

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning)
Commission's Approval and Denying the Appeal)
of Planning Docket C-04-16/SDR-02-16; Approval)
of a Conditional Use Permit and Site Design) Board Order 16-427
Review for a 12-acre Solar Facility on Mill Creek)
Road, Sheridan; Applicant: SP Solar 5, LLC)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on October 20, 2016, Commissioners Mary Starrett, Stan Primozych, and Allen Springer being present.

IT APPEARING TO THE BOARD as follows:

A. By application dated January 13, 2016, SP Solar 5, LLC applied to the county for a conditional use permit and site design review for a 12-acre solar facility on a 90.3-acre property zoned EF-80, Tax Lots 6604-500, 700 and 800;

B. On June 2, 2016, the Planning Commission held a hearing on the application. Following the hearing and subsequent open record periods, the Commission reconvened on July 7, 2016, deliberated, and voted 5-4 to approve the application;

C. On July 25, 2016, Ray and Jalena Juarez filed a timely appeal of the Planning Commission's approval of Docket C-04-16/SDR-02-16; and

D. On September 1, 2016, the appeal was heard by the Board of Commissioners. Following the hearing and subsequent open record periods, the Board reconvened on September 29, 2016, deliberated, and voted 3-0 to uphold the Planning Commission's decision, and deny the appeal, with staff directed to prepare written findings for final adoption on October 20, 2016; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Commission's decision to approve Docket C-04-16/SDR-02-16 is hereby upheld, and the appeal filed by the applicant is denied.

Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of this order.

DONE this 20th day of October, 2016 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

By: Keri Hinton
Deputy Lucy Flores Mendez
KERI HINTON

FORM APPROVED BY:

T. Sadlo
Timothy S. Sadlo
Senior Assistant County Counsel

Mary Starrett
Chair MARY STARRETT

Stan Primozych
Commissioner STAN PRIMOZICH

Allen Springer
Commissioner ALLEN SPRINGER

Accepted by Yamhill County
Board of Commissioners on

10-20-16 by Board Order

16-427

**Exhibit A – Board Order 16-427
Findings in Support of Decision to
Uphold the Planning Commission’s Approval
of Docket No. C-04-16/SDR-02-16
and Conditions of Approval**

With regard to the appeal of Planning Docket No. C-04-16/SDR-02-16, the Board of Commissioners concludes that, based on substantial evidence in the record, the application satisfies the applicable approval criteria. Specific findings supporting this conclusion are provided below, along with conditions of approval imposed as part of the approval.

1. INTRODUCTORY MATTERS

DOCKET NO.: C-04-16/SDR-02-16

REQUEST: Conditional Use and site design review for a solar facility consisting of approximately 12 acres.

APPLICANT: SP Solar 5, LLC

TAX LOTS: 6604-500, 700 and 800

LOCATION: Approximately ½ mile southeast of the intersection of Harmony Road and Mill Creek Road, Sheridan, Oregon

ZONE: EF-80 Exclusive Farm Use

2. RELEVANT APPROVAL CRITERIA

The following criteria are applicable to the review of this application. Yamhill County Zoning Ordinance (“YCZO”) Sections 402.04(M) (EF-80), 1101 (Site Design Review), and 1202 (Conditional Use). Agricultural Lands rules under OAR 660-033-0130(38).

3. FINDINGS OF COMPLIANCE WITH THE YAMHILL COUNTY ZONING ORDINANCE

3.1. EF-80 (YCZO 402)

3.1.1. Section 402.04 lists the Conditional Uses in the EF-80 zone. This list includes “Commercial utility facilities for the purpose of generating power for public use by sale, and transmission towers over 200 feet in height, subject to Subsection 402.07(D) and Section 1101, Site Design Review.” YCZO 402.02(M). Thus, the

proposed solar farm is a conditional use in the EF-80 zone. Compliance with Subsection 402.07(D) and Section 1101, Site Design Review are demonstrated below.

- 3.1.2.** Section 402.07 lists additional standards applicable to Conditional Uses in the EF-80 zone. Applicable to this proposal are YCZO 402.07(A) and 402.07(D). Subsection 402.07(A) requires Conditional Uses in the EF zones “not force significant change in,” or “significantly increase the cost of, accepted farming or forest practices on surrounding lands devoted to farm or forest use.”

