

IN 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 Adopting Findings for a Prior Decision Denying a Request for a Vested Rights Determination and Further Denying an Extension Request for a Conditional Use Permit; Tax Lot No. 4315-700; Applicant: Manchester Solar, LLC

BOARD ORDER ~~25~~ - 28

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on January 26, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

WHEREAS, On August 12, 2022, LUBA remanded a decision back to the County related to a denied extension of a conditional use permit for Manchester Solar, LLC (the "Applicant"); and

WHEREAS, On September 27, 2022, the Applicant formally requested that the County initiate remand proceedings and issue a new decision on the matter; and

WHEREAS, On November 10, 2022, the Board held an initial public hearing, but ultimately stayed the hearing and held the record open through December 13, 2022 to allow the Applicant the opportunity to provide additional written testimony and evidence; and

WHEREAS, On December 15, 2022, the Board reopened the public hearing at the point of staff recommendation; and

WHEREAS, Following deliberation, the Board voted 2-1 to deny the request for a vested rights determination and 3-0 to deny the requested extension of the conditional use permit; and now, therefore,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. In support of its December 15 decision, the Board hereby adopts the findings attached as Exhibit A and incorporated herein by reference.

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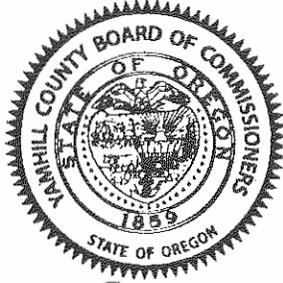
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Accepted by Yamhill County  
Board of Commissioners on  
1.26.23 by Board Order  
# BO. 23-28

DONE at McMinnville, Oregon on January 26, 2023.

ATTEST

KERI HINTON  
County Clerk



By: *Carolina Rook*  
Deputy CAROLINA ROOK

FORM APPROVED BY:

*Jodi Gollehon*  
JODI GOLLEHON  
Assistant Yamhill County Counsel

YAMHILL COUNTY BOARD OF  
COMMISSIONERS

*Lindsay Berschauer*  
Chair LINDSAY BERSCHAUER

*Kit Johnston*  
Commissioner KIT JOHNSTON

*Mary Starrett*  
Commissioner MARY STARRETT

## EXHIBIT A

**Board Order 23-\_\_\_\_\_**  
**Findings in Support of a Decision**  
**Remand Hearing Date: November 10, 2022**  
**Docket No.: C-27-18/SDR-34-18**

### FINDINGS OF FACT:

#### A. Background Facts

The following are the actions taken in relation to this application to-date (all documents attached hereto as Exhibit A-1):

- The original approval was granted November 29, 2018, with 17 conditions of approval and had an original expiration date of November 29, 2020.
- A request for an extension was made on November 23, 2020, and an additional year was granted to December 14, 2021. A notice of the extension approval was sent to Manchester Solar, LLC (the “Applicant”) at the address provided by a representative of the Applicant, on January 21, 2021, and a new expiration date of December 14, 2021, was provided.
- The application expired on December 14, 2021.
- On January 5, 2022, after the extension had expired, an e-mail was received by the Department requesting an extension on the building permit, and a follow-up letter from Jamie Zhang, Corporate Counsel of SPI, was sent on January 13, 2022. The letter stated that SPI had not received the January 13, 2021, letter notifying them of the December 14, 2021, expiration date because the address where the notice was sent was incorrect (please note that the notice was sent to the address provided by the Applicant in both their application and e-mail request for extension.)
- On February 11, 2022, our office mailed a letter to Jamie Zhang, Corporate Counsel for SPI, indicating that the application was incomplete, and irrespective of that fact, the request was also made after the expiration date, so any extension request would likely be denied. The letter was mailed to the address provided by Jamie Zhang in her letter, but it was returned to our office on February 17, 2022, as undeliverable due to its “insufficient address”.
- On February 17, 2022, that same letter of incompleteness was then e-mailed to Jamie Zhang, Kevin White, Jack Lee and Peter Coughlin.
- On February 23, 2022, Damien R. Hall, of Ball Janik, LLP, e-mailed a letter to Ken Friday stating that the Department had not responded to Jamie Zhang’s January 13th letter, even though, as noted above, the Department’s response was both mailed to the address provided by Ms. Zhang and e-mailed to her and other members of SPI Solar, Inc. as noted above.
- On March 7, 2022, Jodi Gollehon, Assistant Yamhill County Counsel II, wrote to Mr. Hall detailing the dates provided above, explaining how the request was incomplete, and including a

statement that, because the request was received after the deadline, it was not expected to be approved.

- On March 9, 2022, the applicant paid for the extension request.
- On April 12, 2022, the extension request was denied.
- On April 28, 2022, an appeal of the Planning Director's Decision was filed with the Yamhill County Board of Commissioners (the "Board").
- On May 17, 2022, the Planning Director emailed Mr. Hall and informed him that, pursuant to YCZO 402.08(B), an extension denial cannot be appealed, but that the Board may, on its own motion, review the decision within 15 days. The Board chose not to review the decision.
- On May 27, 2022 a Notice of Intent to Appeal was filed with the Land Use Board of Appeals (LUBA).
- On August 12, 2022, LUBA remanded the matter back to the County at the request of both parties so that findings could be adopted by the Board.
- On September 27, 2022, the Applicant requested a public hearing for the remanded matter.
- On November 10, 2022, the County held its initial public hearing for the Board to issue a decision on the remand. The record was held open through December 13, 2022 to allow the Applicant the opportunity to provide additional written testimony and/or evidence.
- On December 15, 2022, the Board reopened the public hearing at the point of staff recommendation. The Board voted 2-1 to deny the request for a vested rights determination, and they then voted 3-0 to deny the requested extension of the conditional use permit.

## **B. Scope of Review**

The scope of the voluntary remand is limited to the following issues:

1. Has the Applicant vested the right to complete development of the Conditional Use Permit by initiating a development action pursuant to YCZO 402.08(A)?
2. Should the Conditional Use Permit's construction blackout time periods be excluded from the substantial completion deadline required under YCZO 1202.05(D)?

## **C. Analysis**

### **I. VESTING DETERMINATION**

#### **A) Vesting Based on YCZO 402.08(A), Initiated Development**

YCZO 402.08(A) provides that, "a proposed development in the Exclusive Farm Use district is void two years from the date of the final decision if the development action is not initiated in that period." YCZO does not define or describe what constitutes an "initiated" "development action". However,

caselaw provides guidance on this question by confirming that, even if it is determined that a development has been “initiated”, YCZO 402.08(A) does not in itself create a vesting right.

In *Landwatch Lane County. v. Lane County*<sup>1</sup>, an applicant applied for a “Special Use” permit with the county to authorize construction of a private school on a 20-acre parcel zoned for exclusive farm use. The county approved the application on May 6, 2005, which was valid for a period of two years, after which, they could apply for an extension as outlined in the approval. The applicant proceeded to construct the first of three buildings for the development project in 2008. On December 3, 2014, the applicant filed for a building permit to construct the second building, even though the permit had expired seven years prior, under the argument that it had a vested right to complete the project originally authorized under the 2005 permit on the basis that OAR 660-033-0140(1) (the equivalent of YCZO 402.08(A)) prevented the voidance of the permit upon its expiration so long as the “development action” was “initiated” within the two-year period. The application was ultimately approved by the County and then appealed to the Land Use Board of Appeals (LUBA). LUBA found that OAR 660-033-0140(1) (i.e., YCZO 402.08(A)) must be read in context with OAR 660-033-0140(2) (i.e., YCZO 402.08(C)). Specifically, “[i]f initiation of the development action within the two-year period is sufficient in itself to authorize continued development after expiration of the two-year period, then the ‘continue development’ element of OAR 660-003.0140(2) is meaningless language.” LUBA determined that, were initiation of a development action enough to render a permit valid indefinitely, “then OAR 660-033-0140(2)(d) would not require the applicant to demonstrate that it was unable to ‘continue development during the approval period’ as a condition for obtaining an extension beyond the initial two-year period. Instead, it would simply require the applicant to demonstrate that it was ‘unable to begin development during the approval period.’” (See *Landwatch*, pages 13-14.)

Per *Landwatch*, 402.08(A) must be read in context with YCZO 402.08(A)(1). YCZO 402.08(A)(1) allows the County to grant a one-year conditional use permit extension if the applicant states, “the reasons that prevented the applicant from beginning or continuing development within the approval period.” This additional language provides a limitation on 402.08(A) in that it makes clear that a permit extension may be required to “continue development” after expiration of the two-year period, even if the development action was begun or “initiated” within the two-year period.

