

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 Accepting the Appeal of Planning)	
Docket C-08-18/SDR-12-18; Overturning the)	
Planning Director's Approval; and Denying)	
the Application for a Conditional Use Permit)	Board Order 18-356
and Site Design Review for an Eight-acre Solar)	
Facility on Tax Lot 5424-1700)	
Applicant: Blackforest Solar, LLC)	

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on October 4, 2018, Commissioners Mary Starrett, Richard L. "Rick" Olson and Stan Primozych being present.

IT APPEARING TO THE BOARD as follows:

A. By application dated February 27, 2018, Blackforest Solar, LLC (Sulus Solar), applied to the county for a conditional use permit and site design review for an 8-acre solar facility on a 173-acre property zoned EF-80, Tax Lot 5424-1700. The property is located at 19002 SE Lafayette Highway, in rural Dayton, and is owned by Shad-O-Hill Farms LLC/Les Stephens.

B. The Planning Director approved the application on July 27, 2018, and a timely appeal was filed by Jeff Stiling.

C. On September 13, 2018 the appeal was heard by the Board of Commissioners. Following the hearing, the Board deliberated, and voted 2-1 to accept the appeal, overturn the Planning Director's decision, and deny the application, with staff directed to prepare written findings for final adoption on October 4, 2018; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The appeal by Jeff Stiling is hereby accepted, the Planning Director's decision to approve Docket C-08-18/SDR-12-18 is hereby overturned, and the application is denied.

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

DONE this 4th day of October, 2018 at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

Chair

MARY STARRETT

By: Carolina Rook

Deputy Carolina Rook

Commissioner

RICHARD L. "RICK" OLSON

FORM APPROVED BY:

Commissioner

STAN PRIMOZICH

Timothy S. Sadlo

Senior Assistant County Counsel

**Exhibit A – Board Order 18-356
Findings in Support of Decision to
Deny Docket No. C-08-18/SDR-12-18**

1. INTRODUCTORY MATTERS

DOCKET NO.: C-08-18/SDR-12-18

REQUEST: Conditional use and site design review for a solar power generation facility consisting of approximately 8 acres.

APPLICANT: Blackforest Solar, LLC (Sulus Solar)

TAX LOTS: 5424-1600, 1700, 1701, 2000

LOCATION: 19002 SE Lafayette Hwy, Dayton

ZONE: EF-80, Exclusive Farm Use District

REVIEW CRITERIA: Sections 402.04(M), 402.07(A and D), 1101.02 and 1202.02 of the Yamhill County Zoning Ordinance. Comprehensive Plan policies addressed in these findings. Agricultural Lands rules under OAR 660-033-0130(38).

FINDINGS:

A. Background Facts

1. *Tract Size and Request:* The tract is approximately 173 acres in size. The tract is located on a hillside that for the most part slopes relatively gently from north to south and from west to east with a small wetland/pond area on a terrace near the southern end (below the existing cherry orchards). The applicant intended to use eight acres near the center of the tract for the commercial solar power generating facility and related ancillary uses, including solar panels, electrical equipment and access roads. According to the applicant's written statement, the solar facility would have consisted of solar arrays on steel racking, consisting of photovoltaic modules oriented generally toward the south and mounted on a fixed tilt racking system, with inverters, a transformer pad, and connections to the existing power lines. The site plan also proposed necessary access and safety features including access roads, perimeter roads and fencing. The proposal indicated that the photovoltaic modules would be supported by stationary piles driven up to 10 feet into the ground. The proposed solar facility has a proposed nameplate capacity of approximately 1.4 Megawatts (MWac).
2. *Access:* An existing private driveway and farm roads internal to the tract would provide direct access to SE Lafayette Highway.

3. *On-Site Land Use:* The property is dedicated to commercial agricultural uses including hay and grass seed production, fruit and hazelnut orchards, and vineyards. There are two dwellings on the property as well as a number of farm buildings.
4. *Surrounding Land Use and Zoning:* All of the surrounding parcels are zoned for Exclusive Farm Use. Parcels to the east are zoned EF-80, to the north and west EF-40, and to the south EF-20. The properties immediately to the north and west appear to have large forested areas as well as single-family homes. There appear to be some farm uses occurring on these properties including fruit or nut orchards, grass seed and hay production, and pasture land. Properties to the south also have significant forested areas and single-family homes with the predominant farm uses being vineyards and grass seed. Across Lafayette Highway to the east are a few homes and grass seed farms.
5. *Soils:* The Natural Resources Conservation Service (NRCS) map and accompanying documents submitted by the applicant, show that the tract consists of predominantly high-value soils and is therefore considered high-value farmland. The applicant's soils map indicates that approximately 45.5% of the parcel is composed of Carlton silt loam soils. The soils are composed of approximately 29.3% Saum-Parrett Complex soils, approximately 11.9% Woodburn silt loam soils, approximately 6.1% Cove silty clay loam soils, approximately 2.2% Dayton silt loam soils, as well as approximately 1.0% Amity silt loam soils (the remaining 1.9% is submerged in water). The soils where the facility was proposed to be located appear to be almost entirely Class III agricultural soils.
6. *Water:* No on-site water supply is required for the use.
7. *Sewage Disposal:* No on-site sewage disposal is required for the use.
8. *Fire Protection:* Amity Rural Fire District.
9. *Overlay Districts:* The project site is not located within an identified 100-year floodplain. There are no identified historic sites or Willamette River Greenway or airport overlay district. The Department of State Lands (DSL) wetlands map indicates wetlands are present just south and downhill from the proposed project site.

B. Conditional Use Provisions and Analysis

1. The list of conditional uses in the EF-80 zone includes Section 402.04(M) which, at the time of application, stated:
 - M. *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.*

Subsection 402.07(D): A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise on a tract not identified as high-value farmland, or 12 acres on a tract identified as high-value farmland, unless an exception is taken pursuant to OAR 660, Division 4.

The request is subject to the conditional use criteria in section 402.07(A and D) and section 1202.02 and is also subject to the Site Design Review criteria in 1101.02 of the *Yamhill County Zoning Ordinance (YCZO)*. In addition to the county standards, the proposed facility is regulated under Oregon Administrative Rule (OAR) 660-033-0130(38).

2. The applicable criteria and definitions of OAR 660-033-130(38) are as follows:

(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.

