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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Fennimore
DATE: February 12, 2018
SUBJECT: Conditional Use 18-011/SSD Marion 4, LLC

The Marion County Planning Division has reviewed the above named case and offers the following comments:

FACTS:

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 property is located on the northeast corner of the intersection of Mt. Angel Highway NE, and Hook Road NE. The property contains a single family dwelling and two mobile home dwellings with associated improvements. There are also several other storage buildings on the property. The mobile homes were approved as second and third farm-related dwellings by Farm Dwelling Questionnaire Cases FD80-24 and FD81-30, respectively. In each of those cases the mobile homes were approved to house employees of the farm and the property owner signed an agreement to remove the mobile homes when the employees were no longer needed to help manage the operation of the existing horse ranch on the property.
3. Surrounding uses in all directions consist of properties in farm use in an EFU zone.
4. The applicant is proposing to establish a photovoltaic solar array power generation facility on 12 acres of the property. The proposed site is in the northeast corner of the property.

STAFF FINDINGS AND ANALYSIS:

5. Marion County Code (MCC) 17.110.680 states in part that:

“No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which

the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this title unless issuance of the permit would correct the violation.”

The applicant describes the property as being used for commercial agriculture, however, it is unclear what type of farm uses are taking place on the property. There is no evidence the horse ranching operation, under which the second and third farm dwellings were approved, is still in operation. If the two mobile homes no longer meet the requirements for secondary farm dwellings, they would be considered in violation of the land use approvals granted in FD80-24 and FD81-30.

If it is determined by the hearings officer that the mobile homes are in violation, and since approval of this conditional use for a solar facility would not resolve that issue, under the above provision in MCC 110.680, this application could not be approved.

6. Marion County Building Inspection commented that permits would be required for construction.

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.

Friends of Marion County provided comments in opposition to the proposal that are available for review in the planning file.

7. 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 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 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 applicant does not evaluate the kinds of farming taking place on the subject property and surrounding farmland, whether the subject property interacts with surrounding farmland and whether development of the solar facility would preclude additional land from being farmed if the solar site were developed. Unless additional information is provided, this criterion does not appear to be 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 order to satisfy this criterion, though, the applicant must review the common and accepted farming practices of the subject parcel and evaluate whether the proposed solar facility would have any impact on those practices. The applicant must also evaluate the proposed roadway to the facility and whether the proposed location of the facility would create a parcel or parcels of land that are small or isolated and difficult to farm. This analysis is similar to (A) above. Unless additional information is provided, this criterion does not appear to be met.

(C) *The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;*

The applicant provided a stormwater plan prepared by a registered engineer. This individual appears qualified to prepare this plan. The stormwater plan appears to address stormwater concerns, not specifically erosion and sediment control specific to the subject property. Unless additional information is provided, this criterion does not appear to be met. If approved, the applicant would be advised to contact the Oregon Department of Environmental Quality and obtain any permits they may require.

(D) *Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil de-compaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;*

The applicant submitted a soil compaction plan that includes measures to minimize and mitigate soil compaction during the solar array construction. The plan was prepared by a restoration ecologist. This individual appears qualified to prepare this plan. The compaction plan does not appear to be specific to the parcel. For instance, it does not review parcel specific attributes like soil types specific to the subject parcel, but discusses generally those attributes and how compaction would be addressed generally in different circumstances. Unless additional information is provided, this criterion does not appear to be met. If approved, the application would be required to submit a grading plan as part of the building permit.

(E) *Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.*

The applicant provided a weed control plan to address this requirement. The plan was prepared by an engineer who appears qualified to prepare the plan. The information in the plan appears specific to the site regarding the types of weeds likely to be encountered. The plan also includes methods proposed to be used to eradicate the weeds. The report does not consider how past farming practices could affect the kinds of weeds that would be encountered upon site development. The plan does not describe the local seed mix proposed to be replanted at the site so that persons farming in the area could review the mix and provide feedback on whether any of the species in it would affect their farming practices. It is also important that farmers in the area

be able to review recommended weed eradication measures to ensure they are compatible with their farming practices. Unless additional information is provided, this criterion does not appear to be met.