Additionally, the argument that a conditional use permit authorized under YCZO 402.08(A), once initiated, remains valid indefinitely is inconsistent with provisions of YCZO 402.08(C), which provides that, “[a]dditional one-year extensions may be authorized by the Planning Director where applicable criteria for the decision have not changed.” Read in context with YCZO 402.08(A), it can be interpreted that, even if a development action has been initiated, YCZO 402.08(C) places additional limitations on an applicant’s ability to continue with that development after the permit has expired. As best stated by LUBA, “[t]he apparent intent of [YCZO 402.08(C)], and the rule as a whole, is to encourage applicants to proceed expeditiously to complete development authorized by the discretionary permit, and to limit the potential lifespan of discretionary permit approvals in EFU zones in order to avoid circumstances such as those presented in this appeal, where non-farm development is delayed for years or requires re-approval under new criteria.” (See *Landwatch*, page 14.)

Here, the Applicant’s conditional use permit expired on December 14, 2021. An extension request was submitted on March 9, 2022, which was denied because it was submitted after the expiration date, which was required pursuant to YCZO 402.08(A)(1). Additional approval criteria were not assessed, though it is worth noting that between the original permit approval and its expiration, the applicable

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<sup>1</sup> *Landwatch Lane County. v. Lane County*; LUBA No. 2016-038.

approval criteria for the decision had changed, which would have likely inhibited the County's ability to approve the extension request. This is discussed in more detail in subsection (B) below.

When viewed in context with YCZO 402.08(A)(1) and YCZO 402.08(C), it is clear that YCZO 402.08(A) does not render the Applicant's conditional use permit valid indefinitely simply by initiating a development action before the permit's expiration date. Rather, the Applicant was required to apply for an extension in order to continue development pursuant to the provisions of YCZO 402.08(C), which they failed to do before the permit expired.

There is no vesting based on the provisions of YCZO 402.08(A).

#### B) Vesting Based on Common Law

Vesting rights may be granted if there is a change in law that now prohibits a prior-approved project, subject to certain criteria (see *Clackamas County v. Holmes*<sup>2</sup>). Here, after the Applicant's conditional use permit was approved, the Yamhill County Zoning Code was amended to prohibit photovoltaic solar power generation facilities on parcels containing predominantly Class I-IV soils<sup>3</sup>. Because of this change, the Applicant's previously approved development would now be considered a non-conforming use. *Holmes* set forth several factors to consider when determining whether or not a property right has vested: 1) substantial costs toward completion of the job incurred (cost ratio test); 2) the good faith of the property owner; 3) whether the property owner had notice of the proposed change in law before beginning development; 4) whether the expenditures have any relation to the completed project or could apply to various other uses of the land; and 5) the kind of project, the location, and the ultimate cost; and 6) whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.

##### *i. Substantial costs toward completion of the job incurred (cost ratio test).*

Per *Holmes*, "in order for a landowner to have acquired a vested right to proceed with the construction, the commencement of the construction must have been substantial, or substantial costs toward completion of the job must have been incurred." In order to better assess if the proportion of expenditures in relation to total expenditures for any given project is "substantial", the County adopted Board Order 00-514 (attached hereto as Exhibit A-2), which provided the following interpretation:

*In determining whether "substantial construction" or "substantial development" has occurred on a previously approved land use application, the Planning Director shall consider criteria including, but not limited to, substantial expenditures incurred, the type of expenditures, the ratio of expenditure incurred to the estimated total project cost, good faith reliance of the landowner, and similar factors as these examples indicate:*

- a. Architectural, building, engineering, or consultants' plans, drawings, or studies,*
- b. Grading or levelling,*
- c. Paving or access acquisition,*
- d. Test boring, drilling, or installation of a well or water system,*
- e. Septic tank plans or installation,*
- f. Storing or stockpiling of building materials on the site,*

<sup>2</sup> *Clackamas County v. Holmes*, 265 Or. 193, 198-99, 508 P.2d 190 (1973).

<sup>3</sup> See Yamhill County Ordinance No. 903.

- g. *Moving a mobile or temporary dwelling onto the site after obtaining the necessary permits, for use during construction,*
- h. *Obtaining financing from a bank or lending institution,*
- i. *Any other substantial effort or investment that indicates intent to develop the site.*

*No single criterion on its own will necessarily suffice to establish substantial construction or development. Rather, it is the combination of these factors and the sums spent on each that could lead the Planning Director to make the determination that substantial construction or development has occurred.*

Here, the Applicant provided various documentation that purports to show approximately \$1.38M in expenses between November 29, 2018 and December 14, 2021 (see Exhibit A-3, attached hereto). However, many of the invoices provided in Exhibit A-3 do not appear to be applicable under Board Order 00-514. Accordingly, only the following expenses are being included in the analysis:

- *Architectural, building, engineering, or consultants' plans, drawings, or studies:*
  - Consultant fees: \$917,862
  - Engineering fees: \$14,000
- *Any other substantial effort or investment that indicates intent to develop the site:*
  - Interconnection fees: \$150,502

The total of these applicable expenses is approximately \$1.08M. However, we cannot just look at that amount on its own. Per *Holmes*, the “substantiality” factor, “cannot be met by the mere isolated, unrelated recitation of a dollar figure. Substantiality is to be determined, rather, by an assessment of the proportion which the expenditure bears to the total expenditure which would be required to complete the proposed improvement.” (See *Holmes* at 192.) As such, Per the Applicant, the estimated capital construction cost for the project is \$1,881,838 (see Exhibit A-4, attached hereto). Adding that amount to the total expenses documented by the Applicant in Exhibit A-3 (~\$2.37M), the presumed total project cost would be approximately \$4.25M, giving a cost ratio of approximately 25% (=1.08M/4.25M). While not trivial, this Board does not find a cost ratio of 25% to be “substantial”, especially in light of the fact that it is unclear whether or not several of the expenditures reported are even related to the subject property<sup>4</sup>. Moreover, all expenses provided by the Applicant appear to be preparatory in nature, and the property itself remains undeveloped farmland.

The Applicant did not incur substantial costs toward completion of the development project. Because the Applicant failed to meet the first factor of the *Holmes* test, we need not address the remaining factors.

Based on the evidence in the record, the Applicant has not demonstrated a common law vested right to develop the 10-acre solar field.

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<sup>4</sup> As noted in *Friends of Yamhill County*'s November 17, 2022 written letter, “the applicant does not explain why they have included in their submittal 4 invoices to survey properties in Canby, Estacada, Molalla, and Mt. Angel. Other examples include media contacts and consulting fees for community solar programs (Manchester is not a community solar project). We also note within the submitted material a letter from PGE, dated June 24, 2020) terminating the interconnection agreement with Manchester Solar for non-payment.”

## II. CONSTRUCTION BLACKOUT PERIOD

The opponent has requested that the Board of Commissioners adopt findings that allow the construction blackout period condition of their approval to be excluded from the deadline required under YCZO 1202.05(D). The two conditions required in the original approval are as follows:

- Condition 10 states: *Construction activities shall not take place between the months of November through February.*
- Condition 17 states: *This approval shall expire two years from the date of this letter unless the use has been initiated.*

Condition 10 was included in the original approval due to a report submitted by the applicant related to soils compaction, specifically the Soil Erosion and Compaction Control Plan (SECCP). The SECCP noted additional risk during the rainy season and recommended that construction not take place during that time. Specifically, the second paragraph of page 7 of the staff report (attached hereto as Exhibit A-5) states, "Taking the applicant's SECCP into account, staff will place a condition of approval that proposed installation of the solar facility shall not occur during the rainy season when soils are saturated and therefore more prone to erosion and soil compaction. . . ." This condition was a direct result of the applicant's original application.

Condition 17 clearly referred to the expiration as, ". . . two years from the date of this letter." (Emphasis added.) The approval letter was dated November 29, 2018. Condition 17 is clear in language and intent and made no reference to an allowed extension due to construction not being permitted November through February. If the Board were to interpret a stated deadline to exclude what the applicant refers to as the "construction blackout period," then it could lead to certain unintended consequences by establishing a new interpretation of required expiration dates. Specifically, based on such an interpretation, the applicant could theoretically also argue that Condition 11 extends the deadline even further. Condition 11 states: *Mobilization and construction activities shall take place between the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday.* Based on their argument that any "construction blackout period" should be excluded from stated time constraints, an argument could be made that because Condition 11 only allows construction 12 hours a day, six days a week, the approval should be extended an additional three years and 156 days because construction was not allowed during the other 12 hours of the day or on Sundays. This interpretation is not based in law, and it has not historically been the method the County uses to calculate its expiration dates. It was never the intent of Condition 17 to allow for such an extension to be incorporated into the deadline.

Lastly, the applicant was sent both the staff report and the conditions of approval for the original application and had an opportunity to object to them by filing an appeal within 15 days of the original decision. No appeal was ever filed. Moreover, the applicant requested an extension prior to the two-year expiration date in 2020 and did not voice any objection at that time that the expiration date should be extended or otherwise affected by the "construction blackout period." This argument was only brought up after the applicant had already missed its opportunity to request an additional renewal before the subsequent expiration date of December 14, 2021.

For the reasons stated above, the Board finds that the expiration date was not modified or extended by Condition 10 of the approval.

**D. Conclusions for Denial**

1. Based on the evidence in the record, the Applicant has not demonstrated a vested right to develop the 10-acre solar field.
2. The application expired on December 14, 2021. This expiration date was not modified or extended by the other conditions of approval.