(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

(e) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(f) For high-value farmland described at ORS 195.300(10), 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 4. The governing body or its designate must find that:

As noted above, the applicant proposed the development of an 8-acre commercial solar power generating facility and related ancillary uses, including solar panels, inverter sheds, electrical equipment, fencing, and access roads. This is the only existing or proposed facility within more than 1,320 feet. The subject parcel is considered high-value farmland due to the property consisting of predominantly high-value soils. The applicant has stated, and has shown on the submitted site plans (Appendix 2 of the application), that the proposed facility would consist of approximately 8 acres, therefore an exception pursuant to ORS 197.732 and OAR chapter 660, division 4 would not be required.

3. *(A) The proposed photovoltaic solar power generation 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 a 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 stated that the 8-acre project area was sited to ensure that there is no significant change in or increase to the cost of accepted farming on surrounding lands devoted to farm use. A signed statement from the landowner, who actively farms the 173-acre tract, states that the plans were made with his full knowledge and input. The applicant's burden of proof also stated that the 8 acres of cherry trees that will be removed are slated for removal regardless of whether a solar generating facility is approved to replace them. This is due to the fact that the trees are at the end of their useful life for producing fruit, and due to the relatively steep slopes in this portion of the orchard. Mechanized harvesting is not possible due to the slopes and this makes the portion proposed for solar development uneconomical to continue farming at this time. The main reason that only 8 acres seems to have been chosen for development on this particular project (instead of the 12 allowed by state law and county ordinance) is that the opportunity to construct this type of project coincided with the imminent removal of that non-productive portion of the existing cherry orchard. The farm road or driveway that is currently used to access the orchards and adjacent vineyards is the road that would have been used during construction and to access the solar facility over the long term. While the road would have needed upgrading somewhat to handle construction equipment, its current existence means there would not be any new segmentation of fields, nor would it break up the continuity of any growing units.

The applicant stated that, once installed, the proposed solar facility would have no negative impacts on neighboring parcels or on any farm or forest practices conducted thereon. Neighbors contested that characterization. The applicant stated that there would be no impacts to air or noise quality, nor would there be any glare issues as a consequence of the installation. The neighbors, and neighbors of another solar facility in the county disputed the applicant's claims, and submitted photos of glare from the other solar facility. The applicant also stated that the company would abide by the weed control and soil erosion and compaction plans submitted with the application.

4. *(B) 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;

(C) 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 decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;

The applicant submitted a soil erosion and compaction plan that detailed how soil erosion and compaction would be avoided or remedied (see Appendix 2 of the applicant's supplemental submission received May 15, 2018). Based on written and oral testimony received by the county, the county does not accept that the standard is satisfied by the materials submitted by the applicant. The steepness of the hill will make erosion difficult to manage, and the plans submitted are generic and do not demonstrate that the potential for serious erosion at the site has been appropriately addressed and minimized. The erosion and compaction plan describes the project site as having either moderate or severe erosion hazard ratings throughout, and that erosion is therefore expected for bare soils in the project area. In order to mitigate this issue, the report states that it would be necessary to establish erosion control measures that minimize bare soils in the first place, control stormwater run-on and run-off in the project area, and establish cover on exposed soils as soon as possible. The Erosion and Compaction Control Plan (prepared by Environmental Planning Group or EPG) notes that the Oregon Department of Environmental Quality Construction Stormwater Best Management Practices Manual was consulted for the preparation of the report and the proposed control measures that could be implemented to minimize erosion or soil compaction. The applicant stated a willingness to schedule construction in order to avoid the wet season, if possible, when there is an increased risk of soil compaction and surface runoff. The applicant also planned to maintain as much of the existing onsite vegetation as possible to further minimize the risk of erosion or soil compaction. The applicant has also suggested revegetating any disturbed areas with native plants. Mulch was proposed to be placed over re-seeded areas to help ensure that erosion would be lessened while the vegetation grows and takes hold. The applicant noted that soil is prone to displacement by wind erosion during the dry summer months and suggested that a mitigation strategy would have been to lightly moisten the surface soil along with the stockpiling and covering of any stripped topsoil. Again, the county concludes that, in this instance, the plans are not adequate to prevent unnecessary soil erosion or loss that could limit agricultural productivity on the subject property.

Regarding the loss of farmland, the applicant maintains the land can be returned back to a farm use at any time and will not permanently be taken out of resource use. State law takes into consideration, and requires conditions to be placed upon solar facilities, which address soils erosion and compaction, weed control and the rights of adjacent agricultural operations consistent with accepted farm practices. Problems at a previously approved solar facility raised during the hearing on this application, have led to county concerns that the applicant in this proceeding may have similar problems during construction with unforeseen erosion and compaction.

In this case, the county has concluded that the site soils are expected to have a mid to high predisposition for compaction. The soil compaction plan submitted by the applicant focused on immediate soil compaction impacts from construction activities. However, the county also

has concerns about the long-term impacts of soil compaction on this high-value farmland caused here by the compaction from installation of the stationary piles for the proposed photovoltaic panels that would be driven up to 10 feet into the ground. Testimony in the record supports a conclusion that solar facilities may alter the soil profile and diminish the productive use of the underlying farmland after the solar panels are removed because of impacts from compaction over the life of the solar facility. The applicant did not carry its burden to establish that soil compaction from installation and use of the solar photovoltaic panels for 20-30 years would not have long-term impacts that would reduce the productivity of soil on the subject property for crop production.

5. *(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed 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 submitted a Weed Control Plan, (Appendix 6 of the application) prepared for the applicant by EPG, which presents a plan to mitigate the propagation of noxious weeds and other invasive flora. The applicant noted that the time period at which there is the greatest risk for invasive weed infestation is during construction. The plan calls for a pre-construction survey of the project site as well as monthly monitoring during construction to minimize weed introduction. The plan also calls for inspecting clothing, boots, and equipment for weed seeds during construction; minimizing the area disturbed for road construction, vegetation clearing, and staging areas; bringing in construction and erosion mitigation materials that are weed-free; and minimizing the time that soils are left bare and exposed.

The applicant suggested several post-construction restoration guidelines to mitigate for the introduction and spread of weeds. Specifically, the applicant suggested the uniform application of a customized local seed mix during the construction and rehabilitation phases of development to provide active competition against any noxious weeds already established onsite, and to compete with weeds that may be introduced while the ground is disturbed. If construction occurred during the dry summer or autumn months the seeds may have needed to be irrigated. The applicant also stated a willingness to have inspections conducted by a biologist with local (Willamette Valley) ecosystem knowledge on an annual basis or other schedule as agreed upon by the biologist and the county. The applicant also suggested some long-term maintenance strategies including the manual removal of weeds, mowing, planting shrubs to outcompete certain noxious weeds, livestock grazing, or the least preferred option of herbicide application by a certified professional. The applicant noted that these long term maintenance activities would have been recorded in a log book and would document the date of inspection and weed maintenance, as well as the presence and quantity of noxious weeds, bare areas that require the reapplication of native seed, recommended weed maintenance and eradication measures, as well as the type(s) and dates when eradication measures were conducted. In addition to the annual report prepared by a biologist regarding the implementation of the Noxious Weed Control Plan, including the submission of the applicant's weed mitigation log book, the applicant would comply with the other best practices outlined in the Weed Control Plan.

