

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: Z0545-20-C
(Bradley Solar)

A. SUMMARY

1. The applicant is Bradley Solar LLC. The subject property is an approximately 41-acre parcel owned by Robert Blount. The subject property is zoned Rural Residential Farm Forest 5-Acre (RRFF-5) and is improved with a single-family residence and associated outbuildings. The predominant use of the subject property is hay/pasture, along with wooded areas.
2. The subject property is located at 17423 S Potter Rd., Oregon City, OR 97045, a location between Bradley and Potter Roads, north of Redland Road.
3. On February 3, 2022, 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 10 acres of the property that is not in farming use.
4. Eric Mische, a neighbor residing on nearby property, opposes the application, asserting a number of reasons the application should be denied or more fully evaluated prior to approval.
5. 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 February 3, 2022 public hearing about this application and during a subsequent open record period, including submittals identified as Exhibits 1-10. 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, providing a presentation and related discussion, and recommended approval of the application.
3. Enda James Grogan of Sulus Solar testified in support of the application, providing a presentation and testimony on behalf of the applicant.
4. Robert Blount, owner of the subject property, testified in support of the application.
5. Eric Mische, a neighbor, submitted written comments in advance of the hearing opposing the application, and also appeared at the hearing where he provided a presentation and testified in opposition to the application.
6. At the conclusion of the public hearing, the Hearings Officer left the record open for 7 days for the purpose of allowing all parties the opportunity to submit additional evidence,

arguments, or testimony for consideration in this matter, an additional 7 days to provide all parties an opportunity to respond to any new evidence submitted during the initial open record period, and a third 7 day period for the applicant to submit a final written argument. Mr. Grogan submitted additional materials in support of the application, Mr. Mische also submitted additional materials, and Mr. Grogan submitted a final written argument on behalf of the applicant.

C. FACTS

1. The subject property is an approximately 41-acre parcel owned by Robert Blount. The subject property is zoned Rural Residential Farm Forest 5-Acre (RRFF-5), is generally rectangular in shape, and is improved with a single-family residence and associated outbuildings. The predominant use of the subject property is hay/pasture, along with wooded areas. The subject property is located at 17423 S Potter Rd., Oregon City, OR 97045, a location between Bradley and Potter Roads, north of Redland Road, also known as T2S, R2E, Section 36, Tax Lot 00800.
2. 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 was submitted, dated October 19, 2021. All the submittal requirements under Subsection 1203.04 are included in the application. The application was submitted on November 30, 2021. Following submission of additional requested information the application was deemed complete December 27, 2021. The 150-day deadline established by state law for processing this application is May 26, 2022.
3. Applicant's proposal consists of the installation of a 10-acre photovoltaic solar power facility on this 41-acre tract in the RRFF-5 Zone. The project area is shown as comprising approximately 10-acres of solar generating facility, consisting of solar panels, racking, invertors, overhead poles and lines, perimeter fencing, and internal driveway access. The facility will be un-occupied except for occasional maintenance visits.
4. Natural features on the property include a "small" RSCA stream (and associated features) that crosses the site in a location outside of the area proposed for use with this application. Otherwise, there are no identified natural features. This area of the County northwest of Redland is in mixed use and zoning. Rural residential on acreage properties is predominant, though larger parcels in forest and farm use are also evident and scattered throughout the area.
5. The subject property is not located in a public surface water district. Surface water is regulated pursuant to Section 1006 of the ZDO and administered by the DTD Engineering Division. The subject property is not located in a public or private water district. The subject property is not located in a public or private sewer district. The subject property is within Clackamas Rural Fire Protection District #1. The County requested responses to the application from: Department of Transportation and Development (DTD), Traffic Engineering (TE); Department of Transportation and Development (DTD), Building Division; Clackamas RFFD #1; ODA, Oregon Department of Aviation; CPO; and, Property Owners within 2,640 feet. The County received a written response from the Oregon Department of Aviation (ODA) dated January 4, 2022, stating that the ODA had no comment.
6. On January 27, 2022, Eric Mische, a neighbor residing on nearby property located at 17245 S. Bradley Rd., submitted written comments opposing the application. (Exhibit 5) Mr. Mische

describes himself as a long-term resident of 33 years, and as a professional engineer with experience in the solar power industry. Mr. Mische makes several arguments, restated here:

