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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Milliman
DATE: April 12, 2018
SUBJECT: Conditional Use 18-023/Carnes Creek Solar 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 property is located on the west side of Portland Road NE, approximately 1,375 feet north of the intersection with Waconda Road NE. The property contains a dwelling, accessory and farm structures, well, and septic system. The parcel was subject of Property Line Adjustment Case number PLA04-3 and is considered to be legally created for land use purposes.
3. Surrounding properties are zoned EFU and consist primarily of small to medium size farm parcels in agricultural use, with smaller properties in commercial use located along Portland Road NE.
4. Soil Survey of Marion County Oregon indicates that 100% 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.

Building Inspection commented that permits are required prior to construction.

Oregon Department of Transportation commented that there is an access permit for the northern most of three accesses onto Portland Road NE. The applicant intends to use the southern most access to the property, which will need to be upgraded to accommodate construction traffic.

Friends of Marion County commented on the impact of solar facilities on farmland.

7. Chapter 17.137.050 (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 proposed solar facility is located on a portion of the property that is currently being farmed, east of the home site and adjacent to an internal driveway that serves improvements located on the adjacent parcel to the north. A portion of the parcel approximately 2.2 acres in size on the west side of the property, is also currently being farmed and would only be accessible through the adjacent parcel if the proposed solar facility is approved. Access to the facility would be via a driveway that bisects the subject property and serves the adjacent parcel. It appears that this criterion is met, as long as there is access to the western two acres that is not a part of the proposal.

(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 with the adjacent parcel that is currently owned by a relative of the applicant. The solar facility is proposed to be located adjacent to an existing driveway that is intended to serve as access for the solar facility as well as other existing activities on the subject and adjacent parcels. It appears that this criterion is 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 not signed and it cannot be determined if the author has the qualifications to prepare such a plan. The plan does not discuss site specific attributes such as soil types or their potential for soil erosion, and includes general methods to prevent or minimize soil erosion. This criterion does not appear to be met. If approved, the applicant would be advised to contact the Oregon Department of Environmental Quality and Oregon Department of State Lands to 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 brief soil erosion, sediment and soil compaction plan that includes generic measures to minimize and mitigate soil compaction during the solar array construction. The plan is not signed and it cannot be determined if the author has the qualifications to prepare such a plan. This criterion does not appear to be met. If approved, the applicant would be required to submit a grading plan and site specific soil erosion and compaction best management practices 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 not signed and it cannot be determined if the author has the qualifications to prepare such a plan. The plan does not identify specific weed species that have the potential to be present on site nor methods to manage them. The plan includes weed management methods for during and after construction of the facility. The plan does not specify the local seed mix proposed to be replanted at the site. General weed removal methods are listed. 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 is no adjacent property in the same ownership as the subject parcel. The property does not contain any non-high-value soils. 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 stated that there are fewer than 48 acres of photovoltaic solar power generation facilities that have been constructed or received land use approvals and obtained building permits, but provided no documentation. Staff cannot determine that this criterion has been 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 provided a review of farming activities on land in the nearby area. The applicant did not describe the herbicide and pesticide regimes, and other farming practices occurring on adjacent farm parcels. The applicant provided an unsigned weed management plan for the subject parcel but did not include a discussion of site specific weed concerns or mitigation practices. It cannot be determined if 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. Staff cannot determine that this criterion is met.

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

The property is served by Woodburn Fire District and Marion County Sheriff. These and other rural services are adequate to serve the proposed use. 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. 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 stated that anticipated noise from the solar facility would be lower than the maximum noise levels allowed in the Marion County Noise Ordinance. 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 does not appear that the proposal meets 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 develop a detailed site specific Weed Mitigation plan for review and approval by the Planning Director and then implement the approved plan 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 develop a detailed site specific Stormwater Erosion and Sediment Control plan for review and approval by the Planning Director and then implement the approved plan 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 and obtain any permits they require.