Opposition testimony stated that the applicant had underestimated the difficulties in weed control and the invasiveness of non-native thistles, scotch broom and blackberries, among other difficult to control weeds. Testimony noted the difficulties of mowing around the panels,

increasing the need for herbicides, herbicide resistance, and lack of plans to prevent herbicide drift. Testimony in opposition noted that grapes are currently being grown in close proximity to the proposed site of the solar facility, limiting the ability to use herbicides. The county finds that the applicant did not meet its burden to analyze the potential for herbicide drift to harm neighboring crops, particularly sensitive vineyard crops, nor its burden to demonstrate that construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species.

6. *(E) The project is not located on high-value farmland soils unless it can be demonstrated that:*

(i) Non high-value farmland soils are not available on the subject tract;

(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 of non high-value farmland soils; and

(F) 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 have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy 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.

Based on a review of the NRCS soils map, the applicant proposed to develop the solar facility on the portion of the parcel that contains high-value soils. The applicant stated that this area was chosen so as to not interrupt the existing agricultural enterprise on the remainder of the parcel (described more fully above). It appears from the NRCS map that the only areas of non-high value soils contain orchards and vineyards. The chosen location meets criterion (iii) above. There are no additional solar facilities approved or in place in the study area.

7. OAR 660-033-0130(38)(j): *Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility from retiring the photovoltaic solar power generation facility.*

Staff recommended that the applicant be required to post a bond, and the applicant did not object. For reasons stated elsewhere in these findings, the proposed solar facility is denied. Therefore, no bond is required.

8. The conditional use criteria of YCZO Section 1202.02 are as follows:

(A) *The use is listed as a conditional use in the underlying zoning district;*

The request is consistent with criterion 1202.02(A) above, in that the proposed use is listed as a conditional use in Section 402.04(M) of the EF-80, Exclusive Farm Use district.

9. **(B) *The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use;***

The county adopts the following findings in response to YCZO 1202.02(B). The county recognizes that the goals and policies of the Yamhill County Comprehensive Plan (“Comprehensive Plan”) are aspirational and are not approval criteria. Notwithstanding the aspirational nature of the goals and policies, this conditional use standard requires a balancing of those goals and policies of the Comprehensive Plan that apply to the proposed use, and require the county to make a finding of consistency. After consideration of the goals and policies of the Comprehensive Plan discussed in the staff report, by the applicant, and members of the public, the county determines that the applicant failed to demonstrate that the proposed use is consistent with the goals and policies of the Comprehensive Plan and adopts the following findings:

Under Section II, the Comprehensive Plan’s first Goal Statement for Agricultural Lands states:

1. To conserve Yamhill County’s farmland for the production of crops and livestock and to ensure that the conversion of farmland to urban use where necessary and appropriate occurs in an orderly and timely manner.

The applicant provides no information about conserving the subject property for the production of crops even though the subject property is currently a cherry orchard, and would not have been farmable for 20-30 years if the project had been approved. The use has been characterized as “industrial,” but it is not clearly an “Urban” or “rural” industrial type of use, and may be both. For this reason, the county is unable to conclude that this overarching Goal Statement weighs in favor of approval or denial of the application.

Under Policy A of this Goal Statement:

Policy a: Yamhill County will have to preserve the farm lands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce and various public financial incentives.

Solar development on farmland is currently on the rise due to the high economic incentives compared to agriculture practice. But, preservation under Policy A means that potentially high economic returns for solar facilities should not be elevated above the goal of preservation of farmlands. The changing market condition and the rise of solar development on farmlands affect the long-term productivity and sustainability of the county’s farmland for agricultural production.

The record indicates that Portland General Electric (“PGE”) is the entity that would purchase the energy from the proposed solar facility. This interpretation of balancing the Comprehensive Plan Goals and Policies in favor of protection of farmland for farm use is further supported by the status of PGE’s existing renewable portfolio. According to PGE’s 2016 Integrated Resource Plan:

“The Solar Photovoltaic Capacity Standard is a legislative mandate that by January 1, 2020, PGE must own or contract to purchase 10.9 MW of solar PV capacity. Individual solar systems must be between 500 kW and 5 MW in size. PGE’s existing portfolio meets the requirements with resources such as Baldock Solar, Bellevue Solar, Yamhill Solar, Outback Solar, and Steel Bridge Solar. Appendix D, Existing Resources, describes PGE’s solar resources.”

The Oregonian reported on PGE’s ability to meet this legislative mandate in its recent coverage of the issue:

“But there’s a more fundamental issue at work. Both PGE and PacifiCorp have been generating more green power than required for years. As a result, they’ve built up huge banks of renewable energy credits that can be used to comply with the state mandates in years when they don’t generate enough green power. Utilities successfully lobbied for those long-lived, bankable credits as a kind of compliance shock absorber. But PGE’s bank of credits is now so big that it can satisfy the increasing mandates until 2029 or 2030 without purchasing any more physical resources.”

Thus, the applicant is proposing to expand PGE’s renewable energy portfolio by entering into agreements on cheap agricultural land to construct an industrial use in comparison to better suited, albeit more expensive, land within urban growth boundaries. As part of its Integrated Resource Plan, PGE prepared solar generation market research. The market research shows that fixed-tilt, ground mount utility-scale installations are significantly less expensive than commercial or industrial rooftop installations. The market research does not suggest that commercial or industrial installations should be abandoned because they do not pencil out. In fact, if PGE were to wait until costs plateau in another 7 years, then commercial and industrial installation will be much more competitive with the high-value farmland selected in this application. The county is reticent to sacrifice high-value farmland production for the next 20-30 years when industrial and commercial land in urban areas is more suitable for the use, and solar array installation costs are continually falling on those more appropriate sites. For PGE, time is on its side as its bank of renewable energy credits show it can satisfy legislative mandates through 2029. Once agricultural land is industrialized, time runs out on it being available for productive farm use.