- a) Site is not “flat” as asserted by the applicant. Mr. Mische contends that the site is actually sloped up to 10-15% to the west, north and south, stating that in the area where the panels are proposed there is a 38-foot drop from east to west. Mr. Mische states that, in his professional opinion, such solar projects are best situated on flat ground. Mr. Mische asserts that there is actually a better-suited location closer to Potter Road and the utility interconnection.
- b) Mr. Mische asserts that the applicant should provide details concerning how the panels will be mounted on the slope, and details concerning the applicant’s erosion plan (not just a preliminary plan).
- c) Mr. Mische points out that the subject property and much of the surrounding area is zoned RRFF-5, further pointing out that the majority (or all) of these projects within the County are on EFU or TBR zoned properties. Mr. Mische notes that EFU and TBR properties are much less densely populated and do not designate Dwellings as a Primary Use, as is the case with RRFF-5 zoned properties.
- d) Mr. Mische contends that the proposed solar power plant would “alter the character of the surrounding area in a manner that substantially impairs (i.e. diminishes in quality)” his own property for its current primary residential use. Mr. Mische contends that residential uses have more rights as a designated Primary use in the RRFF-5 zone as opposed to similar but non-primary uses under EFU or TBR zoning.
- e) Mr. Mische states that he would see all 10 acres of this proposed solar power facility from his own property from his backyard lawn and deck, and from certain windows of his residence. Further, Mr. Mische points to the slope of the site, asserting that he would see all 10 acres of panels from his property’s vantage point, and not just the edge of the panels. Mr. Mische essentially contends that the additional impact of the slope needs additional assessment. Mr. Mische also asserts that: “Pastoral views are a central feature of this property.” Mr. Mische provided photographs taken from various locations on his own property of the proposal site. These photographs show that the proposal site is visible from these locations. The photographs also show that views from Mr. Mische’s property of the proposal site are partially screened by a vegetative strip of trees, and show that the proposal site is on the other side of Bradley Road, several hundred feet from Mr. Mische’s property.
- f) Mr. Mische points to statements in the applicant’s proposal that there will be **no** glare from the panels, and also comparisons of glare from solar panels as no worse than that from a body of water (such as a pond) and disputes the accuracy of these assertions. First, Mr. Mische points out that solar panels on a slope are nothing like a pond, which is flat. Mr. Mische further contends that, based on the slope of the site, “glare (“i.e. to shine with a harsh uncomfortably brilliant light) from the panels would be an issue and result in a substantial impairment of the quality of my Property for its Primary use.” Mr. Mische points to the elevation of his home, noting that the panels nearest to his property would be to the west and below his home’s elevation, with glare “likely to be exacerbated by the uneven slope of the property” particularly in the mornings. Mr. Mische submitted a photo of a nearby Sulus Solar site on a flat EFU property near Estacada. The photograph shows an area of glare extending 2-3 panel widths on those panels lined up with the noon sun.
- g) With respect to natural screening, Mr. Mische references recent fire and storm damage, and points to much of the current vegetation screening as deciduous. Mr. Mische references the photos he submitted and points out that the site is not completely screened from site from

his own property. Likewise, Mr. Mische points out that a sight-obscuring fence and landscaping around it would also not completely screen the panels from view from his own property, as it sits above much of the site.

- h) Mr. Mische again points to the slope of the proposal site and asserts that the applicant has not outlined a detailed plan that includes methods and criteria for keeping grass and weeds on the site low, consistent with NFPA firewise standards. Particularly, Mr. Mische notes that existing waddles and slope could make mowing difficult. Mr. Mische also references a September 2020 fire event on the subject property and the impacts of this past fire on area homes (with area residents evacuating) and upon County resources required to extinguish it. Mr. Mische points to the need to keep grass low in a power plant to reduce such risk.
 - i) Mr. Mische requests that, if the County approves this application, the County also consider imposing certain additional requirements (conditions of approval) as follows:
 - i. Require no glare from the panels to be visible from any residence or landscaped area or deck, with revocation of the permit if glare is present and not remediated upon 30 days notice.
 - ii. Require the vegetative strips screen the site from all neighboring properties and roads year-round prior to generation of any power from the proposed facility.
 - iii. Require implementation of a maintenance plan that minimizes fire risk from the facility that includes specifics around mowing and rodent management with revocation of the permit if the plan is not implemented, upon 30 days notice.
 - iv. Require re-evaluation of the siting of the plan to minimize impacts on surrounding RRFF-5 landowners.
7. County planner Clay Glasgow summarized the County's review of the application and presented the County's staff report, related exhibits, and findings, with a PowerPoint presentation. Mr. Glasgow noted that Section 316 of the Clackamas County Zoning and Development Ordinance (ZDO), Table 316-1, includes as a potential conditional use "Public Utility Facilities (ORS 757)." Therefore, the proposed photovoltaic solar power facility is a potentially allowed conditional use within the RRFF-5 zone, subject to the approval requirements discussed in the staff report.
8. Mr. Glasgow noted that the area of the property chosen for the proposed conditional use is a 10-acre portion of this 41-acre parcel, a generally rectangular-shaped parcel currently in non-intensive farm use of sufficient size to accommodate the proposed facility. Mr. Glasgow described the topography of this site, noting that the location is not flat but the slopes are within the approximately 0-to-23-degree range of slopes needed for this type of solar project, concluding that the slopes are appropriate for the proposed use. Staff noted that, with slope as existing, only minimal grading is needed to prepare the site for the proposal.
9. Mr. Glasgow noted the location of the site between Oregon City and Redland, describing the area as mixed property use that is predominately rural residential on acreage properties. Mr. Glasgow noted that the subject parcel itself is improved with a residence and outbuildings, but is of sufficient size to accommodate the proposed facility. The project area is shown as comprising approximately 10-acres of solar generating facility consisting of solar panels, racking, invertors, overhead poles and lines, perimeter fencing, and internal driveway access for occasional maintenance visits.
10. Mr. Glasgow described the small stream that crosses the site and its associated emergent wetland features, noting these features are well outside the area proposed for this conditional use. Mr. Glasgow stated there are no other inventoried or otherwise identified natural features on the Property. No portion of the subject property is located within a designated floodplain,

the DOGAMI maps do not show any geologic hazards on site, the small RSCA stream entering the property from the south is outside the proposal area, and there are no wetlands identified on NWI in the proposal area. Based on these facts, staff found the characteristics of the site suitable for the proposed use. Mr. Glasgow also noted that the applicant proposes access to the site via an existing driveway to S. Potter Road, utilizing an on-site perimeter access road. Staff noted that approval of the access is subject to Clackamas County Roadway Standards that can be met, concluding that the safety of the transportation system is adequate to serve the proposed development.