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# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMINNVILLE, OREGON 97128

Phone:(503) 434-7516 • Fax:(503)434-7544 • TTY: (800) 735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

November 29, 2018

Manchester Solar, LLC  
c/o Wework  
700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

Re: **Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700**

In reference to your conditional use and site design review application for a commercial solar power generation facility consisting of approximately 10 acres on a parcel identified as Tax Lot 4315-700, the planning staff has reviewed your application and finds that it complies with the requirements of the *Yamhill County Zoning Ordinance*. Your application is hereby approved 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 location and to the size described in the application and depicted on the site plan submitted with the application (Appendix 2). The total area occupied by the solar facility shall not exceed 10 acres.
2. Prior to the issuance of building permits the applicant shall submit, to the Planning Director, a contract for long-term weed control maintenance and review by a biologist with local (Willamette Valley) ecosystem knowledge. In addition, the applicant shall implement the Soil Erosion and Compaction Control Plan (Appendix 5) and Weed Control Plan (Appendix 6) as reviewed in this application.
3. The applicant shall submit the biannual report prepared by a biologist regarding the implementation of the Weed Control Plan (Appendix 6), including the submission of a copy of the applicant's weed mitigation log book. The applicant shall fully comply with the best practices outlined in the Weed Control Plan.
4. Prior to the issuance of building or electrical permits, the applicant shall install sight obscuring fencing, measuring at least 6 feet in height, around the perimeter of the solar facility.
5. Prior to the issuance of building or electrical permits, the applicant shall satisfy any Oregon Department of Environmental Quality (DEQ) permitting requirements
6. Prior to the issuance of building or electrical permits for the solar facility, the applicant shall submit an engineered drainage plan showing that no natural drainage is disturbed by any of the proposed activities and construction taking place on the parcel and that the runoff due to soil compaction and the establishment of the infrastructure required directly for, or in support of, the solar facility can be carried by the existing drainage system. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval. Any required improvements to the drainage system shall be done at the expense of the applicant.

7. Prior to issuance of building or electrical permits, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it 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 the 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."**

8. 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.
9. Any lighting for the facility shall be shielded, deflected, or directed on the applicant's property, so it does not shine onto adjacent parcels.
10. Construction activities shall not take place between the months of November through February.
11. Mobilization and construction activities shall take place between the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday.
12. 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 and electrical permits from the Building Department and a new or amended access permit from the County Public Works Department.
13. Prior to the sale of the rights to build this solar facility to a third party, the applicant and new prospective owner shall meet with the Planning Director to review the conditions of approval.
14. The owner of the solar facility shall submit a report, to the Planning Director, by January 2<sup>nd</sup> of each year showing the amount of power generated from the facility during the previous year.
15. 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. The materials shall be disposed of according to local, state, and federal regulations regarding safe handling of such items. Ultimately, the applicant is responsible for ensuring the agricultural land occupied by the solar facility can be returned to an agricultural use or other allowed use.
16. Prior to issuance of building or electrical permits, the applicant shall provide to the County a performance guarantee in a form described in Section 1202.04 of the *Yamhill County Zoning Ordinance* and 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. These estimates may not account for any projected salvage value from decommissioned materials from the solar facility. It is the responsibility of the applicant to provide

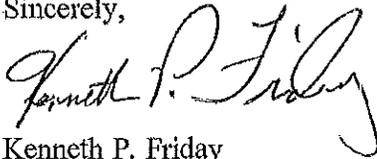
the County with the certified cost estimate. The guarantee shall be maintained by the applicant until the project is fully decommissioned. The guarantee shall be adjusted yearly based on the Western Region Consumer Price Index.

17. This approval shall expire two years from the date of this letter unless the use has been initiated.
18. 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 with the process detailed in Sections 1101.07, 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance* or revocation of the site design review as detailed in Section 1101.07 of the *Yamhill County Zoning Ordinance*.

This decision is based on findings and conclusions as contained in the staff report. The *Yamhill County Zoning Ordinance* provides for appeal of any action or ruling of the Planning Director to the Board of Commissioners within fifteen (15) days of the decision on a proposed action. Anyone wishing to appeal the Director's decision must file an appeal form, together with a \$250.00 fee, with this department no later than **5:00 p.m., December 14, 2018**. If no appeal is filed, the Director's decision will be final and this letter will serve as your official notice of approval of your application.

If you have any questions, please contact this office.

Sincerely,



Kenneth P. Friday  
Planning Director

cc: Board of Commissioners  
Assessor  
DaytonRFPD  
City of Dayton  
SWCD  
DSL

Anthony and Noele Hartford, 18100 SE Neck Road, Dayton, OR 97114  
Jane Baer, 29740 SW Mill Creek Rd, Sheridan, OR 97378  
Ximena Orrego & Guy Insley, 20501 Russell Creek Rd, Yamhill, OR 97148  
Steve Quimby, 19200 SE Neck Road, Dayton, OR 97114  
Friends of Yamhill County, P.O. Box 1083, McMinnville, OR 97128





YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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**DATE:** November 27, 2018

**DOCKET NO.:** C-27-18/SDR-34-18

**REQUEST:** Conditional use and site design review for a solar power generation facility consisting of approximately 10 acres. The proposed solar power generation facility is located within the Exclusive Farm use zoned area of the parcel.

**APPLICANT:** Manchester Solar, LLC

**OWNER:** Anthony & Noele Hartford

**TAX LOT:** 4315-700

**LOCATION:** 18100 SE Neck Road, Dayton

**ZONE:** EF-80, Exclusive Farm Use

**CRITERIA:** Sections 402.04(M), 402.07(A and D), 1101.02 and 1202.02 of the *Yamhill County Zoning Ordinance*. Comprehensive Plan policies may also be applicable. Agricultural Lands rules under OAR 660-033-0130(38).

**COMMENTS:** *County Engineer:* No response to date.  
*Dayton Rural Fire District:* No response to date.  
*Department of Agriculture:* No response to date.  
*Department of State Lands:* No response to date.  
*DLCD:* No response to date.  
*Public Health:* No response to date.  
*City of Dayton:* No response to date.  
*Soil & Water Conservation District (SWCD):* No response to date.  
*Jane Baer, 29740 SW Mill Creek Road, Sheridan* – See letter submitted on October 22<sup>nd</sup>, 2018.  
*Steve Quimby, 19200 SE Neck Road, Dayton; October 22<sup>nd</sup>, 2018* — My only concern is that it does not effect [*sic*] the irrigation easement (recorded) on the SE side of the property.  
*Friends of Yamhill County* — See letter submitted on October 29<sup>th</sup>, 2018.  
*Ximena Orrego & Guy Insley (Atticus Wine), 20501 Russell Creek Road, Yamhill* — See letters submitted on October 29<sup>th</sup>, 2018.

**FINDINGS:**

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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**A. Background Facts**

1. *Parcel Size and Request:* The parcel is approximately 27.1 acres in size. The parcel is relatively flat with little discernable slope. The applicant intends to use 10 acres 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 will consist 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. According to the applicant, none of the proposed developments will exceed 12 feet in height when ground mounted. The site plan also proposes the necessary access and safety features including access roads, perimeter roads and fencing. The proposed photovoltaic modules are supported by stationary piles driven up to 10 feet into the ground.
2. *Access:* The applicant indicates that, if approved, a new driveway would be constructed with service from SE Neck Road. This new driveway would be used for mobilization, construction, demobilization, and maintenance of the proposed solar facility.
3. *On-Site Land Use:* The property is currently dedicated to grass seed production, and these farming activities are conducted by a lessee. The applicant identified the proposed location of the solar facility in conjunction with the property owner to ensure the remaining acreage may continue to be farmed. There is a farm building located along the southern property line. There is a dwelling located on the parcel, near the eastern property line, along with a garage and accessory building.
4. *Surrounding Land Use and Zoning:* The adjacent parcels are all zoned for Exclusive Farm use, EF-80. The surrounding parcels are predominantly dedicated to commercial agricultural uses including grass seed and hay production and filbert orchards. The adjacent parcel to the southwest contains the Yamhill Landing Park. The proposed solar facility is located approximately 1 mile to the east of City of Dayton, as the crow flies.
5. *Soils:* The Natural Resources Conservation Service (NRCS) map and accompanying documents submitted by the applicant, indicate that the parcel consists of predominantly high-value soils and is therefore considered high-value farmland. The applicant's soils map indicates that approximately 66.8% of the parcel is composed of Aloha silt loam, at 0 to 3 percent slopes, a Class II soil; approximately 22.6% of the parcel is composed of Woodburn silt loam, at 12 to 20 percent slopes, a class III soil; approximately 2.3 % of the parcel is composed of Verboort silty clay loam, at 0 to 3

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percent slopes; and the remainder of the parcel is composed of Woodburn silt loam, at 20 to 55 percent slopes, which is not classified as high value soil.

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:* Dayton Rural Fire District.
9. *Overlay Districts:* Based on a review of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41071C0435D, the subject property is not located within an identified 100-year floodplain. There are no identified historic sites or airport overlay district associated with the property. The Willamette River Greenway is congruent with the parcel's southern property line.