Other evidence in the record supports a conclusion that developed areas within agricultural landscapes such as rooftops, transportation corridors and parking lots; land too salty for crops to grow; reclaimed areas that were previously contaminated; and reservoirs and irrigation channels that could accommodate floating solar panels known as floatovoltaics could accommodate solar installations before paving over productive farmland. Research conducted in California concluded there were enough of these underused sites for solar — which would be the equivalent area of 1.5 million football fields — that solar energy from those spaces alone could exceed the 2025 electricity demands for California by up to 13 times. Moreover, the

evidence cited concluded that solar facilities could prevent the productive use of the underlying farmland after the solar panels are removed because of impacts from compaction and herbicide use over the life of the solar facility. The applicant did not provide an adequate response to these concerns.

The county also notes the observations in the record made by state agencies in a joint solar photovoltaic project siting briefing to the Oregon Governor's office on November 2, 2017, from the Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Department of Fish and Wildlife, and Oregon Department of Energy, that highlight concerns about the current state law. Based on that joint agency briefing and other information in the record, the county finds that this applicant should consider non-high-value-agricultural lands for its proposal as more consistent with the county's comprehensive plan policies. The November 2, 2017 state agency briefing highlighted agency concerns that although the rule to allow solar facilities on farmland "[w]as specifically designed to encourage solar developers to select sites with the poorest capability for commercial agriculture... Many solar projects have been approved on all types of farm and rangeland..." The briefing continued, "What was not anticipated when these thresholds were established was the proliferation of solar PV projects on less than 100 acres located on high value or productive farm ground... By creating serial solar PV projects... a developer may also avoid having to go through the goal exceptions process previously described." *Id.* These statements reflect the county's position that local code provisions such as consistency with Comprehensive Plan Goals and Policies are a safeguard to ensure that high-value farmland is not unnecessarily converted to non-agricultural uses.

Additionally, persuasive evidence in the record indicates that the area, slopes and soils located at and around the proposed site are exceptional for vineyards that produce high quality, world-class wine. Protection of soils of this nature would seem to be precisely the point of the policy.

The county finds that the applicant has not met its burden to show that this plan goal and policy are being advanced. The proposed site is located on high-value farmland particularly suited to the production of wine grapes, and the county does not find it appropriate in this case to convert farmland to nonfarm use because to do so would be a failure to conserve Yamhill County's farm lands for the production of crops.

Based on the foregoing, this plan goal and policy weighs in favor of denial of the proposed use.

Policy h: No proposed rural area development shall substantially impair or conflict with the use of farm or forest land, or be justified solely or even primarily on the argument that the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise.

The proposed eight-acre solar facility is "rural area development." As stated elsewhere in these findings, the development would prevent use of the site as farm or forest land for 20-30 years. The county notes that the approval of the proposed use would result in the overall loss of farmland to a non-farm use on land that is currently proven to be suitable for farming. Therefore, the county concludes that Policy H weighs in favor of denial of the proposed use.

The county finds that on balance the first Goal Statement for Agricultural Lands and Policies A, B, and H weigh in favor of denial of the proposed use.

Under Section II of the Comprehensive Plan, the second Goal Statement for Agricultural Lands states:

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.

As stated, the county has concluded that the location, soils and slope of the proposed site are highly suitable for agricultural use and especially suited for production of grapes used in the production of high-quality, even world class, wines. (The landowner disputed this characterization, indicating that he has sought individuals interested in developing the site with a vineyard, with no takers.) The county finds that removing farmland from agricultural production and allowing heavy construction, compaction and changes in the soil profile from driving piles, and cover from natural light for 20-30 years, could adversely affect the long-term suitability of soil resources at the site for agricultural uses. The county heard testimony from project opponents that chemicals associated with the solar panels may cause harm to the long-term use of the soil for agricultural uses. Even if the PV panels are not chemically finished, aluminum used on the PV panels could runoff from the panels and accumulate in the soil over time. This accumulation of aluminum could adversely impact the future use of the soil for agricultural purposes. The applicant had stated in a presentation that the solar PV panels do not corrode, but the record contains no evidence that aluminum particles will not separate from the panels, racking, or other materials used at the solar facility over the 20-30 year life span.

Further, as referenced above, evidence in the record concluded that compaction and herbicide impacts in construction and over the life of the project may prevent the productive use of the underlying farmland after the solar panels are removed. The county does not find that the soil compaction report or weed control plan adequately addressed long-term impacts to the soil raised by project opponents. The county finds this goal weighs in favor of denial of the project.

Policy a: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.

The proposed use of the site would remove approximately eight acres of high-value soils from production for 20-30 years, and possibly longer. The applicant addressed this goal and policy by saying that the project will not alter the soils and the property would revert to its previous use after the site is decommissioned. However, as described above in the discussion of Goal Statement 2 and incorporated here, the county finds the applicant did not meet its burden that soils could be preserved over the long-term lifespan of the solar facility and/or following removal of the facility.

The applicant has indicated that it would implement the erosion control measures and noxious weeds management plans submitted. The county has concluded that those plans are not adequate. There are also concerns raised by those in opposition to the solar facility, regarding the loss of productive high-value farmland from this solar facility and cumulatively from the number of solar facilities now located in the county. While a cumulative impacts analysis may not be required under state regulations, the county's conditional use criteria that examines the consistency of this proposal with the Comprehensive Plan allows the county to consider the conversion of county farmland to nonfarm uses and to determine that in this instance, when

more than 100 acres of county farmland has been converted to nonfarm solar facility use and such conversion does not meet the county's soil preservation goals, another solar facility should be viewed as defeating this policy. Thus, as another proposed instance of converting an additional eight acres of Class I – IV soils away from farm use, this proposal does not help the county meet this policy.

In addition, the county considered additional variables about whether this use complies with the Comprehensive Plan to preserve soils for farm use. Solar facilities can be sited in many other locations. Large-scale solar fields can be located on non-high-value soils, in rural residential zones, in certain commercial and industrial zones, and on property in the urban growth boundary/city limits. In short, solar facilities have a wide variety of options to locate. Agriculture on the other hand is significantly restricted by certain unique features. One of the key features of successful agriculture is the location and availability of appropriate soils. Agriculture needs the soils, especially the high-value soils, to grow their crops. That is why soils are prominent both in the Comprehensive Plan, and also in the zoning ordinance. Chipping away at the availability of high-value farmland, especially when there are other options, appears to threaten the overall *integrity and viability of the agricultural land base*. For these additional reasons, the Board finds that this policy weighs in favor of denial of the proposal.