11. Mr. Glasgow described staff analysis of the proposal's impact on the character of the surrounding area and the proposal's impact on the uses of surrounding properties for the primary uses allowed in the underlying zoning districts for these properties. Mr. Glasgow noted that the approval criterion does not require the proposed 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. Mr. Glasgow pointed out similar conditional uses approved within the County were not located on properties zoned RRFF-5 like this one, but were mostly on farm-zoned (EFU) properties, and this is the first application for this type of conditional use on RRFF-5 property within the County.
12. Mr. Glasgow referenced the applicant's description of impacts to surrounding properties, which included these statements: "The proposed facility produces no detectable noise, odor or glare, and will have no impact on adjacent rural residential and farm uses." The applicant also stated: "The proposed facility is surrounded by natural vegetation strips, screening the site from all neighboring properties and roads. Furthermore, the site will be surrounded by a sight obscuring fence and the Applicant is happy to provide a landscaping plan (similar to the example shown in Appendix 13) if deemed necessary by planning staff." Staff also noted that the land under the 10-acre project area can be converted back to the original condition after the lifespan of the facility and will not permanently be taken out of other use.
13. Mr. Glasgow referenced the County's findings that the proposal satisfied the goals and policies of the County's Comprehensive Plan in the areas that apply to the proposed use. He also reviewed County findings that the proposed use complies with applicable requirements of the site's zoning district and overlay zoning district. Mr. Glasgow continues to recommend approval of the application after also reviewing Mr. Mische's written comments opposing the application, but does note the potential for some impacts to neighboring properties from glare from the proposed solar panels as asserted by Mr. Mische.
14. Enda James Grogan presented a PowerPoint (Exhibit 7) providing additional detail concerning Sulus Solar, the application and this proposal, and how the site was identified and selected to meet the applicant's criteria as a suitable location. 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, describing the project as quiet and low in height, as it is a passive solar panel project. Mr. Grogan compared the solar proposal to development of the site with a new subdivision asserting that the proposed solar project will have much less impact on the area and neighboring properties. Mr. Grogan testified to outreach efforts he has made within the area concerning the proposal, including commitments with neighbors of the property to reduce the visual impact of the solar arrays. Mr. Grogan contends that the proposal will not impact surrounding uses or cause any changes to existing uses.
15. Mr. Grogan reviewed the other various submittals by the applicant, including a soil erosion and compaction report with details on mitigation measures, and other related information. Among the reports is a site-specific weed control report with details concerning practices for

addressing historic weed presence, potential for weeds to occur, construction and operation best management practices, and long-term maintenance including: twice yearly biologist check, seed mix designed to reduce weed invasion, manual removal, mowing and grazing, and spot herbicide by licensed professional. Mr. Grogan stated that he is amenable to working with neighbors and their concerns, and to reducing the visual impact of the project.

16. Mr. Blount also provided testimony in support of the application. Mr. Blount participated in a local Community Planning Organization meeting to discuss concerns with respect to the visual impact of the proposal. Mr. Blount stated at the hearing that he is having an additional 3,500 new trees planted on his property in areas to reduce the visual impact of the solar panels, that he is leaving the trees along the setback for the creek area on his property as a greenway for wildlife. Mr. Blount stated that the southwest corner of his property has an area that was logged that is already approved for new plantings, and he is willing to include additional plantings to reduce the visual impact of the proposal.
17. Mr. Grogan provided some additional clarification, stating that there will be sight-obscuring perimeter fencing around the solar project. He also clarified that no perimeter roadway will be built; rather, there will be a line of trees along the perimeter of the property as a screen for neighboring properties. Mr. Grogan notes that the solar panels are solar collectors that absorb light rather than reflect it, but also notes that there is glare from the panels, and the glare increases with the height of the panels.
18. Eric Mische provided testimony and argument, and a PowerPoint presentation of his points in opposition to approval of the application (Exhibit 8). In his PowerPoint presentation, Mr. Mische reviewed each of the points he made in his written comments in opposition to the proposal (Exhibit 5). Specifically: the site is not actually “flat”; application lacks details for mounting the panels given the slope; the subject property and surrounding area is zoned RRFF-5, whereas approvals for similar types of facilities have been on EFU and TBR properties; solar power plant would alter the character of the surrounding area in a manner that substantially impairs (i.e. diminishes in quality) his own property for its primary allowed use (residential), essentially asserting this primary use should have more rights than the proposed conditional use; and, the solar panels would be visible from his own property.
19. In his PowerPoint presentation, Mr. Mische also presented the photographs he provided in Exhibit 5, pointing out his own primary residential use of his RRFF-5 property and again asserting: “Pastoral views are a central feature of this property.” Mr. Mische similarly discussed the other photos he had submitted in Exhibit 5. Mr. Mische argues that his own property will be affected by glare from the panels, due to the factors he asserted in Exhibit 5, contending that the applicant should be required to commit to ensuring his property will not be affected by any glare, and again pointing to the photo he provided showing glare from similar panels. Mr. Mische asserted there is only limited natural screening between his property and the proposal site, contending that use of natural vegetation strips will not screen the site from his property, nor will the sight-obscuring fence and proposed landscaping. Mr. Mische further asserts that the applicant did not attempt to contact him to assess actual impacts to his property.
20. Mr. Mische also contends that the applicant’s proposal lacks necessary details for keeping grass or weeds under the panels and within the fence low, consistent with prudent NFPA standards. Mr. Mische points to existing waddles and slope making mowing difficult, the effect of the past fire on the subject property, and the need to address such fire hazards in these types of facilities. Mr. Mische repeated his assertion that, if approved despite his opposition, the additional requirements he requested be imposed.

