

**NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 18-019**

APPLICATION: Application of SSD Marion 5 LLC, on property owned by Artemio and Maria Magana, for an administrative review to amend the site plan for a photovoltaic solar power generating facility approved in CU18-009 on a 12 acre portion of a 30 acre parcel in an EFU (Exclusive Farm Use) zone located at 13581 Wilco Highway NE, Woodburn. (T5S; R1W; Section 27; tax lot 100).

DECISION: The Planning Director for Marion County has approved the amended site plan for a photovoltaic solar power generating facility.

EXPIRATION DATE: This decision is valid only when exercised by **November 6, 2020**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should check with the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS:

1. Condition 13 of Conditional Use case number CU18-009 which required the applicant to confirm the status of Colonel Patch Lane is rescinded.
2. The development shall be consistent with the site plan attached to this decision.
3. All other conditions of approval in CU18-009 remain in effect.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to the Marion County Hearings Officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **November 6, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 7, 2018** unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations. Non-farm uses, such as solar power generating facilities, can be approved where they do not have a significant adverse impact on farming operations in the area and meet the criteria for conditional use approval in the zone.
2. The subject parcel is located on the south side of Wilco Highway NE approximately 1,500 feet north of its intersection with Woodburn-Monitor Road NE. The portion of the property where the development is proposed is currently being farmed. The property was subject of Conditional Use Case number CU18-009 and is considered a legal parcel for land use purposes.
3. Surrounding uses in all directions consist of properties in farm use in an EFU zone.

4. Soil Survey of Marion County Oregon indicates 98% of the subject property is high-value farm soils.
5. The applicants are requesting an amendment to the site plan for a photovoltaic solar power generating facility approved in CU18-009.
6. Marion County Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Oregon Department of Transportation commented that the comments submitted for CU18-009 still apply and that the unimproved driveway on the west edge of the residence must be removed.

7. The Planning Director determined that an administrative review is the proper procedure to use to review an amendment to the approved site plan when the reconfiguration of the solar facility footprint is sufficient to require review of the siting criteria. All criteria for approving a solar power generating facility were found by the Marion County Hearings Officer to be met. The proposed change in location of the facility on the subject property does not change the ability of the proposal to meet the other criteria for siting a solar power generating facility.
8. Chapter 17.136.050 (F) (3) of the Marion County Code (MCC) permits a photovoltaic solar power generating facility in an EFU zone as a conditional use, subject to MCC 17.120.110. MCC 17.120.110(2) states that, for high-value farmland soils described at ORS 195.300(10), the following siting criteria must be satisfied:

(A) *A photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004;*

The proposed facility is 12 acres or less in size on high-value farmland. Whether the facility would preclude additional acres from farming, though, depends on: (1) whether the remainder of the parcel can be farmed after this solar facility is developed; (2) whether other land adjacent to the solar facility now being farmed in conjunction with the land would still be able to be farmed after the facility is constructed; and (3) whether land adjacent to the solar facility depends on access through the farmland proposed to be used for the facility and would still be able to be farmed after the solar facility is developed. The proposed location of the solar facility is proposed to be changed based on communications with the owner of the subject property and neighbors potentially impacted by the solar facility. Moving the facility to the east side of the property would consolidate the farmed portions of the property and make it easier to farm the subject property than the original location that was approved in CU18-009. The proposed location would also provide a larger buffer of open space between the solar facility and adjacent dwellings and move access to the solar facility from Colonel Patch Road, the shared access for adjacent properties, to the driveway that serves the dwelling on the subject parcel. This criterion is met.

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

The applicant states that remaining portions of the property will be able to continue to be farmed in a single block. The applicant stated that the property owner reviewed the proposed site plan and is confident he can maintain current farming practices on the part of the property not occupied by the solar facility. Access to the solar facility is proposed to be changed from Colonel Patch Road to the driveway serving the dwelling on the subject property, which would remove all solar facility traffic from the private road that serves adjacent parcels and minimize the potential for conflicting with movement of agricultural equipment on adjacent parcels. This criterion is met.

9. The change in location of the proposed solar power generating facility does not change the findings in CU18-009 regarding the general criteria for a conditional use in the EFU zone. In particular, the applicant stated that noise generating components of the proposed facility would be located farther from sensitive receptors than the approved plan and have a lower potential for noise impacts on adjacent properties. The Hearings Officer's

decision in CU18-009 had a number of conditions of approval that still apply to the proposal and include Conditions 1-12 and 14 and 15. Because access to the facility would no longer use Colonel Patch Drive, Condition 13 is no longer necessary.

9. Based on the above findings, it has been determined that the proposed site plan can be approved.

Gilman Fennimore
Planning Director

Date: October 22, 2018

If you have any questions regarding this decision contact Lisa Milliman at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.