The findings adopted in this proceeding differ from those adopted to approve a solar facility in Board Order 16-427. The Board notes that the findings in that matter were based on a different record, for a different application. Additionally, as noted in testimony received by the Board, many unanticipated impacts from the facility installed under that Board Order diminish the persuasiveness of those earlier findings.

Policy b: Yamhill County will continue to support ASCS soil conservation measures and SWCD best management practices designed to protect and improve forest and agricultural land productivity and to prevent unnecessary losses through excavation, stripping, erosion and sedimentation.

The applicant stated that it would adopt best practices, but offers no specifics on how it will actually accomplish soil preservation over the long-term as set forth in previous findings and reincorporated here. The Yamhill County Soil and Water Conservation District testified against the proposal. Testimony was received in this matter in opposition to conversion of high-value farmland to non-farm uses. The removal of the most productive and valuable soils in this case is contrary to the county's goals to conserve soil resources. Therefore, the county finds that this policy weighs towards denial of the application.

Policy d: Yamhill County will require that construction permits contain provisions to protect sites from soil erosion.

The applicant stated it would obtain required construction permits that could attach conditions to protect the site from soil erosion. Since the county denies the application, the county finds this policy is not due any weight in its decision.

Under the Comprehensive Plan, Section II, Open Space, the first Goal Statement states:

Goal Statement 1. To insure the continuance of the open space character that has always

existed in Yamhill County.

The open space character is not insured by the industrialization that would occur if this proposal were approved. The county finds that it would be counter-intuitive to achieving the balance of the Comprehensive Plan Goals and Policies by sacrificing farmland, and its aesthetic qualities, in favor of industrialization.

Based on the foregoing, the county finds this policy weighs in favor of denial of the proposed use.

Policy c: Where conflicting uses are identified concerning an open space, natural or scenic resource proposal, the economic, social, environmental and energy consequences of the conflicting uses will be determined and programs developed to achieve the goal.

The county views this policy as informing the inventory process described in Policy B, not as an independent approval criterion or requirement for a proposed conditional use. Therefore, this policy does not enter into the balancing for the county to reach its decision, because no Goal 5 inventory is being adopted.

Under the Comprehensive Plan, Section I, Rural Area Development, the first Goal Statement states:

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.

Policy c: All proposed rural area development and facilities:

1. *Shall be appropriately, if not uniquely, suited to the area or site proposed for development;*

The county finds that the facilities proposed in this case are not appropriately nor uniquely suited to high-value farmland. Rather, high-value farmland is best suited to farm uses and cannot occur without agricultural soils. This proposal could be consistent with this Comprehensive Plan policy if it were sited in urban areas or on land that is not plan and zone designated as high-value farmland. Further, the Board finds that high value farmland is irreplaceable and should not be sacrificed for industrial-sized solar facilities.

While the proposed solar facility is subject to conditional use approval, and thus allowed as a rural use, that designation does not guarantee approval unless the applicant can meet its burden of demonstrating that the use meets all conditional use criteria. The fact that the county has listed this use as a conditional use does not mean that in every instance that a proposed EFU site will be determined to better accommodate the use than other zones or urban areas. Rather, the county finds that the proposed use is not appropriately or uniquely suited to the proposed area or site, and that this policy weighs toward denial of the application.

On balance, this goal and policy weighs in favor of denial of the application.

Under Comprehensive Plan, Section I, Economic Goals, the first Goal Statement states:

Goal Statement 1. To maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county, balance the real property tax base of the various cities, and strengthen local economic bases.

Policy b. Yamhill County will encourage economic development projects which do not conflict with the predominant timber and agricultural character of the county.

To the extent this policy is applicable in this context, the county finds that this proposal will not have a significant positive effect on unemployment in the county. Further, the county heard testimony about the potential for adverse impacts to the county's tourism and wine industries as a result of the transforming farmland to non-farm uses of the type proposed. The county also heard testimony supporting a conclusion that solar facilities of the type proposed conflict with the predominant agricultural character of the county. The county finds that siting solar installations on high-value farmland is not in the short or long-term economic interest of the county, even though it would provide an income source for the property owner and increased property tax revenues to the county.

The county finds that, on balance, this plan goal and policy weigh in favor of denial of the proposed solar facility.

Under Comprehensive Plan, Section I, Industrial, the first Goal Statement states:

Goal Statement 1. To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.

The overarching focus of this goal is that, generally, industrial development belongs in cities, and that designated industrial areas should be protected from incompatible uses. The industrial nature of the proposed solar facility suggests that, pursuant to this policy, it should be located in an industrial area, or in some other place where it will not displace agricultural uses. Placing the facility in an area known for its high-quality wine production, and known for its burgeoning reputation as scenic "wine country," presents a land use conflict. Overall, the county finds this goal statement balances in favor of denial of the proposed use.

Policies B and E under this Goal Statement state:

Policy b: To the greatest extent possible, industrial areas will be located within urban growth boundaries.

Policy e: Industrial uses will be located so that adequate buffer space is provided between incompatible land uses.

The county finds that the applicant has failed to demonstrate that the proposed solar facility is consistent with this Goal and its policies because the industrial use is proposed outside the urban growth boundary, in an undesirable location, without an adequate buffer to prevent adverse

impacts to surrounding properties, and these policies weight in favor denial of the proposed use.

Under Comprehensive Plan Section II, Water Resources, the first Goat Statement states:

Goal Statement 1: To conserve and to manage efficiently our water resources in order to sustain and enhance the quantity and quality of flows for all consumptive and non-consumptive uses and to abate flood, erosion and sedimentation problems.

The proposed use does not appear to affect water resources in a manner that implicates this goal. On balance, the county finds that this goal does not weigh in favor of approval or denial of this proposed solar facility.

Under Section II of the Comprehensive Plan, Fish and Wildlife, Goal Statement 1 states:

Goal Statement 1: To conserve the fish and wildlife habitat of Yamhill County with a view to maintaining an optimum ecological balance, enhancing the sport fishing and hunting resource of the county, and protecting endangered species.

There are no endangered species or associated habitats observed on the project site.

Policy b: Yamhill County will recognize the need to conserve and protect fish and wildlife habitat in its plan implementation measures; and the following will be considered in any public or private land use determination subject to county review; the impact of harvesting forested areas where there is no forest management plan for regeneration of the forest lands; the filling or drainage of swamps or marshes; the damming of rivers and streams; the location and construction of highways and utility transmission lines; and any other land development activities which significantly interfere with the vegetation or soil cover or drainage patterns in critical habitat areas.

The Comprehensive Plan does not identify fish or wildlife habitat on the subject property. This policy is not relevant to the consistency finding.

