

**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 a Photovoltaic	)	<b>Z0363-20-C</b>
Solar Power Generation Facility.	)	<b>(Coolmine Solar)</b>

**A. SUMMARY**

1. The applicant is Coolmine Solar LLC and Connor Grogan. The owners are William and Debra Knapp.
2. The subject property is located at 41690 Southeast Highway 26, Sandy, Oregon. The legal description is T2S, R5E, Section 19, Tax Lot 700, W.M. The subject property is approximately 42.52 acres and is zoned EFU – Exclusive Farm Use.
3. On October 8, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on October 8, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the corona virus. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Clay Glasgow discussed the staff report and recommended approval of the application.
3. Connor Grogan and William Knapp 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 42.52-acre parcel zoned EFU. The subject property is located at 41690 Southeast Highway 26, between Southeast Langensand Road and Southeast Firwood Road in the Sandy area. The subject property is essentially square shaped with the northeast corner bordering Highway 26. The subject property is in an area of mixed uses. Along the southern side of Highway 26 there are relatively large acreage properties in resource use. Across Highway 26 to the north there are a mix of commercial and residential uses in the City of Sandy. The property is currently being used for farm use and has a residence and outbuildings. The application proposes to construct a 10-acre photovoltaic solar power generation facility in the southeastern 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 Z0363-20-C, with the following conditions of approval.

### **F. CONDITIONS OF APPROVAL**

#### **I. General Conditions:**

- 1) Approval of this land use permit is based on the written narrative and plan(s) originally submitted August 20, 2020 and deemed complete August 21, 2020. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.

- 2) **Prior to the issuance of building permits**, the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Development Agency. Wendi Coryell can be contacted at 503-742-4657, or [wendicor@co.clackamas.or.us](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.
- 3) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
  - a) A building permit for a new primary structure that was part of the conditional use approval; or
  - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 4) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

**II. Planning and Zoning Conditions:** Clay Glasgow, (503) 742-4520, [clayg@clackamas.us](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.
- 5) Applicant is advised to work with ODOT regarding requirements from that agency regarding change of use for driveway.
- 6) Applicant is advised to work with Oregon Department of Aviation regarding requirements of that Agency.

**III. Building Code Division Conditions:** Richard Carlson, (503) 742-8742, [richardcar@clackamas.us](mailto:richardcar@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) 742-4763, [kenken@clackamas.us](mailto:kenken@clackamas.us)

**No specific proposed comments were received from this Division as of staff report.**

- 1) Conditions as required from this Division, to include: all 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) 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. Turn and curve radii shall comply with local Fire District requirements. The access road and perimeter access shall be consistent with Roadway Standards Drawing R100 with a surface of 6 inches of screened gravel or better.
- 4) Adequate storm drainage facilities shall be provide. A storm water management plan shall be provide and shall comply with the requirements of Roadway Standards, Chapter 4.
- 5) 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.
- 6) Parking spaces for the solar facility shall meet *ZDO* section 1015 dimensional requirements, and Roadway Standards, Drawing P100.
- 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. 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. Sandy Fire #72**

Comments received via email dated September 22, 2020. Discussion along with suggested conditions.

Exhibit 3

**VII. Oregon Department of Aviation (ODA)**

Comments received via email dated September 22, 2020. Discussion, suggested conditions Exhibit 4.

DATED this 13<sup>th</sup> day of October, 2020.

  
Fred Wilson  
Clackamas County Hearings Officer

**APPEAL RIGHTS**

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