21. Mr. Grogan provided rebuttal of the arguments and testimony by Mr. Mische, asserting that, with respect to glare, there is a significant buffer between the properties and he is happy to plant additional screening. With respect to fire hazards, Mr. Grogan stated that he would work with the appropriate government agencies to ensure the project does not increase fire risk. Mr. Blount also provided rebuttal concerning the issue of fire risk, noting that the proposed site location is currently a planted hay field, asserting that replacing the hay with the solar project will result in less fire risk than currently exists.

Open-Record Period Submittals

22. Mr. Mische submitted additional written argument within the open-record period (Exhibit 9), referencing his original written comments opposing this application (Exhibit 5). Mr. Mische notes that these comments were submitted after the County's initial staff report and recommendation of approval. Mr. Mische states that his primary point is that approval of this application for a conditional use permit would: "Alter the character of the surrounding area in a manner that substantially impairs my property and others for the Primary uses allowed in the zoning district, specifically Dwellings under RRFF-5 zoning" providing the definition: "'impair' means to 'diminish' in function, ability, or quality: to weaken or make worse."
23. Mr. Mische points to the issue of glare, asserting that glare reflecting from the panels towards a neighboring dwelling (or associated landscaped area) is a substantial impairment of that primary residential use, and "specifically enjoyment of living at one's rural residential property and any pastoral views." Mr. Mische points to the definition of "glare" as meaning: "a harsh uncomfortably bright light; especially: painfully bright sunlight." Mr. Mische writes: "In my professional opinion, for this application the glare would be exacerbated by:
- The slope of the site in multiple directions.
 - The fact that there are dwellings above the proposed facility to the south and west with direct visibility of the facility. Mr. Mische included an additional photograph showing portions of the proposal site visible from a different neighbor's property, about which he states: "In my professional opinion this Dwelling will experience glare also unless mitigated by the Applicant."
 - Glare shown in photos he submitted (with Exhibits 5 and 8) taken of similar Sulus Solar projects, showing glare from the solar panels.
24. Mr. Mische refutes the statements by the applicant that the proposal will produce no detectable glare and will have no impact on adjacent rural residential and farm uses, contending that the applicant has not met its burden of proof, and questioning the consequences if applicant's statements and assertions are not true. Mr. Mische points to another of the applicant's assertions: "The proposed facility is surrounded by natural vegetation strips, screening the site from all neighboring properties and roads." Mr. Mische provides this definition of screen: "something that shelters, protects, or hides: such as a growth or stand of trees, shrubs, or plants." Mr. Mische agrees that it may be possible for the applicant to screen the site, but points to the difficulties presented by the site's slope and the neighboring properties above it. Mr. Mische agrees that planting 3,500 trees is a good effort at screening, but contends these efforts are unlikely to have any impact on screening for a long time. Mr. Mische suggests it would be easier to move the site location than screen it.
25. Mr. Grogan provided a response to the additional written argument Mr. Mische submitted during the open-record period (Exhibit 10). With respect to glare, Mr. Grogan contends that the solar panels the applicant proposes to use do not cause significant glare. Mr. Groan reports that these solar panels are coated with an anti-reflective coating designed to absorb light, not

reflect it, stating: “By way of comparison, solar panels have less reflectivity than grassland and significantly less reflectivity than a body of water. Mr. Grogan provided a copy of a Global Airport Glare Analysis study that concluded after a review of airports with solar arrays around the world there was no evidence to suggest that glare was either present or a concern. Among other conclusions, the study states: “Solar photovoltaic panels are designed to absorb rather than reflect light. Typical panels are designed to reflect only some 2% of incoming sunlight. Reflected light from solar panels will have a significantly lower intensity than glare from direct sunlight.” The study included a comparative reflection analysis showing that these types of solar panels have more reflectivity than asphalt, but less reflectivity than forest, crops/grassland, or the general rural environment.