**B. Conditional Use Provisions and Analysis**

1. The list of conditional uses in the EF-80 zone includes Section 402.04(M) which states:

*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 applicant's request is for a commercial solar power facility which will sell this energy to the local electricity utility company. 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) 660-033-130(38).

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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*

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*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 is proposing the development of a 10 acre commercial solar power generating facility and related ancillary uses, including solar panels, inverter sheds, electrical equipment, fencing, an unknown number of aluminum support piles driven 10 feet into the ground, as well as 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 Zoning Site Plans, that the proposed facility would consist of no more than 12 acres, the applicant is requesting a 10-acre solar facility, therefore, an exception pursuant to ORS 197.732 and OAR chapter 660, division 4 would not be required. If approved, staff would recommend a condition of approval stating that the solar facility shall be established in the location and to the size depicted in the applicant's site plan.

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 states that the 10-acre project area has been 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. The neighboring farm uses include grass seed and hay production as well as nut orchards. The applicant states that, once in place, the facility will not discharge aerosols or water that could have a negative impact to neighboring farm uses. The applicant states that there will be limited traffic during construction, and presumably, during the decommissioning of the facility. The applicant proposes coordination with the Yamhill County Road Department, and this shall be condition of approval. The applicant indicates that the remainder of the farmable land will continue to produce grass seed. The proposed project area will encompass 10-acres of the parcel's approximately total area of 27.1 acres. The applicant states that, once installed, the proposed solar facility will have no negative impacts on neighboring parcels or on any farm or forest practices conducted thereon. The applicant states that there will be no impacts to air or noise quality, nor will there be any glare issues as a consequence of the installation. The applicant goes on to state that they will abide by the weed control and soil erosion and compaction plans

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submitted with the application. A condition of approval will require the applicant to sign a deed restriction that will protect the rights of accepted farm practices on adjacent lands in order to assure that the proposed solar facility does not curtail or impede accepted farm or forest operation on neighboring parcels.

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;*

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. The state statutes take into consideration and require the imposition of conditions on solar facilities which address soil erosion and compaction, weed control, and the rights of adjacent agricultural operations consistent with accepted farm practices. The applicant discusses soil erosion in Appendix 5, submitted on July 31<sup>st</sup>, 2018. The applicant submitted a Soil Erosion and Compaction Control Plan (hereafter referred to as the SECCP) which provides site specific soil compaction mitigation strategies. The applicant indicates that the parcel is composed of soils that range in soil erosion hazard rating from "slight" to "severe". The SECCP provides a number of erosion mitigation measures including, but not limited to, the preservation of existing vegetation, re-vegetating disturbed soils, mulching seeded areas, stockpiling of stripped topsoil, dust control, and the temporary stabilization of soils until the new vegetative cover is successfully established.

Section 3.0, of Appendix 5, considers the risk of soil compaction within the proposed solar facility site. The applicant indicates that on-site soils have a low to moderate soil compaction resistance and are prone to compaction due to clay content in each of the soil types present on the property. The SECCP proposes a number of soil compaction mitigation measures including the avoidance and minimization of equipment traffic on-site when the soils are saturated (i.e., during the rainy season), that traffic to keep to the designated access road, that tires are properly inflated, and

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that the applicant should avoid using oversized equipment. The applicant further acknowledges that in some cases there is some soil compaction that is unavoidable. The applicant states that soil compaction will occur in areas where the topsoil has been removed and backfilled, on ground utilized for the staging and use of construction equipment, and in areas that were trenched for the placement of underground conduits, pipes, and wires. The applicant states that soil compaction will be remediated by plowing or subsoiling techniques and replanted with deep rooted vegetation, where possible. The applicant further states that these remediation techniques are best conducted when soils are unsaturated and that these activities will avoid inversion, or the mixing of topsoil and subsoil.

Taking the applicant's SECCP into account, staff will place a condition of approval that the proposed installation of the solar facility shall not occur during the rainy season when soils are saturated and therefore more prone to erosion and soil compaction, and that the applicant has indicated that erosion and soil compaction mitigation and remediation measures are more ideally suited to times when the soil is not saturated.

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, hereafter referred to as the WCP, prepared for the applicant by Environmental Planning Group, LLC. The WCP submitted by the applicant presents best management practices that will be employed during and after construction to prevent the introduction or spread of noxious weeds. The applicant's WCP contains a list of weed species that could potentially colonize disturbed soils in the area. The applicant's consultants indicate that the property is currently devoid of any known noxious weeds. The applicant notes that the proposed construction activities are when the risk for the introduction and propagation of weeds and invasive species is greatest. The WCP states that construction crews will be provided with weed identification information published by the Oregon Department of Agriculture to assist work crews with identifying potential weeds. The WCP states that construction crews will be responsible for inspecting and washing construction equipment to ensure no seeds or pods are present that could lead to colonization of noxious weeds on the parcel. The applicant suggests several post-construction restoration guidelines to mitigate for the introduction and spread of weeds. Specifically, the applicant suggests the uniform application of a customized local seed mix selected in coordination with the Jenny Meisel, the Resource Conservationist for

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the Marion County Soil and Water Conservation District, during the construction and rehabilitation phases of development to provide active competition against any noxious weeds that may already be established onsite, and to compete with weeds that may be introduced while the ground is disturbed. If construction occurs during the dry summer or autumn months the seeds may need to be irrigated. The applicant also states a willingness to have inspections conducted by a biologist with local (Willamette Valley) ecosystem knowledge twice per year, in the spring and autumn. Staff believes this recommendation by the applicant to be a sensible condition of approval. The applicant also suggested some long-term maintenance strategies including the manual removal of weeds, mowing, planting shrubs to outcompete certain noxious weeds, mowing, livestock grazing, or the least preferred option of herbicide application by a certified professional. The applicant notes that these long term maintenance activities will be recorded in a log book documenting the date of inspection and weed maintenance. The applicant states a willingness to share with the planning department a report prepared annually, or to another standardized schedule (monthly, quarterly, or bi-annually), regarding 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. Staff believes the annual review of the Weed Management Plan report will ensure that the presence of noxious weeds is being sufficiently addressed. The annual submission of the Weed Management Plan report to the county Planning Department will be a condition of approval.

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:*

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*(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 is proposing to develop the solar facility on the portion of the parcel that contains high-value soils. The applicant states that the proposed location for the solar facility will remove 10-acres of established grass seed and hay production from the total 27.1 acre parcel. The applicant has indicated that the remaining farm land will continue to be used for farming. The surrounding land uses were discussed in section A.4. of this staff report. The land use within the larger 1-mile area from the centroid of the parcel is predominantly dedicated to farm use, with fruit and nut trees, and grass seed and hay production being the most common farm operations within this study area. The 1-mile study area also encompasses a neighborhood within the City of Dayton, the Yamhill River, as well as the Willamette River. There are no additional solar facilities approved or in place within the 1-mile 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.*

In order to ensure the condition in OAR 660-033-0130(38)(j) above has not been sufficiently addressed in the application materials submitted. Staff recommends a condition of approval that, at the end of the solar project's lifespan, the operator of the solar facility project shall completely remove the solar panels, all related infrastructure and equipment, and shall provide the County with a bond or other security instrument which imposes on Manchester Solar, LLC the responsibility for retiring the solar facility. The applicant initially acknowledged and accepted

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responsibility for the retirement of the facility. Staff believes that a bond or guarantee assuring that the applicant, who is requesting a conditional use permit to establish a solar facility on land under ownership of a third party, is a reasonable condition to place on the applicant to ensure the safe and timely removal of the solar panels and all other ancillary equipment associated with the proposed solar facility. Additionally, the Oregon Administrative Rules above, chapter 660 division 033 subsection 0130(38)(j), explicitly empowers a county to require a decommissioning bond or other security measure to ensure the photovoltaic solar power generation facility is retired at the end of its operational lifecycle. The applicant is willing to accept a condition of approval for the decommissioning and retirement of the facility. The applicant shall submit a final decommissioning estimate, prepared by a licensed professional engineer that does not include the projected salvage value of the solar facility materials prior to the issuance of any requisite building and electrical permits.

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.

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

Regarding criterion 1202.02(B), even though the majority of the Yamhill County Goals and Policies are aspirational and not to be mistaken for, or treated as, approval criteria it is required that they be considered. It is a fact that some of the goals and policies conflict with one another. They are simply to be used as a guide to aid decision makers. For example, where goals or policies conflict the decision makers need to weigh the evidence and decide which goal or policy the request best satisfies. The prominent Goals and Policy from Section VI. Energy Conservation includes:

*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.*

It is pretty clear that the proposed solar facility would satisfy the above Goal and Policy regarding the promotion of renewable solar energy resources, albeit with the

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sacrifice of the Goal and Policy related to the preservation of high-value Agricultural Lands.