In addressing this standard, the county considered “farm use[s]” and “accepted farming practice[s]” as defined in ORS 215.203. Most of the site will continue in farm use. The Site and surrounding parcels are zoned EF-80 and the area considered by the county (properties adjacent to the Site) is farmland of predominantly pasture, grass and grain crops and orchards, with a few rural residences. The Site is currently used to grow grass seed and the only other active farm uses on the adjacent properties are a sheep raising operation on the property to the west of the site and a marijuana grow to the north of the site. Plowing, burning, application of herbicides and pesticides, disking of orchards and machine harvesting are accepted farming (and forest) practices that may take place in the area.

In this case, the record contains significant evidence that the proposed solar installation will not create impacts that force any change in, or increase the cost of, surrounding farm practices. The closest farming practice is the grass seed farming that will continue on the balance of the site that is not used for the solar installation. The proposed use, once installed, is relatively passive, and it is expected that the presence of the solar installation will have no impact to farm practices continuing on the site, or to farm or forest practices taking place now, or during the life of the project, in the area. No evidence that the proposed solar array would impact surrounding farm uses was submitted to the record. An appellant asked whether the proposal would emit electromagnetic fields (“EMF”) that would impact the livestock (sheep) raised on the adjacent property. The Applicant provided expert evidence that the solar farm will not create any EMF that extends beyond the area enclosed by the solar farm perimeter fence, which is a significant distance from the shared property line. No contradictory evidence was submitted to the record.

The Applicant also provided expert evidence and testimony that no noise, glare, dust, or vibrations from the proposed solar farm will impact surrounding farm uses.

Some contradictory evidence as to the levels of glare and noise was provided by appellants, but such evidence was prepared by laypersons and may not have reflected the factual circumstances of the proposed solar farm. The Board therefore finds the expert evidence submitted by the Applicant to be persuasive, and finds that no substantial evidence was submitted to indicate that the proposed use will cause a significant change or cost increase in farm practices taking place in the area.

- 3.1.3.** YCZO 402.07(D) requires an exception to Goal 3 for any power generation facility that is located on high-value farmland in excess of twelve (12) acres. Here, the solar farm is proposed to be located on a high-value farmland tract, but is proposed to be less than twelve (12) acres. To ensure compliance with this criterion, condition of Approval No. 1 requires “The total area occupied by the solar facility shall not exceed 12 acres.”

3.2. Site Design Review (YCZO 1101)

Section 1101.02 for Site Design Review requires consideration of the following factors in the review of site development plans:

- (a) *Characteristics of adjoining and surrounding uses;*
- (b) *Economic factors related to the proposed use;*
- (c) *Traffic safety, internal circulation and parking;*
- (d) *Provision for adequate noise and/or visual buffering from incompatible uses;*
- (e) *Retention of existing natural features on site;*
- (f) *Solving problems that may arise due to development within potential hazard areas; and*
- (g) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

- 3.2.1.** Regarding factor 1101.02(a) above, the site and surrounding parcels are zoned EF-80 and the area is farmland of predominantly pasture, grass and grain crops and orchards with a few rural residences. The Site is currently used to grow grass seed and the only other active farm uses on the adjacent properties are a sheep raising operation on the property to the west of the site and a marijuana grow to the north of the site. Properties to the west and north of the site contain rural residences.

- 3.2.2.** Regarding factor 1101.02(b) above, there have been no economic factors that have been identified that prevent the use of the parcel for the proposed solar facility.
- 3.2.3.** Regarding factor 1101.02(c), the parcel will be provided with access from a driveway and turn-around from Mill Creek Road. The parcel is of sufficient size for appropriate internal circulation of traffic and large enough to provide parking space.
- 3.2.4.** Regarding factor 1101.02(d) above, the Applicant has proposed a landscaping plan that includes significant plantings in a 20-foot buffer along the northern and western edges of the solar farm. These plantings will provide a screen to adjacent residential property uses. Immediately behind the plantings will be a perimeter fence with green slating, as ensured by Condition of Approval No. 4.

The Applicant has also provided evidence that sound generated by the solar farm is limited to that emitted by a fan that cools the inverter. This fan only operates during mid-day hours, typically between 11am and 1pm. The noise study provided by the Applicant demonstrates that the sound from the inverters will, at the property boundary, be similar to, if not indistinguishable from, background noise levels in the area.

Active project construction is limited between the hours of 7am and 10pm, pursuant to Condition of Approval No. 7.