26. Mr. Grogan responded to comments from Mr. Mische concerning the proposed project’s positioning and the current natural screening in relation to Mr. Mische’s property. Mr. Grogan states: “the site was partly chosen because there is a natural buffer of trees and shrubs that surround both the property and the project location that will be effective in screening views of the proposed project from surrounding properties.” Mr. Grogan provided several photos in multiple directions from the proposed site, showing a natural buffer of trees and vegetation surrounds the site location. Mr. Grogan further states that: “The Project location was decided upon as it provides a sufficient setback from those houses located on South Potter Road and an equally sufficient setback from those houses located to the west of the site. Mr. Grogan submitted an aerial map of the vicinity showing that the closest component of the proposed project to Mr. Mische’s residence is approximately 690 feet away and 20 feet below in elevation. Mr. Grogan states that the closest component of the proposed project to the nearest residence on the east side of South Potter Road is 650 feet away and 13 feet below in elevation. Mr. Grogan further pointed out that the photos submitted by Mr. Mische show a limited view of the project site, with the view blocked by a substantial vegetative buffer. Mr. Grogan contends that: “Given the distance between his residence and the project site, the relatively standard elevation and the dense vegetation that impairs a clear view of the project site, the applicant does not believe that the minimal glare, if any produced by the project components will substantially limit, impair or preclude the use of [Mr. Mische’s] or any neighboring property as outlined in ZDO 1203.03.”
27. Mr. Grogan referenced outreach efforts he made for this project in the vicinity, including letters, fielding phone calls and having phone conversations and meetings, and working to address concerns. Mr. Grogan stated that he spoke with Mr. Mische’s son, who also resides on Bradley Road, and discussed mitigating the visual impact to Mr. Mische’s property by establishing a line of trees. Mr. Grogan provided a copy of his mailing receipt for an information letter he sent to property owners in the area of the proposal site, showing that a copy was mailed to Mr. Mische at his correct address. Mr. Grogan also provided a copy of the agenda for the January 5, 2022 meeting of the CPO for the area (the Redland-Viola-Fischer’s Mill CPO) showing that the Bradley Solar proposal was discussed at that meeting. Mr. Grogan further addressed the issue of development in general, stating: “The reality of living in this area is that development will happen in some shape or form and limiting pastoral views of an already limited pastoral view is not a sufficient argument that substantiates the claim that this proposal will 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.”

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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 Zoning and Development Ordinance (ZDO) Sections(s) 316, 1002, 1005, 1006, 1007, 1015, 1203, 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. The 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.

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 was submitted, dated October 19, 2021. All the submittal requirements under Subsection 1203.04 are included in the application. The application was submitted on November 30, 2021. Following submission of additional requested information the application was deemed complete December 27, 2021. The 150-day deadline established by state law for processing this application is May 26, 2022 (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.*

The subject property is zoned RRFF-5, Rural Residential Farm Forest. Section 316 of the ZDO details allowed land uses in the RRFF-5 TBR zoning district. Table 316-1, lists the conditional uses which are allowed. Table 316-1 includes as a potential conditional use “Public Utility Facilities (ORS 757).”

Mr. Mische points out that other solar power projects approved as conditional uses within Clackamas County have been located on EFU or TBR zoned properties, and not proposed on RRFF-5 properties like this application proposes.

The requirement here is that the use is listed as a conditional use within the RRFF-5 zoning district. As referenced by staff, public utility facilities (including solar power facilities) are a potential conditional use within the RRFF-5 zone, the zoning for the subject property. The Hearings Officer concurs in the finding by staff that 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.*

Applicant states: “the subject property is ideally suited for the proposed solar facility. The 10-acre project area is flat, clear of wetlands, and free of other environmental and manmade obstructions. Additionally, the property is located near to the proposed utility interconnection point.”

Staff finds the following:

1. Size: The subject parcel is comprised of approximately 41-acres. This proposal involves siting a ten-acre solar array. The submitted plans and other application materials demonstrate the property is of sufficient size to accommodate the proposed facility.
2. Shape: The shape of the property is generally rectangular, and not a limiting factor here.
3. Topography: The portion of the property proposed for use has slopes appropriate for the use.
4. Location/Use: The site is between Oregon City and Redland. Property use in this area is mixed, though predominantly rural residential on acreage properties. On site is a residence and various outbuildings. Location and area use are not limiting factors.
5. Improvements: Residence, outbuildings, otherwise the site is in non-intensive resource use.
6. Natural Features: There is a “small” RSCA stream crossing the property south to north. This feature is shown as being undisturbed by this proposal. There are no other inventoried or otherwise identified natural features/buffers on portion of property shown for use.

- a. Floodplain: According to the FEMA Floodplain maps, no portion of the subject is located within a designated floodplain.
- b. Geologic Hazards: The DOGAMI maps do not show any hazards on site.
- 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. There is a small RSCA stream entering the property from the south. This feature is outside area proposed for development through this application.
- d. NWI, National Wetlands Inventory, no wetlands identified on NWI in area proposed for use.

Summary: The shape, use, topographic and location characteristics of the property are suitable to accommodate the proposed use.

Mr. Mische points out that the proposed site is not actually “flat” as represented by the applicant. Rather, he asserts that the site is sloped up to 10-15% to the west, north and south. Mr. Mische is a professional engineer with experience in the solar power industry, and he further states that solar projects like this proposal are best located on flat sites, not sloped like this proposed site. Mr. Mische points to increased challenges with sloped properties, including keeping weeds, grasses, and rodents in check, providing for fire prevention and erosion control, and in mounting the solar panels.

Mr. Glasgow discussed the slopes of the site, and the findings by County staff that the existing slopes are within the range of slopes needed for this type of solar project with only minimal grading needed to prepare the site for the proposed use.

The requirement is not that the site is the “best” location for the proposed conditional use. The requirement is only that the site is “suitable” for the proposed conditional use. The Hearings Officer concurs in the findings by staff that 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

Staff finds the following:

The applicant has proposed construction of a photovoltaic solar power generation facility on 10 acres of a 41-acre property that is located between S. Bradley and S. Potter Roads. In addition to solar panels, the applicant proposes access via an existing driveway to S. Potter Road, and an onsite perimeter access road.