Since the application is for the use of high value farmland to locate an alternative energy site, the prominent Goal and Policy from Agricultural Lands are required to be considered. The summary prior to the goals and policies contains the following guidance:

*Agriculture plays an integral role in the overall economy of the county.*

*A significant amount of land within the county has soils which are defined as having high quality agricultural capability.*

*The need to maintain the integrity and viability of the agricultural land base has been clearly recognized by Yamhill County residents.*

...

*In addition to agriculture's important role in the economy of the county, vast expanses of farm land provide county residents with scenic open space which contributes to their overall health and welfare.*

The prominent Goal and Policy from Agricultural Lands:

*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 as identified in the Capability Classification System of the U.S. Soil Conservation Service.*

The use of the site will take approximately 10 acres of high-value soils out of production for a significant amount of time, likely for multiple decades. The applicant addresses this goal and policy by suggesting that the productivity of the soils located within the project area will be preserved through the implementation of the proposed Soil Erosion and Compaction Control Plan (SECCP), and the Weed Control Plan (WCP). The applicant's erosion control plan indicates that straw bales, hay coil logs, run-off channels, silt fencing, and sediment basins are the mitigatory measures under consideration to minimize the risk of soil loss due to erosive forces. The applicant acknowledges that the Oregon Department of Environmental Quality (DEQ) may require additional permitting. A condition of approval will require that

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the applicant attain all required state and county permits prior to operation of the solar facility.

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 proposed site of the solar facility is on a parcel measuring approximately 27.1 acres. The parcel is of sufficient size to support a solar facility of 10 acres. The applicant will establish an access road connecting with Neck Road that will serve as the maintenance road to the proposed solar facility. The area the applicant identified as the proposed solar facility has a gentle southerly slope which will provide the most efficient area for the installation of the panels and allow the applicant to maximize the density of panels to be installed onsite. The remainder of this parcel will be suitable for continuing the commercial farming operations conducted on the parcel. Once in place, the proposed solar facility will not require the development of any new improvements to the parcel. 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 surrounding area is zoned Exclusive Farm Use, EF-80, and are dedicated to commercial agricultural uses including grass seed and hay production as well as fruit and nut orchards. The only comment or concern submitted by a neighboring property owner was by Steve Quimby. Mr. Quimby's concern is that the proposed establishment of the solar facility does not affect the irrigation easement recorded and in place on the southeastern side of the property. The Planning Department has no jurisdiction over easements. An easement is a civil agreement which does not require land use approval.

The properties adjacent to the applicant's parcel are predominantly dedicated to commercial farming operations (grass seed and hay production, fruit and nut orchards). The applicant states that the proposed facility will be passive and unoccupied once completed. The applicant states that the facility, once in place, will not impact air or noise quality nor will there be any glare issues. There is nothing in the record to suggest that the applicant's proposed facility, as sited, will substantially limit, impair, or prevent the permitted residential, farming, or commercial uses on the surrounding parcels.

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In response the applicant paraphrases the conditional use criterion stating:

“The proposed solar farm will not alter the character of the surrounding area in a manner that would limit, impair or prevent the use of surrounding properties. See also the findings in response to YCZO 402.07(A), above.”

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 Dayton Rural Fire Department, and no comments or concerns were submitted by the Dayton Fire Department. The proposed use does 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 once the facility is established. The applicant has stated a willingness to coordinate with the county road department during the mobilization and demobilization phases of the facility’s lifecycle, which will be a condition of approval. The county public works department was notified of the proposed use and did not submit any concerns or comments to the planning department. With conditions the proposed use appears to satisfy criterion 1202.02 (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 in Findings B. 11, and B. 12. of this staff report, the applicant has stated that the location of the 10-acre facility will not impact or conflict with existing or allowable farm, forest, or rural residential uses on neighboring properties. The applicant has indicated that the proposed use will not increase demand on existing public facilities or services.

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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 subject is located in the Exclusive Farm use, EF-80 zone. The surrounding parcels are predominantly dedicated to commercial farm uses including hay and grass seed production and nut or fruit orchards. As indicated in Findings B. 4., B. 11., and B. 12. above, the applicant has stated that once the proposed solar facility is established there are no emissions generated that could impact neighboring residential, farm, or commercial activities. The applicant has acknowledged that there is a risk of noxious weed propagation onsite, as well as soil erosion and compaction, and the applicant has submitted plans for mitigating these risks and ensuring there are no impacts to neighboring parcels. The applicant has stated a willingness to record an affidavit which recognizes the rights of adjacent agricultural operations consistent with accepted farm practices pursuant to OAR 660-033-0130(38)(i), and this requirement shall be a condition of approval.

**C. Site Design Review Criteria**

1. Section 1101 for Site Design Review requires consideration of the following factors in the review of site development plans:

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

Regarding criterion 1101.02(a) above, staff has addressed this in Section A.4 and B.14 of this report.

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

Regarding criterion 1101.02(b) above, the applicant addresses this criterion in the application, stating that the construction and operation of the solar facility may provide short-term employment opportunities during the mobilization and demobilization phases of development, as well as income to the property owner, and increased tax revenues to the County. The applicant notes that the proposed solar facility will add \$10,000 in tax revenue per year for Yamhill County.

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

Regarding criterion 1101.02(c), access to the property will be provided by the development of a new driveway which will be used to facilitate the mobilization and demobilization phases of development in addition to the maintenance activities conducted during the multi-decadal lifespan of the solar facility. The applicant acknowledges that a driveway permit must be acquired from the county road department. The applicant states that the proposed driveway and access will be built to county and Dayton Fire Department standards. The proposed site is located in an open field that has been used for grass seed and hay production. As noted in Findings B. 10., B.12., and B. 14. above, the applicant will coordinate with county road department to effectively and safely manage the projected increase in traffic during the mobilization and demobilization phases of development. This coordination with the county road department will be a condition of approval. Once the solar facility has been established there will minimal visits to the site by maintenance workers and by the biologist who will visit the site to evaluate the effectiveness of the noxious weed management plan. With conditions, the parcel is of sufficient size for appropriate internal circulation of traffic and is large enough to provide parking for the periodic visits by staff.

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

Regarding criterion 1101.02(d), as addressed in Findings B. 3., B. 4., B. 5., B. 12., and B. 14. above, the applicant states that construction activities during installation are 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 approximately 900 feet from the nearest off-site residence and is buffered on all sides by either grass seed fields, by the Willamette River and adjacent riparian vegetation, or by established stands of timber. The application indicates 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. The applicant indicates that a minimal degree of noise may be heard outside of the fenced area. The applicant maintains that these sound levels are not expected to be distinguishable above quiet rural sound levels at a distance of the nearest adjacent properties. The applicant is proposing the installation of a security fence around the perimeter of the facility. Staff believes it would be appropriate to require, as a condition of approval, that the security fence include sight obscuring slats or other sight obscuring material and be a minimum of six (6) feet in height.

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

Regarding criterion 1101.02(e) above, this criterion has been addressed in Section B.10. of this staff report. As indicated earlier, there are no natural features, aside from high value farmland, that will be removed or diminished by the establishment of the proposed solar facility.

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

Regarding criterion 1101.02(f) above, there have been no hazard areas identified on this parcel.

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

Regarding criterion 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. The only comment received by staff, from a surrounding property owner, was addressed in Section B.11. of this staff report. This neighboring property owner would like to ensure that the proposed solar facility would not negatively impact an existing irrigation easement. As mentioned in Section B.11. of this staff report, easements are civil agreements that do not require land use approval and are not under the jurisdiction of the county Planning Department. The Planning Department also received comments from Friends of Yamhill County and other residents of Yamhill County who oppose solar facilities but who are not directly or personally impacted by the applicant's proposed solar facility, in this location.

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**CONCLUSIONS FOR APPROVAL:**

1. The proposed solar facility is listed as a conditional use in the Exclusive Farm Use zone subject to site design review approval and is limited to no more than 12 acres when it is located on high-value farmland. The applicant's request is for a 10 acre solar facility.
2. With conditions, the request is consistent with the conditional use approval criteria of Section 1202.02 and 402.07 of the *Yamhill County Zoning Ordinance* and OAR 660-033-0130(38).
3. With conditions, the request is consistent with the site design review standards in Section 1101.02 of the *Yamhill County Zoning Ordinance*.