- 3.2.5.** Regarding factor 1101.02(e) above, the DSL has noted that wetlands are present on the tract and that wetland delineation has been approved for Tax Lots 500 and 700. The DSL requires a permit for removal or fill of wetlands and waters of 50 cubic yards of material or greater. The solar farm is proposed to be located at a distance from the identified wetlands, and is unlikely to require reduction of fill in the wetlands area. The proposed use will not require the removal or modification of any other existing natural features.
- 3.2.6.** Regarding factor 1101.02(f) above, no County-inventoried, significant hazard areas have been identified.
- 3.2.7.** Regarding factor 1101.02(g), the notice of the proposed use was sent to the surrounding property owners and published in a newspaper of general circulation. Neighboring property owners participated in the review process and appealed the initial Planning Commission approval to the Board.

- 3.2.8.** The Board finds that all the factors listed at Section 1101.02 have been considered. All other provisions in Section 1101 are plan submittal requirements and review procedures that are not approval criteria applicable to this decision.

3.3. Conditional Use Criteria and Requirements (YCZO 1202)

- 3.3.1.** YCZO 1202.02(A): *The use is listed as a Conditional Use in the underlying zoning district.*

The proposed solar farm is a commercial utility facility for the purpose of generating electricity, and is listed at YCZO 402.04(M) as a Conditional Use in the EF-80 zone.

- 3.3.2.** YCZO 1202.02(B): *The Use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed area.*

The proposed solar farm is consistent with the Yamhill County Comprehensive Plan goals and policies that are applicable to the use. The Comprehensive Plan goals and policies discussed herein are aspirational and not to be mistaken for, or treated as, approval criteria. However, in a general sense, the proposed solar farm involves the goals and policies found in the Agricultural Lands, Energy Conservation, and Economic Development Chapters of the Comprehensive Plan.

- 3.3.2.1.** The Agricultural Lands Chapter of the Comprehensive Plan contains the following pertinent goal and policy:

Goal Statement 2: To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture, and urban development and their sustained use for the purposes designated on the county plan map.

Policy a.: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils.

The proposed solar farm is consistent with this goal and policy because it will preserve the suitability of the land on which it is located for future agricultural use. The solar farm will not impact the soil quality of the site, as soil compaction and grading will be minimal, and the solar equipment is

affixed to the ground with piles. The sole impermeable surface will be a single concrete pad on which the inverter will sit.

To ensure that the quality of the soil on site is maintained, the Applicant will employ best practices to limit impacts throughout the construction of the solar farm and will maintain the site with native plantings. To this end, the Applicant has created and submitted an Erosion Control plan and Sediment and Soil Compaction Mitigation Plan, implementation of which is required by Condition of Approval No. 2.

The use of a portion of an agricultural property (12 of 90.3 acres) for a solar farm provides the land owner with a steady income stream to bolster the continued agricultural use of the balance of the property. As noted by the property owner, the proposed solar farm will provide the financial stability needed to weather the uncertainty of down cycles in agricultural production, thus enhancing the sustainability of the agricultural use of the entire property.

Further, the proposed use is consistent with state law governing exclusive farm land, and therefore is a use that is anticipated in the zone. The state has adopted administrative rules specifically allowing establishment of the proposed solar farm on high-value soils on exclusive farm use land because the solar farm is less than 12 acres. As such, the proposed use is consistent with state law and the permitted uses on EFU land. Although the Yamhill County Comprehensive Plan has not been amended to reflect state law, the 12-acre safe harbor is consistent with the EF-80 zone.

Finally, the suitability of the land for agricultural use is ensured by the decommissioning of the solar farm after its useful life pursuant to the Applicant's decommissioning plan and Conditions of Approval No. 9 and 10. Condition 9 requires that the project be decommissioned at the end of its useful life, and condition 10 requires that the applicant provide to the county and maintain a performance guarantee to ensure that the site is decommissioned.

Based on all of these factors, the proposed solar farm is consistent with the Agricultural Lands goal and policy because its impact is limited to twelve (12) acres of agricultural land, the suitability of which will be preserved for future agricultural use.

- 3.3.2.2. The Economic Development (Rural) Chapter of the Comprehensive Plan contains the following pertinent Goal:

Goal Statement 1: To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.

The proposed solar farm is suited only to rural areas, not urban development, and does not require extension of urban level services. State law recognizes the importance of locating solar farms on EFU land, as such uses are too acreage-intensive to be economically viable inside urban growth boundaries. Approval of the proposed solar farm is consistent with the goal of providing sufficient lands for such uses and does not compromise the County's goals related to urban containment.