S. Potter Road is classified as a local roadway. Approval of access is subject to Clackamas County Roadway Standards. The *Standards* require the first 20 feet of a

private road to be paved per Standard Drawing D500. The remainder of the roadway can be gravel.

No comments had been received from Development Engineering as of this staff report, regarding roads and connectivity. As general comments Planning adds the following:

This proposal 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*.

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.

- a. Subsection 1007.07(B): *“Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.”*

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

Subsection 1007.07(A): *“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.”*

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 Highway 26. Based on Engineering staff’s site visit, and the concurrency exemption, this proposal is able to comply with the requirements of ZDO subsection 1203.03 C.

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.*

S. Potter Road is classified as a local road and is under the jurisdiction of Clackamas County. The principal safety concern relates to the site driveway approach with S. Potter Road. Approval of access is subject to County standards and permitting requirements.

The Hearings Officer concurs in the findings submitted by staff that the proposed use is consistent with Subsection 1007.09, and safety of the transportation system is adequate to serve the proposed use and/or can be 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.”*

Staff finds the following:

This is an area of mixed zoning and land use, with rural residential predominate. Scattered larger parcels in resource use are also evident.

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

Applicant responds here with: “The proposed facility produces no detectable noise, odor or glare, and will have no impact on adjacent rural residential and farm uses. See Appendix 3 for a thorough inventory of surrounding uses and a demonstration of the project’s introduction not having any discernable difference on surrounding properties.” “The proposed facility is surrounded by natural vegetation strips, screening the site from all neighboring properties and roads. Furthermore, the site will be surrounded by a sight obscuring fence and the Applicant is happy to provide a landscaping plan (similar to the example shown in Appendix 13) if deemed necessary by planning staff.”

The applicant’s discussion of surrounding area/potential impacts is extensive (Appendix 3) and, along with substantial evidence provided by previously approved and existing solar facilities, staff sees no reason to repeat the exercise. The site is in an area zoned Rural Residential Farm Forest, RRFF-5. Allowed uses in the RRFF-5 Zone generally are rural residential along with farming and forest resource management activities.

The applicant contends the character of area RRFF-5 properties will not be altered by this unoccupied facility. Based on applicant’s discussion, staff agrees. The rural residential character will not be degraded, e.g. will not be substantially limited, impaired, or precluded because the project will have at most very limited impacts on surrounding properties (noise, odor, vibration, dust, etc.) Area properties will be buffered from the proposed use both by distance, and vegetation.

The land under the 10-acre project area can be converted back to the original condition after the lifespan of the facility and will not permanently be taken out of other use. With slope as existing, only minimal grading is needed to prepare the site.

Once construction is completed, the proposed facility is essentially unoccupied. Only an occasional equipment inspection is required. The facility is compatible with rural residential and farming/forestry 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 uses otherwise allowed in the RRFF-5 Zone.

Notice of this proposal was sent to property owners within 2,640 feet of the subject property, along with the Redland – Viola – Fischer’s Mill CPO and potentially affected agencies. No comment have been received as of this staff report from area land owners or the CPO. Oregon Department of Aviation responded with: “the ODA has no comment.”

Mr. Mische disagrees with these findings by County staff, and asserts that the proposed solar power plant would “alter the character of the surrounding area in a manner that substantially impairs (i.e. diminishes in quality)” his own property for its current primary residential use. Mr. Mische points out that his residential use is a primary use within the RRFF-5 zone, whereas the application is for a conditional use, asserting that primary uses should have more rights than non-primary uses. I find no support for this argument. Property owners have the right to use and develop their own properties within the standards and criteria of the Clackamas County Zoning and Development Ordinance. To restate the requirement, Mr. Blount’s development or use of his own property must not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes Mr. Mische from using his own property for the primary uses allowed in the zoning district, including residential use.

In making a determination concerning ZDO 1203.03(D), the hearings officer must first make a determination identifying the character of the surrounding area, then conduct an inquiry to determine whether the proposed use would: (1) substantially limit; (2) substantially impair; or (3) substantially preclude, the primary identified uses on properties within the surrounding area, essentially altering the character of the surrounding area.

There is no real question of fact presented that the character of the surrounding area is predominately rural residential use on acreage properties, with some mixed use such as Mr. Blount’s non-intensive farm use.

Therefore, given that the actual primary uses of the surrounding property are primarily rural residential, the effects of the applicant’s proposal on the existing residential use must be considered. Specifically, whether approval of the applicant’s proposal will alter the rural residential use character in a manner that substantially limits, impairs, or precludes these primary allowed residential uses. The fact that a

proposed use may cause inconveniences and annoyances is not enough to deny an application.

Mr. Mische makes two main arguments with respect to his contention that approval of this application would substantially impair the primary residential use of his own property. First, Mr. Mische contends that: “Pastoral views are a central feature of this property.” Further, Mr. Mische points to the slope of the proposed site and contends that he will see the entire 10-acres from various residential living areas on his own property. I understand this argument to assert that placing the 10-acres of solar arrays on Mr. Blount’s property would affect the views from Mr. Mische’s property in a manner that substantially impairs his residential use.

