site will be required for this change of use.

DATED this 3rd day of December, 2018.



Fred Wilson  
Clackamas County Hearings Officer

## **ENDANGERED SPECIES ACT NOTICE**

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

## **APPEAL RIGHTS**

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