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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Milliman
DATE: March 28, 2018
SUBJECT: Conditional Use 18-015/Sulus Solar 6 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 parcel is located on the southeast corner of the intersection of Anderson Road SE and Schmidt Rd SE. The property is undeveloped. The parcel was the subject of Lot Line Adjustment #LLA85-27, which approved the current configuration of the parcel, and is considered a legal lot for land use purposes.
3. Surrounding uses in all directions consist of properties in farm use in an EFU zone, with the exception of a 2.4 acre parcel to the northeast that is zoned I (Industrial) and in use as a meat processing facility and a 1.5 acre parcel west of the subject property that is zoned P (Public) and is in use as a cemetery.
4. Soil Survey of Marion County Oregon indicates that 98% of the subject property consists of high-value farm soils.
5. The applicant is proposing to establish a photovoltaic solar array power generation facility on 12 acres of the property.

STAFF FINDINGS AND ANALYSIS:

6. 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.

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

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 demonstrates how the remainder of the parcel can continue to be farmed after the proposed solar array were sited. The parcel does not appear to be farmed in conjunction with surrounding farmland. Finally, access to the facility would be directly from the adjacent roadway Schmidt Rd SE, which runs through the parcel. No farmland would be taken out of production for the access road. This criterion appears 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. The applicant divides the remainder of the parcel that is currently being farmed into three pieces and describes how each piece can be accessed for farming and how farming practices can continue on each piece after the facility is installed. This criterion appears 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 an erosion, sediment and soil compaction plan for how soil erosion will be avoided or remedied. The plan is signed by a person who appears to have the qualifications to prepare such a plan. The plan includes a site specific of attributes such as soil types, their potential for soil erosion, and specific methods to prevent or minimize soil erosion. This criterion appears 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 erosion, sediment and soil compaction plan that includes measures to minimize and mitigate soil compaction during the solar array construction. The plan is signed by a person who appears to have the qualifications to prepare such a plan. Similar to the discussion in (C) above, the plan appears to consider site specific types of soil and the methods to prevent or remedy soil compaction. This criterion appears 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 is signed and appears to be prepared by an adequately qualified individual. The plan identifies specific weed species that have the potential to be present on site and methods to manage them. The plan includes weed management methods for during and after construction of the facility. The plan includes a description of the local seed mix proposed to be replanted at the site that was selected through coordination with the Marion County Soil and Water Conservation District. Weed removal methods appear to be compatible with farming practices. This criterion appears 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.

A tract includes all adjacent property in the same ownership. None of the adjacent parcels are in the same ownership. Therefore, the subject property is not part of a larger tract. The subject property contains 3.5 acres of non high-value soils located in a low area of the property that provides seasonal drainage and is not being farmed. The applicant's statement indicates that this area is not suitable for solar project facilities "due to currently being predominantly covered in vegetation." The applicant does not address why the existing vegetation cannot be removed, but it appears that much of the area that is not currently being farmed supports trees of various species, in addition to being in a depression that contains a seasonal stream that would present difficulties for establishment of a solar facility. This criterion has not been completely addressed by the applicant, but staff finds that this criterion appears to be 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 provides a review of farming activities and practices on land in the nearby area. The applicant describes the crops being grown, the herbicide and pesticide regimes, and other farming practices. The applicant also describes how agricultural pests would be managed, such as voles, in an agricultural pest plan (Appendix 13). Based on these practices and the likely operation of the solar facility, it does not appear the facility would 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. This criterion appears to be met.

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

The property is served by the Sublimity 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 do not appear to be significant watersheds, groundwater, fish and wildlife habitat, areas of soil and slope stability, or regions of air and water quality concerned located at the proposed site. The location of the proposed solar facility avoids areas on the property that are wetlands, seasonal streams, or appear to be undisturbed wildlife habitat. This criterion appears to be met.

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

The applicant has prepared a noise study that appears to be consistent with Marion County Code. The applicant's noise specialist measured the baseline noise present at the property and modeled anticipated noise from the solar facility. The highest level of noise anticipated is along the western boundary of the facility at 29 dBA, which is low and well below county standards of 65 dBA during the day and 55 dBA during the night. This criterion appears 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 meets all of the criteria for conditional use approval and Planning recommends it be approved. 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 approved 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 approved 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 to include removal of all non-utility owned equipment, conduits,

structures, and foundations shall be removed to a depth of at least three feet below grade and returning the land to its original contours, soil profile and planted with appropriate vegetation.

- H. The applicant is advised to contact the Oregon Department of Environmental Quality and obtain any permits they require.