I do understand Mr. Mische’s preference that his view of Mr. Blount’s property remains unchanged. However, I find no support for the argument that an adjacent property owner can be required to maintain pastoral views for the benefit of his neighbors, or otherwise not develop or use their own property. Mr. Blount can be required to mitigate the impacts of his proposed development, through such measures as sight-obscuring fences and vegetative strips. However, Mr. Blount has the right to use and develop his own property within the standards and criteria of the Clackamas County Zoning and Development Ordinance. Mr. Grogan essentially makes this same argument concerning Mr. Blount’s right to develop his property.

Second, Mr. Mische contends that glare from the proposed solar panels will result in a substantial impairment of the quality of his own property for its primary residential use. Here, Mr. Mische points to the slope of the proposed site, and the elevations, contending that the panels closest to his property will be to the west and below his property, with glare from the panels “likely to be exacerbated by the uneven slope of the property” particularly in the mornings. Mr. Mische provided photographs of similar solar panels, with the photographs showing an area of glare in line with the noon sun that extends about 2-3 panel widths. Mr. Mische also provided photographs taken from his property, and taken from another neighbor’s property, that show the proposal site is visible to these adjacent properties through the existing trees and vegetation.

Mr. Glasgow noted in the staff report that area properties will be buffered from the proposed use both by distance and vegetation. Mr. Grogan elaborated on this point in his response, stating that “the site was partly chosen because there is a natural buffer of trees and shrubs that surround both the property and the project location that will be effective in screening views of the proposed project from surrounding properties.” Mr. Grogan provided photos taken in multiple directions from the proposed site that show a natural buffer of trees and vegetation surrounding the site location. Mr. Grogan pointed out that the photos submitted by Mr. Mische show only a limited view of the proposal sight. Mr. Grogan provided an aerial map of the vicinity showing that the closest component of the project to Mr. Mische’s residence is approximately 690 feet away and about 20 feet below in elevation. Mr. Grogan reports that the solar panels are coated with an anti-reflective coating designed to absorb light, not reflect it, submitting a copy of a Global Airport Glare Analysis report that found no evidence to suggest that glare from these types of solar panels

was either present or a concern. That study states: “Typical panels are designed to reflect only some 2% of incoming sunlight. Reflected light from solar panels will have a significantly lower intensity than glare from direct sunlight.” The study submitted by Mr. Grogan also included a comparative reflection analysis showing that these types of solar panels have more reflectivity than asphalt, but less reflectivity than forest, crops/grassland, or the general rural environment.

In other words, the study suggests that the proposed solar panel use of the site will result in less reflectivity than the current “hay/pasture” use of the proposal site. This supports Mr. Grogan’s assertion (and the statements in the application) that: “The proposed facility produces no detectable noise, odor or glare, and will have no impact on adjacent rural residential and farm uses.”

My review of the evidence leads me to conclude that the proposal’s solar panels will occasionally result in glare visible to other properties, depending upon the angle and intensity of the sunlight. However, I find no evidence that this occasionally visible glare has the potential of rising to the level of substantially limiting, impairing or precluding the primary identified residential and farming uses on surrounding properties. Rather, I find evidence of glare associated with the applicant’s proposed use falls within the category of “annoyance” with respect to the impact from its impact on residential uses. I find there is no evidence that the application has any such effect on farming uses.

The Hearings Officer agrees with the findings by staff and concurs that this criterion is satisfied.

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

Staff finds the following:

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, Forest; and Chapter 5 Transportation. The applicant discusses Plan policies in submitted materials.

The subject property is designated in the comprehensive plan as Rural. Applicable policies are found in Chapter 4 of the Plan. Other policies are found in the Energy Section at Chapter 3.

Applicant responds with: “the proposed solar facility is an allowed use after review in the RRF-5 District (Rural Plan designation.) Comprehensive Plan policies encouraging the use of renewable energy and preservation of natural resources and found in Chapter 3, Natural Resources and Energy, section on Agriculture, Energy Sources and Conservation where Policy 1.0 encourages “alternative energy source development.” The preservation of natural resources, including water resources, habitat conservation, water quality resources, wildlife and distinctive resource areas, and noise and air quality, are found in many policies throughout Clackamas County’s Comprehensive Plan. The proposed solar

facilities exemplify the county's policies for clean renewable energy development consistent with state and county standards.

“The facility will promote solar energy, jobs, revenue toward the local economy and an increase in property taxes. The proposed use satisfies all of the applicable goals and policies of the Comprehensive Plan.”

Discussion provided by applicant touches on applicable Plan policies. Generally speaking staff agrees with the information provided by the applicant and is able to find this criterion is satisfied.

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.*

Staff finds the following:

Sections: 1002, 1006, 1007, 1008 and 1015 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.

The area proposed for use is not “natural” for purpose of this criterion. It is in non-intensive farm use.

No particular natural features are identified on the area proposed for use. **The Hearings Officer concurs in this finding.**

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. **The Hearings Officer concurs in the finding that 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. **The Hearings Officer concurs in the finding that 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. Engineering signed the Statement of Feasibility on October 19, 2021, indicating “adequate surface water treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.”

The Hearings Officer concurs in the finding that 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.*

General findings: S. Potter Rd. is classified as a local road and is under the jurisdiction of Clackamas County. Approval of access is subject to County standards and permitting requirements. The existing driveway on S. Potter Rd is improved with a gravel approach. The *Clackamas County Roadway Standards* requires the first 20 feet of a private road to be paved per Standard Drawing D500. The remainder of the roadway can be gravel.