Policy c: All identified sensitive wildlife areas will be classified as exclusive agriculture, forest land or open space. No major land use change, including but not limited to road construction and recreational developments will be permitted without approval of measures to limit undesirable impacts on sensitive wildlife areas.

The Comprehensive Plan does not identify fish or wildlife habitat on the subject property. This policy is not relevant to the consistency finding.

Under Section V of the Comprehensive Plan, Air, Water, and Land Quality, the first Goal Statement states:

Goal Statement 1: To conserve and to protect natural resources, including air, water, soil and vegetation and wildlife, from pollution or deterioration which would dangerously alter the ecological balance, be detrimental to human health, or compromise the beauty and tranquility of the natural environment.

Policy e: In order to maintain and improve the quality of the county's air, water and land resources, Yamhill County will seek to minimize irreversible and other long-term impacts in its

development of energy resources; support efforts, where feasible, for the appropriate and efficient recovery of energy as a means to reduce waste problems; and encourage a program to recover and recycle used motor oil.

This Goal Statement concerns the conservation of natural resources, including “land resources” (soil) and testimony was received asserting that the applicant had failed to demonstrate that, over the course of 20-30 years, the panels would not hurt the high-value soils on which they are proposed to be located. Policy e. states, in part, that: “Yamhill County will seek to minimize irreversible and other long-term impacts in its development of energy resources.” The applicant failed to demonstrate that the impacts of the facility over 20-30 years would not constitute a “long-term impact” to soils on the site. This policy weighs in favor of denial of the application.

Under Section VI, the Energy Conservation portion of the Comprehensive Plan, the first and second Goal Statement and relevant policies under the second Goal Statement state:

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

Policy d: Yamhill County will promote development of renewable energy resources, including but not limited to solar, wind, water and biomass.

Policy l: Yamhill County will assist local governments to promote the use of conservation, solar and other renewable sources of energy supply.

These goal statements and policies tend to weigh in favor of approval of the proposed solar facility.

On balance, the comprehensive plan goals and policies support preservation of farmland over the proposed non-farm use solar facility. The county’s responsibility under the consistency standard is to make findings of consistency with the Comprehensive Plan policies by balancing all relevant goals and policies. The Agricultural Land goals and policies to protect and preserve farmland, soils, large blocks of farmland, as well as protecting rural areas, all weigh stronger for preservation of farmland for farm use than any alleged gain in the establishment of renewable energy sources. Those sources can demonstrably be provided in locations other than on high-value farmland. Overall, and as weighed against each other, the Agricultural Land, Open Space, Rural Area Development, and Economic Goals of the Plan weigh in favor of denying this application.

The application only proposes an 8-acre facility when it would be allowed to go as large as 12 under existing laws. That 8 acres represents less than 5% of the land area of the tract, the remainder of which consists of a thriving, diverse farm operation. The applicant further points out that leaving farmland fallow is a common practice that helps to rejuvenate soils and that by placing the solar facility on these 8 acres with weed, erosion, and compaction mitigation measures taken during construction and over the long term, the land is essentially just being fallowed until the end of the facility’s life. For the reasons stated above the county, after

considering the applicant's testimony and countervailing testimony and evidence, concludes that the proposed use is not consistent with those goals and policies of the Comprehensive Plan that apply to the proposed use.

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

Regarding criterion 1202.02(C), the tract encompasses approximately 173 acres, which is of sufficient size to support a solar facility of eight acres with direct access onto either SE Lafayette Highway, by way of existing private driveways. The applicant stated that the remaining 165 acres would remain in vineyard, orchard, and hay production. The applicant stated that there are no existing, significant natural features that would be affected or removed if the proposed solar facility were approved and established at the proposed site. With conditions, the parcel appears to be suitable for the proposed use considering the factors listed in 1202.02(C).

11. **(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.***

Regarding criterion 1202.02(D), the staff report describes the "surrounding area," essentially, as including all of the adjacent properties, including those adjacent properties located across SE Lafayette Highway and SE Amity Road. That "surrounding area" is zoned Exclusive Farm Use. Testimony in the record suggests that, for the purposes of this standard, the "surrounding area" should also include Eola Hills generally, which has a character and reputation as a scenic, agrarian area that produces high quality wines: "wine country."

The surrounding area includes a mix of farm and forest uses with a number of rural residences. It also includes vineyards, wineries, up-scale bed and breakfast facilities, and an economic infrastructure catering to tourism.

The only property immediately adjoining the project site not under the same ownership as the facility itself (to the west) is almost completely forested with a single family residence that lies over 500 feet from the closest fence line of the proposed facility. The applicant stated that the proposed facility would be passive and unoccupied once completed. The applicant stated that the facility, once in place, would not impact air or noise quality nor would there be any glare issues. The applicant also accurately pointed out that most of the land surrounding the proposed facility is owned by the same landowner, who would have a vested interest in minimizing any conflicts with farm use the facility might introduce.

The appellant owns property immediately to the south of the subject tract. He (and other opponents) have expressed concern about the visible impacts of the facility and the potential detriment to the visual characteristics of the area. He introduced into the record a photograph from the top of the hill on his property looking down and across the small valley at the proposed solar site as it is now, along with a simulated image of what solar panels on the same site may look like once installed. He also cited a report published by the Oregon Wine Board that described the impact of the wine industry and associated tourism on the state and county economy. The appellant's testimony and evidence are meant to show how the introduction of the solar panels will cause a visual detraction that will harm the wine industry of the area, including the use of his land for a possible future winery. The applicant countered that the

solar panels and security fence, once erected, will be shorter than the existing orchards that will still surround the facility and that the main reason the opponent can see the panels is that his property sits partially atop a hill that is 200 feet higher than the project site. The applicant went on to state that, due to their elevation, most of the properties on that hill can see a vast swath of the surrounding area and cannot reasonably expect to control all potential visual impacts within their viewshed. Additionally, the appellant recently cut trees from his property making the site more visible from his property than it was when the application was prepared. These points are well taken. The applicant also pointed out that most of the properties that could potentially see the facility are located nearly half a mile away. A site visit by staff indicated that the site would be barely visible, if at all, from Lafayette Highway once the fence is erected around the facility. A GIS terrain analysis also confirmed that the home and other structures on the appellant's property and others nearby are not within view of the proposed solar site as they are downhill on the opposite side from the proposed facility. There are also 20 acres of planted vineyard on the tract where the facility is proposed, and an existing tasting room in the notification area, which appears by the same terrain analysis mentioned above to have clear line-of-sight from the winery buildings to the proposed facility. The owner of that facility did not comment on or file objections to the application.