**DECISION:**

In reference to your application for conditional use and site design review for a 10-acre commercial solar facility on Tax Lot 4315-700, has been approved with 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 location and to the size described in the application and depicted on the site plan submitted with the application (Appendix 2). The total area occupied by the solar facility shall not exceed 10 acres.
2. Prior to the issuance of building permits the applicant shall submit, to the Planning Director, a contract for long-term weed control maintenance and review by a biologist with local (Willamette Valley) ecosystem knowledge. In addition, the applicant shall implement the Soil Erosion and Compaction Control Plan (Appendix 5) and Weed Control Plan (Appendix 6) as reviewed in this application.
3. The applicant shall submit the biannual report prepared by a biologist regarding the implementation of the Weed Control Plan (Appendix 6), including the submission of a copy of the applicant's weed mitigation log book. The applicant shall fully comply with the best practices outlined in the Weed Control Plan.
4. Prior to the issuance of building or electrical permits, the applicant shall install sight obscuring fencing, measuring at least 6 feet in height, around the perimeter of the solar facility.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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5. Prior to the issuance of building or electrical permits, the applicant shall satisfy any Oregon Department of Environmental Quality (DEQ) permitting requirements
6. Prior to the issuance of building or electrical permits for the solar facility, the applicant shall submit an engineered drainage plan showing that no natural drainage is disturbed by any of the proposed activities and construction taking place on the parcel and that the runoff due to soil compaction and the establishment of the infrastructure required directly for, or in support of, the solar facility can be carried by the existing drainage system. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval. Any required improvements to the drainage system shall be done at the expense of the applicant.
7. Prior to issuance of building or electrical permits, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it 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 the 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."**
8. 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.
9. Any lighting for the facility shall be shielded, deflected, or directed on the applicant's property, so it does not shine onto adjacent parcels.
10. Construction activities shall not take place between the months of November through February.
11. Mobilization and construction activities shall take place between the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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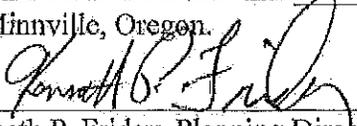
12. Prior to any development, the applicant shall obtain all required local, state and federal permits. The applicant shall obtain all necessary permits from the Building Department and the Public Works Department. These permits may include, but are not limited to building and electrical permits from the Building Department and a new or amended access permit from the County Public Works Department.
13. Prior to the sale of the rights to build this solar facility to a third party, the applicant and new prospective owner shall meet with the Planning Director to review the conditions of approval.
14. The owner of the solar facility shall submit a report, to the Planning Director, by January 2<sup>nd</sup> of each year showing the amount of power generated from the facility during the previous year.
15. 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. The materials shall be disposed of according to local, state, and federal regulations regarding safe handling of such items. Ultimately, the applicant is responsible for ensuring the agricultural land occupied by the solar facility can be returned to an agricultural use or other allowed use.
16. Prior to issuance of building or electrical permits, the applicant shall provide to the County a performance guarantee in a form described in Section 1202.04 of the *Yamhill County Zoning Ordinance* and 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. These estimates may not account for any projected salvage value from decommissioned materials from the solar facility. 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. The guarantee shall be adjusted yearly based on the Western Region Consumer Price Index.
17. This approval shall expire two years from the date of this letter unless the use has been initiated.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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18. 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 with the process detailed in Sections 1101.07, 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance* or revocation of the site design review as detailed in Section 1101.07 of the *Yamhill County Zoning Ordinance*.

DATED AND SIGNED this 27<sup>th</sup> day of November, 2018, at  
McMinnville, Oregon.

  
\_\_\_\_\_  
Kenneth P. Friday, Planning Director  
Yamhill County Planning and Development

KF:lw

## Stephanie Curran

---

**From:** Alicia Schelb  
**Sent:** Monday, November 23, 2020 3:36 PM  
**To:** Stephanie Curran  
**Subject:** FW:H=

**From:** AP <[ap@evergreensolarservices.com](mailto:ap@evergreensolarservices.com)>  
**Sent:** Monday, November 23, 2020 2:21 PM  
**To:** Jessica Biggs <[biggsj@co.yamhill.or.us](mailto:biggsj@co.yamhill.or.us)>  
**Cc:** 'Jacob Stephens' <[j.s@evergreensolarservices.com](mailto:j.s@evergreensolarservices.com)>  
**Subject:** H=

[This email originated outside of Yamhill County]

Hello Jessica,

Thank you for your time today. As discussed with you and the Planning Director, here is the request extend the Condition Use Permit for Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700 for 1 year.

Address on the Docket is:  
Manchester Solar, LLC  
c/o Wework  
700 SW5th Avenue  
Portland, OR 97204

Please let us know this is approved at your earliest convenience.  
Thank you,

*Ayin Philips*



<http://evergreensolarservices.com>  
D. 949.293.8085  
P. 888.303.6424  
F. 703.995.4545  
[ap@evergreensolarservices.com](mailto:ap@evergreensolarservices.com)

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE 4TH STREET • MOUNTAINVILLE, OREGON 97128

Phone: 503-434-7516 • Fax: 503-434-7544 • TTY: 800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

January 21, 2021

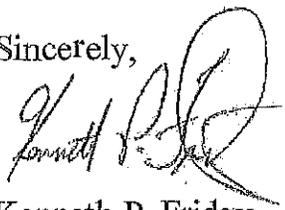
Manchester Solar, LLC  
c/o Wework  
700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

Re: Extension of Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700

Regarding your request for extension of the above conditional use and site design review approval, our office will grant a one-year extension. Your approval will now expire on December 14, 2021. Please be aware that the conditions of approval stated in the original decision letter (see attached) still apply.

If you have any questions or require assistance, please call me at (503) 434-7516.

Sincerely,



Kenneth P. Friday  
Planning Director

**RE: Manchester CUP Extension Request for Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700**

Move to Tag as Delete Mark as spam Archive Snooze

fridayk@co.yamhill.or.us  
KF Wed, 05 Jan 2022 11:01:07 AM -0800 • CUP

To "Lance Woods" <woods@co.yamhill.or.us>, "Peter Coughlin" <peter.coughlin@spigroups.com>  
Cc "Kevin White" <kevin.white@spigroups.com>, "Rellen Liu" <rellen.liu@spigroups.com>

Tags Security TLS [Learn more](#)

It appears that your land use approval expired on December 14, 2021 (See attached). I do not see record of our office granting an additional extension. If you have a copy, could you please provide it to our office?

Ken Friday  
Planning Director  
503-434-7516

**From:** Lance Woods <woods@co.yamhill.or.us>  
**Sent:** Wednesday, January 5, 2022 10:08 AM  
**To:** 'Peter Coughlin' <peter.coughlin@spigroups.com>; Planning <planning@co.yamhill.or.us>  
**Cc:** Kevin White <kevin.white@spigroups.com>; Rellen Liu <rellen.liu@spigroups.com>; Ken Friday <fridayk@co.yamhill.or.us>  
**Subject:** RE: Manchester CUP Extension Request for Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700

Hello Peter,

I will pass this request along to the Planning Director.

Best regards,

Lance Woods  
Associate Planner  
Yamhill County Planning & Development

525 NE 4<sup>th</sup> Street, McMinnville, OR 97128, USA  
Telephone: +1 503 434 7516 | Fax: +1 503 434 7544

**From:** Peter Coughlin <peter.coughlin@spigroups.com>  
**Sent:** Wednesday, January 05, 2022 9:56 AM  
**To:** Planning <planning@co.yamhill.or.us>; Lance Woods <woods@co.yamhill.or.us>  
**Cc:** Kevin White <kevin.white@spigroups.com>; Rellen Liu <rellen.liu@spigroups.com>  
**Subject:** Manchester CUP Extension Request for Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700

[This email originated outside of Yamhill County]

Dear Yamhill County Planning Department,

Due to COVID- 19, extended delivery times for major equipment, and restriction on construction activities between the months of November through February.

Our updated schedule to install road, utility trenching, fencing will commence on 3/15/2022 with our final C.O.D 10/26/2022.

Manchester Solar LLC is requesting an additional extension to CUP/Building Permit.

Attached is the engineered plan-set for your convenience.

Thank you for your time and consideration.

Kind Regards,

Peter Coughlin  
@mention a user or group to share this conversation

Manchester Solar, LLC Remand



January 13, 2022

Via Email

Kenneth Friday

[fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)

Yamhill County Department of Planning and Development

525 NE 4<sup>th</sup> Street

McMinnville, Oregon 97128

**RE: Response to Extension of Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700 Letter**

Dear Mr. Kenneth Friday,

Hope you are well. I am Corporate Counsel for SPI Energy Co., Ltd. ("SPI") the owner of the Manchester Solar LLC, the applicant for the approved Conditional Use Permit under Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700.

SPI has just received this Letter (the "Letter") in Exhibit A for the first time even though it was dated January 21, 2021. This Letter was sent by you and addressed to Manchester Solar, LLC at the following address:

700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204.

SPI has just received this Letter for the first time in an Email (the "Email") in Exhibit B from Stephanie Curran at Yamhill County Building and Planning. SPI did not receive the Letter prior to January 12, 2022 since you sent it on January 21, 2021. The address that the Letter was sent to is not an SPI address. We believe this address was a Sulus Solar address and was sent incorrectly by Yamhill County. SPI's address is:

920 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

Based on the fact that SPI never received the Letter regarding the approved extension request of the conditional use and site design review along with the new expiration date of December 14, 2021, we kindly request that you approve our 2<sup>nd</sup> request for an extension of the conditional use and site design review approval to December 14, 2022.

SPI plans to build the Manchester Solar, LLC project in the 2022 year and will begin the Building Permit application process shortly, upon your approval of this 2<sup>nd</sup> extension request. The solar project is participating in the Oregon Community Solar Program and has signed up 95% of its capacity to provide clean, renewable energy to local residents and businesses. These residents and businesses are very excited about receiving a reduction on their bill in 2022, when this project is expected to be completed. We appreciate your consideration regarding this matter and look forward to resolving this matter with you, without further action.