The Hearing Officer finds that, as conditioned, this criterion can be met.

4. Section 1015, Parking and Loading:

A. Section 1015.04 Automobile Parking Area Standards:

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 un-manned photovoltaic facility is not included in the Table. Proposed vehicle trips associated with the use is less than one per month, by maintenance personnel. Submitted application materials show one vehicle parking space to be provided, along with perimeter access drive. Staff is able to find this is adequate, and the intent of Section 1015 is met as proposed.

The hearings officer concurs that this criterion is satisfied.

6. Section 1021 Standards, Refuse and Recycling Standards for Commercial, Industrial, and Multifamily Developments: outlines the standards for refuse and recycling for commercial developments. The following requirements and standards of Section 1021 are applicable to this proposal.

This is an unoccupied facility. Once construction is complete there will be no need for refuse/recycling facility on site. **The Hearings Officer concurs in the finding that this criterion does not apply.**

7. Section 316 – RRFF-5, Rural Residential Farm Forest Zone

The subject property is zoned RRFF-5. Section 316 of the ZDO controls land uses in the underlying RRFF-5 zoning district. Table 316-1 lists the conditional uses which are allowed. Table 316-1, page 316-5 includes as a potential conditional use “Public Utility Facilities” as limited therein. Section 202, Definitions, include “Public Utility” and defers to ORS 757 for definitions. Those definitions include a use such as proposed.

The Hearings Officer finds that this criterion is satisfied.

The applicant provides discussion on how soil compaction will be limited, and a pest control plan. These are requirements of OAR 660 Division 33 (660-33-130(38)). Staff notes these standards are applicable only to solar facilities proposed within agricultural zones. Subject property here is zoned Rural Residential, RRFF-5. Division 33 does not apply to this proposal.

The Hearings Officer concurs in this finding.

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 reviewed and considered the proposed conditions of approval submitted by staff, and find these conditions designed to ensure that the requirements of this Conditional Use permit are met. I reviewed and considered the additional requirements suggested by Mr. Mische, but decline to adopt a requirement that there be “no glare” that cannot be met. Likewise, I decline to adopt a requirement that the site is fully screened from all neighboring properties prior to power generation, or impose additional requirements beyond the County requirements and recommendations by staff with respect to the site maintenance plan or re-evaluation of the siting for the project. I find the conditions proposed by staff sufficient. 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.

I. General Conditions:

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s) dated 11/30/21. After submittal of additional requested information the application was deemed complete on 12/27/21. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Wendi Coryell at (503) 742-4657 or at wendicor@co.clackamas.or.us
- 3) **Prior to the issuance of building permits**, the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Development Agency. Wendi Coryell can be contacted at 503-742-4657, or wendicor@co.clackamas.or.us. The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a) A building permit for a new primary structure that was part of the conditional use approval; or
 - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

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

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway

Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.

- 2) At the end of the life of facility all non-utility owned equipment, conduits, structures, and foundations will be removed to a depth of at least three feet below grade.

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

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

IV. Engineering Division Conditions: Kenneth Kent, (503) 742-4673, kenken@clackamas.co

- 1) All frontage and onsite improvements shall be in compliance with *Clackamas County Roadway Standards*.
- 2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
- 3) The applicant shall design and construct a minimum 12-foot wide, gravel access road from the paved approach on to S. Potter Road 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.
- 4) Within the site, a minimum 12-foot wide perimeter access road shall be constructed with turnouts approximately every 400 feet. If a minimum 20-foot wide perimeter road is constructed, turnouts are not required. Turnaround and curve radii shall comply with local Fire District requirements. The perimeter access road shall be consistent with Roadway Standards Drawing R100 with a surface of 6 inches of screened gravel or better.
- 5) 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.

- 6) The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar facility. Parking space for the solar facility shall meet *ZDO* section 1015 dimensional requirements, and Roadway Standards, Drawing P100/P200.
- 7) 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) 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. Conditions for Roads & Connectivity:

A) Overview:

- i. The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.
- ii. The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

B) General Provisions:

Prior to Certificate of Occupancy

The applicant shall obtain a Development Permit from the Engineering Department for review and approval of frontage improvements, erosion control Best Management Practices implemented, sight distances and private driveway improvements. The permit shall be obtained prior to commencement of site work and Certificate of Occupancy. 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.

C) **Private Roads & Access Drives:**

Prior to Development Permit issuance

- a. The applicant shall design and construct a private access road meeting Standard Details R100 with an entrance to S Potter Rd meeting D500.
- b. The applicant shall provide written approval from the Clackamas Fire Marshal for access and circulation.
- c. The applicant shall provide and maintain minimum intersection sight distances at the proposed shared private road intersection with S Potter Rd. 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 S Potter Rd.

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

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

VII. Clackamas RFPD #1: No comments received as of this staff report. General:

Fire Department Apparatus Access

- 1) Provide address numbering that is clearly visible from the fire apparatus access response road.
- 2) The inside turning radius and outside turning radius for a 20' wide road shall be not less than 28 feet and 48 feet respectively, measured from the same center point.

VII. Oregon Department of Aviation: Response to notice: "ODA has no comment."

Dated: March 7, 2022



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.