- 3.3.2.3. The Energy Conservation Chapter of the Comprehensive Plan contains the following goals and policies:

Goal Statement 1: To reduce the per capita use of fossil fuels and other non-renewable sources of energy through the efficient and appropriate use of all energy.

Goal Statement 2: To promote the conservation of existing depletable energy resources and the development of local, renewable resources to ensure that an adequate supply will be available to Yamhill County citizens at a reasonable cost.

Policies

C. Yamhill County will support efforts to investigate and establish appropriately scaled units of renewable energy production.

D. Yamhill County will support development of renewable energy resources, including, but not limited to, solar, wind, water and biomass.

The proposed solar farm is consistent with County's goals and policies for supporting development of renewable solar resources and reduced reliance on non-renewable fossil fuels in the County.

- 3.3.3.** YCZO 1202.02(C): *The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features.*

The parcel is suitable for the proposed solar farm because it is relatively flat, unimproved, and contains no significant natural features or hazards that are mapped or regulated by the County. Further, as requested in written public testimony, the Applicant has submitted the Phase 1 Environmental Analysis prepared for the site, which confirms that there are no outstanding environmental issues present. The parcel is also suitable for the proposed solar farm because the balance of the parcel can remain in agricultural production during the life of the solar farm. As noted above, the co-extensive location of solar and agricultural uses on a parcel provide improved economic certainty to the property owner and increased the sustainability of the agricultural activity on site.

- 3.3.4.** YCZO 1202.02(D): *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district.*

As discussed in the Findings for YCZO 402, the Applicant has provided ample expert evidence that the proposed solar farm will not impact any surrounding uses including, but not limited to, residential, farm or transportation uses.

The Applicant has also provided a technical memorandum prepared by a professional engineer (Exhibit 3, letter dated June 2, 2016), outlining information about the solar farm equipment with no impact from toxicity, glare, noise, or electromagnetic fields.

All of these documents represent expert evidence supporting the limited nature of the proposed solar farm on surrounding agricultural and other uses. No conflicting expert testimony or evidence exists in the record. On balance, the Applicant's expert testimony and evidence outweighs the largely conjectural and/or anecdotal testimony received from other sources. The Applicant has demonstrated that the proposed solar farm will not negatively impact surrounding agricultural operations,

residences, transportation facilities, or any other permitted uses in the underlying zoning district.

- 3.3.5.** YCZO 1202.02(E): *The proposed use is appropriate, considering the adequacy of the public facilities and services existing or planned for the area affected.*

The proposed solar farm does not require water or sewer and is adequately provided with fire and electrical services. The solar farm will generate minimal vehicle trips to the site after construction. The Public Works Department and the Oregon Department of Transportation received notice of the proposal and did not submit any comments identifying or objecting to potential impacts to the transportation system.

- 3.3.6.** YCZO 1202.02(F): *The use is or can be made compatible with existing uses and other allowable uses in the area.*

As discussed at length in the findings for YCZO 402 and 1202.02(D), the proposed solar farm will not impact and is consistent with the surrounding farm uses. The same expert evidence of limited impacts applies to the adjacent rural residential uses and transportation uses. Additionally, the Applicant will plant a 20 foot landscaping buffer between the solar farm and the rural residences, which in combination with the slatted fence and the distance of the residences from the solar installation, will ensure the compatibility of the solar farm with all allowed surrounding uses.

4. FINDINGS OF COMPLIANCE WITH OAR 660-033-0130

- 4.1.** OAR 660-033-0130(5) applies the same standards as YCZO 402.07. See above Findings demonstrating compliance with YCZO 402.07.
- 4.2.** OAR 660-033-0130(38)(f) requires an exception for photovoltaic solar power generation facilities that are located on high-value farmland and that preclude more than 12 acres from use as an agricultural enterprise. The tract which contains the solar facility is composed of predominantly high-value farmland according to the NRCS soils map. The Applicant has stated, and has shown on the submitted site plan, that the proposed facility would consist of not more than 12 acres and is therefore not subject to approval as an exception. Condition of Approval No. 1 ensures that the impacted area will not exceed 12 acres.