Regards,

Jamie Zhang  
Corporate Counsel

SPI Solar, Inc., a subsidiary of SPI Energy Co. Ltd.  
920 SW 6<sup>th</sup> Ave, Portland OR 97204

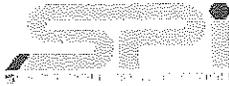


Exhibit A

**Yamhill County**  
**DEPARTMENT OF PLANNING AND DEVELOPMENT**  
325 NE 4TH STREET • MCMINNVILLE, OREGON 97128  
Phone: 503-434-7516 • Fax: 503-434-7544 • TTY: 800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

January 21, 2021

Manchester Solar, LLC  
c/o Wework  
700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

Re: Extension of Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700

Regarding your request for extension of the above conditional use and site design review approval, our office will grant a one-year extension. Your approval will now expire on December 14, 2021. Please be aware that the conditions of approval stated in the original decision letter (see attached) still apply.

If you have any questions or require assistance, please call me at (503) 434-7516.

Sincerely,

Kenneth P. Friday  
Planning Director



## Exhibit B

**RE: FW: November 2020 Misc. Planning P - See attached report from Yamhill County**



Stephanie Curran <currans@co.yamhill.or.us>

Wed, 12 Jan 2022 11:22:50 AM -0800 INBOX

To: "Peter Coughlin" <peter.coughlin@spigroups.com>

Cc: "Kevin White" <kevin.white@spigroups.com>, "Ken Friday" <fridayk@co.yamhill.or.us>

Tags

Security [Learn more](#)

Here is the letter you requested.

Stephanie Curran  
Yamhill County Building & Planning  
525 NE 4th St.  
McMinnville, OR 97128  
503-434-7516

# Yamhill County

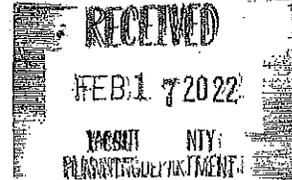
## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET ♦ McMINNVILLE, OREGON 97128

Phone:(503) 434-7516 ♦ Fax:(503) 434-7544 ♦ Internet Address: <http://www.co.yamhill.or.us/plan/>

February 11, 2022

Jamie Zhang, Corporate Counsel  
SPI Solar  
920 SW 6<sup>th</sup> Ave.  
Portland, OR 97204



**Re: Extension of Docket C-27-18/SDR-34-18, Tax Lot 4315-700**

On January 13, 2022, you submitted a letter that indicated your company's desire for a second extension of the above request. Please be aware that the fee for processing an extension request is \$128.00. In addition, the following Yamhill County Zoning Ordinance criteria found in 1202.05(D) needs to be addressed:

*D. A conditional use approval involving construction shall be null and void two (2) years from the date of final approval unless completion or substantial construction has taken place. In any case where a conditional use approval does not involve construction, the approval shall be null and void one (1) year from the date of final approval unless the approval has been implemented. The Director may extend the conditional use permit for an additional period not to exceed one (1) year upon receipt of a written request from the applicant demonstrating good cause for the delay and provided that the request to extend the permit is received by the Director prior to expiration of the original conditional use approval. (Underline added).*

Your request will be considered incomplete until you submit the fee and information indicated above. Pursuant to ORS 215.427, you have 180 days from the date the application was first submitted in which to submit the requested information in order to have it considered under the land use regulations in effect at the time the application was first submitted. If you prefer not to submit the requested information, please inform our office in writing and we will process the request as-is.

Please also be aware that since your request for a second extension was received after the December 14, 2021, deadline; I do not anticipate a second extension being approved. If you have any questions, please feel free to call this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth P. Friday".

Kenneth P. Friday  
Planning Director

Enclosure

cc: Manchester Solar, LLC, c/o Wework 700 SW 5<sup>th</sup> Avenue, Portland, OR 97204

**Yamhill County**  
**DEPARTMENT OF PLANNING AND DEVELOPMENT**  
525 NE Fourth Street  
McMinnville, OR 97128  
[www.co.yamhill.or.us/plan/](http://www.co.yamhill.or.us/plan/)

RETURN SERVICE  
REQUESTED

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YAMHILL COUNTY  
PLANNING DEPARTMENT

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**Desiree Lundeen**

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**From:** Ken Friday  
**Sent:** Thursday, February 17, 2022 11:16 AM  
**To:** Jodi Gollehon; Lance Woods  
**Subject:** FW: Letter to Yamhill County for Manchester  
**Attachments:** Manchester CUP Extension Letter 20220113 (003).pdf; C-27-18\_SDR-34-18.inc.ext.pdf

FYI – This is what I just sent out.

**From:** Ken Friday  
**Sent:** Thursday, February 17, 2022 11:14 AM  
**To:** Jamie Zhang <jamie.zhang@spigroups.com>  
**Cc:** kevin white <kevin.white@spigroups.com>; Jack Lee <jack.lee@spigroups.com>; Peter Coughlin <peter.coughlin@spigroups.com>  
**Subject:** RE: Letter to Yamhill County for Manchester

Attached is the letter I mailed to SPI Solar on February 11, 2022. Please note that I mailed it to the address you provided in your letter of January 13, 2022. Please note that the letter was returned today with the note:

Return to Sender  
Insufficient Address  
Unable to Forward

Please note that my letter was to inform you of the process to follow when requesting an extension. Also please note that since the request will be received after the deadline I anticipate the second extension being denied.

Ken Friday  
Planning Director

**From:** Jamie Zhang <jamie.zhang@spigroups.com>  
**Sent:** Thursday, January 13, 2022 8:16 PM  
**To:** Ken Friday <fridayk@co.yamhill.or.us>  
**Cc:** kevin white <kevin.white@spigroups.com>; Jack Lee <jack.lee@spigroups.com>; Peter Coughlin <peter.coughlin@spigroups.com>  
**Subject:** Re: Letter to Yamhill County for Manchester



[This email originated outside of Yamhill County]

Dear Mr. Kenneth Friday,

Hope you are well. I am Corporate Counsel for SPI Energy Co., Ltd. ("SPI"), the owner of the Manchester Solar LLC, the applicant for the approved Conditional Use Permit under Docket No. C-27-18/SDR-34- 18, Tax Lot 4315-700.

Please find the attached Letter regarding the Extension of Docket No. C-27-18/SDR-34-18, Tax Lot 4315-

700.

We look forward to working with you on this and your prompt response.

Best Regards,

Jamie Zhang

Corporate Counsel

SPI Energy Co., Ltd. (Nasdaq: SPI)



101 SW Main Street, Suite 18100  
Portland, Oregon 97204

balljanik.com

t 503.228.2525  
f 503.295.1058

February 23, 2022

Damien R. Hall  
Also Admitted in California and Washington  
dhall@balljanik.com

VIA E-MAIL – [fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)

Kenneth P. Friday, Planning Director  
Yamhill County Planning and Development Department  
525 NE 4th Street  
McMinnville, OR 97128

**Re: Manchester Solar LLC CUP (Docket No. C-27-18/SDR-34-18)**

Dear Mr. Friday:

This firm represents SPI Energy Co., Ltd. ("SPI") the owner of the Manchester Solar LLC, the applicant for the approved Conditional Use Permit ("CUP") under Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700. This letter follows the letter sent to you from Jerome Zhang, SPI corporate counsel, dated January 13, 2022, to which SPI has not received a response.

We write seeking to establish common understanding of the construction completion deadline for the CUP, as there appears to have been some confusion and miscommunication on the issue. SPI has made significant investments in development of the Manchester Solar project and stands ready to proceed with pulling building permits and initiate construction in Q2 of this year, as soon as the current CUP construction blackout period ends.<sup>1</sup>

**1. CUP Substantial Completion Deadline**

Pursuant to Yamhill County Zoning Ordinance ("YCZO") 1202.05.D, the applicant has three years (two years plus a one-year extension which has been granted) in which to achieve substantial construction of the facility approved under the CUP. Since approval of the CUP, at the end of this month of February, there will be a total of 12 months of the County-imposed construction blackout period. These months are not properly included in the calculation of the substantial construction deadline because no construction can take place and the applicant is incapable of advancing toward substantial construction during the construction blackout period.

Thus, to be consistent with and give effect to the purpose of YCZO 1202.02, the CUP substantial construction deadline is **November 29, 2022**.

<sup>1</sup> CUP condition 10 prohibits construction activities from November to the end of February. "Any departure from these conditions of approval ... constitutes a violation of this ordinance" for which the CUP is subject to revocation. YCZO 1202.06. These four months in any given calendar year are referred to as the "construction blackout period".



Based on my review of prior correspondence between SPI and the county, it appears that this issue (whether the construction blackout period count against the substantial construction deadline) has not been considered. In considering this issue for the first time, please note that if the County simultaneously imposes the construction blackout period and count those blackout periods against the substantial construction deadline, the result is to artificially and arbitrarily deprive Manchester Solar of a full year of potential construction which is available to CUP holders under YCZO 1202.05 and to other similarly situated parties (e.g. those holders of solar CUP approvals that do not impose a construction blackout period, which there are many examples).