Fundamentally, the county concludes that, even if only glimpses of potentially glaring solar panels behind a cyclone fence are visible from the road or from other properties, those glimpses detract from—alter—the character of the surrounding area in a manner that substantially impairs the use of surrounding properties for agricultural uses generally, and wine industry uses in particular. As noted in a previous decision denying a 12-acre solar facility, industrial-sized solar facilities “are completely incompatible with attracting the high end customers that support our wineries, eat at our restaurants, stay at our B&B’s, shop at our stores, and buy gas at the service stations.”

The proposed solar facility will adversely impact not only the current use of the appellant's property (ostensibly, because of the view), but other surrounding properties as well. EFU zoning allows (outright or conditionally) for an array of uses, including wineries, agri-tourism, dwellings, and other farm and non-farm uses. The ability to site any of these particular uses on EFU lands surrounding this solar facility will, according to evidence and testimony in the record, be limited due to the character-changing nature of the siting of the proposed solar facility on the proposed site. The record indicates further that the local economy is driven by agriculture and agricultural-related businesses that rely on the preservation of the character of the area—from hot air balloon operators and restaurants to area bed and breakfasts, and that all of these businesses are reliant on the preservation of farmland and the rural character of the area. Even if the facility can only be ‘glimpsed’ from the highway (and it is not clear how visible it will be), that glimpse is of an industrial, possibly glare producing facility, that is not the type of use that visitors should see when finally having the opportunity to travel to (and spend their money in) the wine country—the very scenic Eola Hills and surrounding agricultural areas.

Standard (D) is addressed specifically to the “character of the surrounding area,” which is different from whether surrounding farm uses suffer a significant change in farm practices or increase in farm costs. The scale of the proposed project (eight acres) and its location distinguishes it from ‘quaint’ small arrays that are found in many locations, including at local wineries.

The county generally agrees with the testimony of the appellant and opponents, disagrees with the testimony of the applicant, and finds that the installation of the proposed solar facility, of eight acres and with an active 20-30-year lifespan, will adversely change the natural farmland and rural character of this area over the life of the project, even though the proposed use is otherwise listed as conditionally allowed in the zone. The county finds that the proposed solar facility, at the proposed location, on high value farmland, is a character-changing use, and that the preservation of the pastoral character of the surrounding area (described above) is important for continued use of farmland for farming, as well as to enable the wine industry to continue to flourish, and for continuation of the agri-tourism businesses and events that rely on the existing character of the area.

12. ***(E) The proposed use is appropriate, considering the adequacy of the public facilities and services existing or planned for the area affected; and***

Regarding criterion (E), the site appears to have adequate public facilities and services. The site is served by the Amity Rural Fire Department, and no comments or concerns were submitted by the Fire Department to the county regarding the proposed solar facility. The proposed use would not need long-term water supply or sewage disposal. Electricity would be provided by PGE or from on-site generation. The applicant states that there will only be occasional visits by maintenance vehicles and by the biologist reviewing the effectiveness of the proposed noxious weed management plan so traffic will be minimal. The Oregon Department of Transportation (ODOT) was notified of the application and recommended that the existing driveway approach be upgraded to accommodate the large trucks associated with construction activities, which would have been a condition of approval, if the application had been approved. With conditions, the proposed use would have satisfied criterion 1202 (E).

13. ***(F) The use is or can be made compatible with existing uses and other allowable uses in the area.***

Regarding criteria 1202.02 (F), as addressed elsewhere in these findings, the surrounding area under consideration is zoned Exclusive Farm Use, and is predominantly dedicated to farm uses with rural residences. The county received concerns from neighboring property owners and others, regarding the potential negative impact to the wine industry, the removal of high-value farmland from productive agricultural uses, and a significant change in character to the area due to the installation of the proposed solar facility. Adjacent property owners also testified that the proposed solar facility would be incompatible with their residential use of their properties, and with future farm and vineyard related uses. The appellant testified that the proposed solar facility would be incompatible with its planned winery, and could not be made compatible.

The applicant indicated that the proposed solar facility would be compatible with existing uses and other allowable uses in the area, and provided testimony and evidence to support this view. The appellant and opponents presented extensive testimony and evidence of the incompatibility of the proposed project with other allowable uses in the area. Weighing all of the evidence, the county finds the applicant did not meet its burden to show that the proposed solar facility is compatible, or can be made compatible, with existing and other allowable uses in the area.

14. Conditional uses in the Exclusive Farm Use District must also comply with the following criteria (YCZO Section 402.07(A)):

1. *The use will not force significant change in accepted farming or forest practices on surrounding lands devoted to farm or forest use.*
2. *The use will not significantly increase the cost of accepted farming or forest practices on surrounding lands devoted to farm or forest use.*

The county interprets these standards to be consistent with ORS 215.296. As explained in Schellenberg v. Polk County, 21 Or LUBA 425, 440 (1991) and successive cases, the ORS 215.296(1) test requires that the county identify the accepted farm and forest practices occurring on *surrounding* farm lands, and then consider whether the proposed use will force a significant change in, or significantly increase the cost of, identified practices. Under ORS 215.203(2)(c), “accepted farming practice” is defined as: “a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.”

For purposes of this analysis, the “area” under consideration includes all adjacent parcels, including adjacent properties across SE Amity Road, and SE Lafayette Highway. As noted elsewhere in these findings, the proposed solar facility site is mostly surrounded by land that is currently owned and farmed by the owner of the proposed facility site.

The subject tract and the proposed solar facility site are entirely within the Exclusive Farm Use zone (EF-80). The surrounding parcels are dedicated to a mix of forest, rural residential, and farm uses including hay and grass seed production, fruit and nut orchards, and vineyards. There may be other crops grown in the area that are not visible from public roads. Plowing, burning, application of herbicides and pesticides, disking of orchards and harvesting by machine and human labor are accepted farm practices in the area under the ORS 215.203(2)(c) definition. Additionally, bird netting, visual devices, propane cannons, and other noise devices are commonly used for bird control in vineyards, and are generally accepted as farm practices. There may also be organic and sustainable agricultural practices taking place. Automated machinery and farm labor are both used extensively in the area to tend and harvest most of the crops noted. Farm machinery is routinely transferred from field to field on the adjacent roads.

As indicated elsewhere in these findings, the applicant stated that once the proposed solar facility is established there are no emissions generated that could impact neighboring farm or forest uses. The applicant acknowledged that there is a risk of noxious weed propagation onsite, as well as soil erosion and compaction. Accordingly, the applicant submitted plans that would mitigate for those risks, ensure that there are no impacts to neighboring parcels, and that would ostensibly return the site to its prior productive state at the end of the facility’s life.