- (F) *The project is not located on high-value farmland soil unless it can be demonstrated that:*
- (i) *Non high-value farmland soils are not available on the subject tract; or*
 - (ii) *Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or*
 - (iii) *The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised on non high-value farmland soils.*

There appear to be a mix of high-value and non-high value soils on the subject property. Approximately 3.6 acres of the entire parcel consists of non-high value soils. There does not appear to be 12 acres of non-high value soils available for the proposed facility. This criterion is met.

- (G) *A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:*
- (i) *If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary;*
 - (ii) *When at least 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the overall land use pattern of the area will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

The applicant provided a map which demonstrates that are no other sites within one mile of the proposed facility that are developed with, or have gained approval for, establishment of a solar photovoltaic solar array. This criterion is met.

8. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
- a. *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*

The proposed use is a conditional use. Conditional uses are uses of land that require detailed review because they are not certain to always be compatible with surrounding land uses. One of

the compatibility reviews relates to farmland, as described above. In order to evaluate whether the facility would have an impact on farming, the applicant must evaluate the farming practices occurring on nearby land. Then the applicant must consider the proposed facility in relation to these farming practices and evaluate whether the facility would cause a significant change to surrounding farming practices or significantly increase the cost of surrounding farming practices. The applicant described some of the farm crops growing nearby, but did not evaluate the farming practices associated with those crops nor crops on land in the surrounding area. Without performing that analysis, along with a consideration of whether the proposed facility would cause a significant change to surrounding farming practices or significantly increase the cost of surrounding farming practices, this criterion does not appear to be met. In addition, the applicant must evaluate the impact to the land once the solar facility is developed and it becomes “static” in relation to farming. For instance, once the land no longer can be disked, plowed, or field burned, if the facility were to become infested with a common agricultural pest, like voles, how would they be remedied and how would the remedy be compatible with surrounding farms and farming practices?

b. *Adequate fire protection and other rural services are or will be available when the use is established.*

The property is served by the Mr. Angel Fire District and Marion County Sheriff. Other rural services are minimal (like well and septic requirements) or are adequate to serve the proposed use (like the roadway network). This criterion appears to be met.

c. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*

There does not appear to be significant adverse impact on areas of significant watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality at the location of the proposed site. This criterion appears to be met.

d. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

In a previous case, the Marion County Hearings Officer previously required (for instance, Brush Creek Solar/ Conditional Use 17-020) that a request for a solar facility include an evaluation consistent with OAR 340-035: develop a baseline noise calculation for the subject property, evaluate which noise standard applies to the proposal, and develop a site specific plan prepared by a certified engineer showing how the facility will operate to meet the required standard. This information was not provided with the application. Unless additional information is provided, this criterion does not appear to be met.

e. *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

There are no significant water impoundments or mineral and aggregate sites that appear to be affected by this proposal. This criterion is met.

9. Based on the above facts and discussion, it appears the proposal does not meet all of the criteria for conditional use approval and Planning recommends it be denied. If approved, Planning suggests the following conditions of approval be applied:

- A. The applicant shall obtain all required permits from the Marion County Building Inspection Division. The applicant is required to submit a grading plan as part of the building permit process.
- B. Prior to issuance of building permits, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
- C. Prior to beginning construction activity, the applicant shall implement the Weed Mitigation plan submitted with the application to detect, control and minimize the spread of weed seeds. After construction is complete, the applicant shall revegetate disturbed areas with an appropriate seed mix and monitor periodically.
- D. Prior to final inspection of building permits, the applicant shall implement the Stormwater Erosion and Sediment Control plan submitted with the application to minimize and mitigate soil erosion and compaction resulting from construction of the photovoltaic solar power generation facility.
- E. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
- F. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.
- G. At the end of the useful life of the photovoltaic solar power generation facility, the facility shall be retired substantially in conformance with the decommissioning plan submitted with the application including all non-utility owned equipment, conduits, structures, and foundations shall be removed to a depth of at least three feet below grade.
- H. The applicant is advised to contact the Oregon Department of Environmental Quality to obtain any permits they require.