- 4.2.1.** OAR 660-033-0130(38)(f)(A). The proposed solar farm is located in the area of the tract that is least suitable for agricultural use. The property owner has stated that soils in this area have more rocks and gravel, and the soil survey indicates that the lowest-value soils on the tract are found in the area where the solar farm is proposed. This location allows the farm use of the rest of the tract to continue alongside the operational solar farm instead of displacing more viable crop production areas.
- 4.2.2.** OAR 660-033-0130(38)(f)(B-D). The Applicant is required to follow the prepared soil erosion, soil compaction, and weed mitigation plans, pursuant to Condition of Approval No. 2.
- 4.2.3.** OAR 6600-33-0130(38)(f)(E). The entire tract is comprised of high-value farmland soils. The solar farm is proposed to be located on the highest-class, lowest-yielding soils on the tract and represent the best location to maximize the continued farm use of the balance of the tract. No evidence to the contrary exists in the record.
- 4.2.4.** OAR 660-033-0130(38)(f)(F). Less than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and building permits within a one-mile radius of the proposed solar farm.

5. CONDITIONS OF APPROVAL

This approval is subject to the following conditions:

1. The commercial power generating facility shall be limited to the operations, uses and activities reviewed in this Conditional Use Permit. The solar facility shall be established in the size and location depicted on the updated site plan dated 8/30/16 contained in the record of this proceeding. The total area occupied by the solar facility shall not exceed 12 acres and the panels shall not exceed eight feet in height.
2. The applicant shall implement the soil erosion plan, soil compaction plan and weed control plan as contained in the record of this proceeding. Additionally, the Applicant shall execute a contract for long-term weed control maintenance.
3. Prior to operation of the solar facility, the applicant shall install landscaping along the northern and western boundaries of the project as identified in the landscaping plans dated 8/22/16 and 1/26/16, consistent with the requirements of Section 1010 of the Yamhill County Zoning Ordinance. The landscaping shall be installed or a surety bond

provided as required by Subsection 1010.01(E) of the Yamhill County Zoning Ordinance. Trees shall be approximately 12 feet in height at planting.

4. Prior to operation of the solar facility, the applicant shall install green-slatted fencing around the perimeter of the facility as depicted in the site plan submitted with the application.
5. Prior to issuance of the building permit, the landowner shall sign an affidavit acknowledging the following declaratory statement and which will be recorded in the Deed and Mortgage Records for Yamhill County:

“The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator's responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator's violation of state law.”

6. To ensure the safety of travelling motorists, the Applicant shall install the solar equipment in a manner that will not cause glare or other safety impacts to motorists. The solar equipment shall include an anti-reflective layer or other similar material and shall not direct light toward the roadway.
7. Construction activities shall be limited to the hours of 7:00 a.m. to 10:00 p.m., Monday through Saturday.
8. Prior to any development, the Applicant shall obtain all required local, state and federal permits. The Applicant shall obtain all necessary permits from the Building Department and the Public Works Department. These permits may include, but are not limited to, building, electrical and plumbing permits from the Building Department as well as a new or amended access permit from the Public Works Department.
9. Within one year from the end of the solar facilities operating life, the operator of the solar project shall completely remove the solar panels and related equipment according to the Decommission Plan submitted with this application. The materials shall be disposed of according to local, state, and federal regulations regarding safe handling of such items. Ultimately, the property owner is responsible for ensuring the agricultural land occupied by the solar facility will be returned to agricultural use or other allowed use.

10. Prior to the issuance of a building permit, the applicant shall provide to the county a performance guarantee in a form approved by the county. The amount of the guarantee shall be 1.25 times the estimated decommissioning cost. Estimates for decommissioning the site shall be determined by an Oregon licensed engineer. It is the responsibility of the applicant to provide the county with the certified cost estimate. The guarantee shall be maintained by the applicant until the project is fully decommissioned.
11. This approval shall expire two years from the date of this approval unless the use has been initiated.
12. Modification of any of the above conditions requires approval under Sections 1101.06 and 1202.05 of the Yamhill County Zoning Ordinance. Violation of any of the above conditions may result in revocation of the Conditional Use Permit according to the process detailed in Sections 1101.07, 1202.07 and 1202.08 of the Yamhill County Zoning Ordinance.

6. CONCLUSION

Having accepted and weighed all of the evidence submitted into the record, the Board concludes that all applicable approval criteria have been met, and denial of this appeal is justified. Accordingly, the Board upholds the Planning Commission approval subject to the Conditions of Approval stated in Section 5 of these Findings.