Based on all of the testimony and evidence in the record, the county concludes that the proposed use, which following construction would be (essentially) passive, would not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, and would not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

C. Site Design Review Criteria

1. The purpose of site design review is stated as follows:

The site design review process is intended to guide future growth and development in accordance with the Comprehensive Plan and other related county ordinances, to provide for an effective process and framework to review commercial and industrial development proposals, to insure safe, functional, energy-efficient developments which are compatible with the natural and man-made environment, and to resolve potential conflicts that may arise between proposed developments and adjacent uses. This section shall apply to all development in all Commercial, Industrial, and Public Facilities Districts, all development in the PRO District, and all other uses as may be required by this ordinance in the AF, EF, F-80, AF-10, VLDR and LDR Districts.

The Site Design Review factors address potential on-site impacts, as well as potential conflicts with adjacent uses. Where the county finds that the potential conflicts cannot be resolved through appropriate design, these factors weigh against approving the proposed design of the site, and/or modifications to the design of the site.

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

(1) *Characteristics of adjoining and surrounding uses;*

Regarding factor 1101.02(A)(1), the characteristics of the adjoining and surrounding uses have been described and considered elsewhere in these findings.

2. (b) *Economic factors related to the proposed use;*

Regarding factor 1101.02(b) above, the applicant addressed this factor in its application, stating that the construction and operation of the solar facility may provide employment opportunities, as well as income to the property owner, and increased tax revenues to the County. It should be noted that mobilization and installation efforts on other solar facilities in the county have been conducted by out-of-state contractors so the suggestion that the solar facility will provide employment opportunities for locals appears to be dubious, at best. The applicant noted that the proposed solar facility would add about \$10,000 in tax revenue per year for Yamhill County.

Neighboring property owners and others testified regarding potential negative economic impact to the local wine industry, and to their property values. The appellant indicated that the view of the facility would have negatively impacted the desirability of his property as the future site of a winery. The owner of the site countered these claims by pointing out that the appellant created a view of the proposed solar facility by clearcutting his own property. Although the concerns related to this factor raised by the appellant and other opponents could potentially be addressed through the imposition of conditions of approval, the county is denying this application for other reasons specified in these findings.

3. (c) *Traffic safety, internal circulation and parking;*

Regarding factor 1101.02(c), the property is served by existing access roads off of SE Lafayette Highway. The parcel is approximately 173 acres in size and the remaining approximately 165 acres will continue to be in farm use by the property owner. The proposed solar facility project area would have replaced an aging cherry orchard that is directly accessed by an existing farm road within the property. As noted elsewhere in these findings, the applicant would have used

an existing private driveway that accesses Lafayette Highway and would have coordinated with ODOT and the county road department (as applicable) to effectively and safely manage the projected increase in traffic during the mobilization and demobilization phases of development. This coordination would have been a condition of approval. If the solar facility had been established, there would have been minimal visits to the site by maintenance workers and by the biologist who would have visited the site to evaluate the effectiveness of the noxious weed management plan. As set forth in this decision, the county is denying the application based on the applicant's inability to meet applicable standards.

4. *(d) Provision for adequate noise and/or visual buffering from incompatible uses;*

Regarding factor 1101.02(d), as addressed elsewhere in these findings, the applicant stated that construction activities during installation were not expected to be incompatible with surrounding residential, farm, or forest uses as construction activities will be short-term and limited to typical daytime construction hours. The proposed solar facility site is more than 500 feet from the nearest off-site residence and is buffered from that residence by nearly 400 feet of dense Douglas fir trees. The application indicated that during the daylight hours only, when the facility will be operating, the inverters and transformer would generate a low, humming noise which quickly dissipates and minimal noise may be heard outside of the fenced area. The applicant maintained that these sound levels are not expected to be distinguishable above quiet rural sound levels at a distance of the nearest adjacent properties as evidenced by an accompanying report prepared by an outside consulting firm. The applicant also proposed the installation of a security fence around the perimeter of the facility. As set forth in this decision, the county is denying the application based on the applicant's inability to meet applicable standards.

5. *(e) Retention of existing natural features on site; and*

Regarding factor 1101.02(e), the applicant acknowledged that while there are no existing natural areas within the boundaries of the proposed facility, there are mapped wetlands immediately to the south and downhill from the project site on the same tract. As part of the application review process, county staff submitted a Wetland Land Use Notice to the Department of State Lands (DSL). The response from DSL indicates that permits from their agency may have been required, and that a Wetland Delineation Report might be necessary to be submitted to DSL for review and approval prior to development. As set forth in this decision, the county is denying the application based on the applicant's inability to meet applicable standards.

6. *(f) Problems that may arise due to development within potential hazard areas.*

Regarding factor 1101.02(f), the applicant's plans indicated that there are some steep slopes within the project area. The soil erosion and compaction plan described elsewhere in these findings contains mitigation measures intended to prevent problems that may arise due to working on these slopes. As set forth in this decision, the county is denying the application based on the applicant's inability to meet applicable standards.

7. *(g) Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

Regarding factor 1101.02(g), the notice of the proposed use was sent to the surrounding property owners within 750 feet of the outside boundaries of the subject tract and published in the newspaper of general circulation as required by Section 1402 of the *Yamhill County Zoning Ordinance* and state law. A large number of comments were received urging the county to deny the application. A number of references were made to a recently passed county ordinance which prohibits solar facilities on NRCS Class I-IV soils, which took effect on August 1, 2018. That ordinance is not a basis for denying this application because, under Oregon's "goalpost statute" (ORS 215.427), an application must be reviewed under the criteria that were in effect on the date the application was submitted. The new ordinance is immaterial to the request currently under review.

Many of the other comments were from landowners who live near other existing and/or proposed solar facilities elsewhere in the county who have voiced opposition on the record in those proceedings as well. Comments from neighbors of a recently constructed solar generating facility located elsewhere in the county have identified conflicts that occurred during construction of that facility, and have indicated that, in their view, claims of the solar facility developer in that case regarding construction impacts, noise and glare are not correct.

In this case, the applicant has responded on several occasions to the specific concerns of both the county and those who provided comment on the application. As set forth in this decision, the county is denying the application based on the applicant's inability to meet applicable standards.

CONCLUSION

These findings address the testimony and evidence received in the proceedings to consider the application submitted. As set forth in this decision, the county denies the application based on the applicant's inability to meet all applicable criteria as specified in these findings.

END