## 2. Development Timeline

Since approval of the CUP there have been a number of factors that have extended construction commencement. These factors include macroeconomic issues associated with the ongoing pandemic, supply chain delays, and labor shortages. These factors also include the construction blackout period and less than clear direction and communication from the County (i.e. sending notice of extension to an incorrect address and failing to consider the impact of construction blackout period on the substantial construction deadline). None of these factors are in the control of Manchester Solar.

Even with these setbacks, Manchester has made significant investment in advancing this project including design and engineering, rent payments, and interconnection payments. The total project development costs to date is approximately \$756,912. These investments have put Manchester Solar in a position to proceed with pulling building permits and initiating construction in Q2 of 2022, immediately following the current construction blackout period. Active construction is anticipated to take approximately four months and can be completed prior to the substantial construction deadline (as discussed above) and the beginning of the next construction blackout period.

## 3. Request

Manchester Solar respectfully requests that the County provide written confirmation of our understanding that the substantial construction deadline is **November 29, 2022**. Manchester Solar would then proceed with submittal, review, and approval of electrical and structural permit applications in short order.



Yamhill County Planning and Development Department  
February 23, 2022  
Page 3

Please do not hesitate to contact me to discuss this matter should any question arise. We look forward to working collaboratively with the County to get this project built but reserve the right to pursue all remedies in order to protect Manchester Solar's investment and interest in the CUP.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hall".

Damien R. Hall

cc: Christian Boesnich  
Colton Totland

# Yamhill County

## OFFICE OF COUNTY COUNSEL



535 NE Fifth Street, McMinnville, OR 97128 • 503/434-7502 • Fax 503/434-7553 • TTY 800/735-2900

March 7, 2022

Damien R. Hall  
Ball Janik LLP  
101 SW Main Street, Suite 18100  
Portland, OR 97204

CHRISTIAN BOENISCH  
COUNTY COUNSEL

COLTON TOTLAND  
ASSISTANT COUNTY COUNSEL

JODI GOLLEHON  
ASSISTANT COUNTY COUNSEL II

NOHELY BARAJAS-MONTALVO  
LEGAL ASSISTANT

Re: Manchester Solar LLC CUP (Docket No. C-27-18/SDR-34-18)

Dear Mr. Hall:

I am writing in response to your letter, dated February 23, 2022, regarding an expired Conditional Use Permit (CUP) previously granted to your client, SPI Energy Co., Ltd., under Docket No. C-27-18/SDR-34-18 for Tax Lot No. 4315-700. I am happy to confirm all dates regarding your client's initial CUP approval, its subsequent one-year extension, and its final expiration.

Yamhill County (County) granted a CUP to your client on November 29, 2018 (see Attachment A). As required by Yamhill County Zoning Ordinance (YCZO) § 1202.05(D), "a conditional use approval involving construction shall be null and void two (2) years from the date of final approval unless completion or substantial construction has taken place." Accordingly, your client's CUP was set to expire on November 29, 2020, which was clearly stated under Section 17 of the original CUP approval. Your client subsequently requested a one-year extension to the CUP in November 2020, as is permitted under YCZO § 1202.05(D) (see Attachment B). On January 21, 2021, the County agreed to extend the CUP through December 14, 2021 (see Attachment C). The extension approval letter was sent to the mailing address provided by your client in its extension request emailed on November 23, 2020.

In January of this year, the County received a letter from your client claiming no knowledge of the CUP's expiration and requesting an update to their mailing address (see Attachment D). When the County attempted to respond, our letter was returned as "insufficient address" for the updated mailing address provided by your client (see Attachment E). As was stated in the County's returned-letter response, a request for a second extension to a CUP requires payment of a \$128 processing fee and a written statement addressing the requirements of YCZO 1202.05. Until these two items are received by the County, your client's second extension request will be considered incomplete. Please note, however, that the Planning Director may only consider a CUP extension request if such a request is received prior to its expiration date. Unfortunately, your client's CUP expired on December 14, 2021. Accordingly, it is not anticipated that a second extension will be granted to your client.

If you have additional questions or concerns, please feel free to contact me directly. I can be reached at (503) 434-7420 or [gollehoni@co.yamhill.or.us](mailto:gollehoni@co.yamhill.or.us).

Thank you.

  
Jodi Gollehon, OSB #171047  
Assistant Yamhill County Counsel II

Enc.

# ATTACHMENT A

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMinnville, Oregon 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • TTY: (800) 735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

November 29, 2018

Manchester Solar, LLC  
c/o Wework  
700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

Re: **Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700**

In reference to your conditional use and site design review application for a commercial solar power generation facility consisting of approximately 10 acres on a parcel identified as Tax Lot 4315-700, the planning staff has reviewed your application and finds that it complies with the requirements of the *Yamhill County Zoning Ordinance*. Your application is hereby approved 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 location and to the size described in the application and depicted on the site plan submitted with the application (Appendix 2). The total area occupied by the solar facility shall not exceed 10 acres.
2. Prior to the issuance of building permits the applicant shall submit, to the Planning Director, a contract for long-term weed control maintenance and review by a biologist with local (Willamette Valley) ecosystem knowledge. In addition, the applicant shall implement the Soil Erosion and Compaction Control Plan (Appendix 5) and Weed Control Plan (Appendix 6) as reviewed in this application.
3. The applicant shall submit the biannual report prepared by a biologist regarding the implementation of the Weed Control Plan (Appendix 6), including the submission of a copy of the applicant's weed mitigation log book. The applicant shall fully comply with the best practices outlined in the Weed Control Plan.
4. Prior to the issuance of building or electrical permits, the applicant shall install sight obscuring fencing, measuring at least 6 feet in height, around the perimeter of the solar facility.
5. Prior to the issuance of building or electrical permits, the applicant shall satisfy any Oregon Department of Environmental Quality (DEQ) permitting requirements.
6. Prior to the issuance of building or electrical permits for the solar facility, the applicant shall submit an engineered drainage plan showing that no natural drainage is disturbed by any of the proposed activities and construction taking place on the parcel and that the runoff due to soil compaction and the establishment of the infrastructure required directly for, or in support of, the solar facility can be carried by the existing drainage system. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval. Any required improvements to the drainage system shall be done at the expense of the applicant.

7. Prior to issuance of building or electrical permits, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it 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 the 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."

8. 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.
9. Any lighting for the facility shall be shielded, deflected, or directed on the applicant's property, so it does not shine onto adjacent parcels.
10. Construction activities shall not take place between the months of November through February.
11. Mobilization and construction activities shall take place between the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday.
12. 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 and electrical permits from the Building Department and a new or amended access permit from the County Public Works Department.
13. Prior to the sale of the rights to build this solar facility to a third party, the applicant and new prospective owner shall meet with the Planning Director to review the conditions of approval.
14. The owner of the solar facility shall submit a report, to the Planning Director, by January 2<sup>nd</sup> of each year showing the amount of power generated from the facility during the previous year.
15. 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. The materials shall be disposed of according to local, state, and federal regulations regarding safe handling of such items. Ultimately, the applicant is responsible for ensuring the agricultural land occupied by the solar facility can be returned to an agricultural use or other allowed use.
16. Prior to issuance of building or electrical permits, the applicant shall provide to the County a performance guarantee in a form described in Section 1202.04 of the *Yamhill County Zoning Ordinance* and 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. These estimates may not account for any projected salvage value from decommissioned materials from the solar facility. It is the responsibility of the applicant to provide

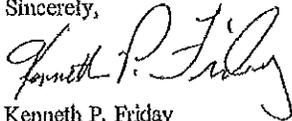
the County with the certified cost estimate. The guarantee shall be maintained by the applicant until the project is fully decommissioned. The guarantee shall be adjusted yearly based on the Western Region Consumer Price Index.

17. This approval shall expire two years from the date of this letter unless the use has been initiated.
18. 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 with the process detailed in Sections 1101.07, 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance* or revocation of the site design review as detailed in Section 1101.07 of the *Yamhill County Zoning Ordinance*.

This decision is based on findings and conclusions as contained in the staff report. The *Yamhill County Zoning Ordinance* provides for appeal of any action or ruling of the Planning Director to the Board of Commissioners within fifteen (15) days of the decision on a proposed action. Anyone wishing to appeal the Director's decision must file an appeal form, together with a \$250.00 fee, with this department no later than 5:00 p.m., December 14, 2018. If no appeal is filed, the Director's decision will be final and this letter will serve as your official notice of approval of your application.

If you have any questions, please contact this office.

Sincerely,



Kenneth P. Friday  
Planning Director

cc: Board of Commissioners  
Assessor  
DaytonRFPD  
City of Dayton  
SWCD  
DSL  
Anthony and Noele Hartford, 18100 SE Neck Road, Dayton, OR 97114  
Jane Baer, 29740 SW Mill Creek Rd, Sheridan, OR 97378  
Ximena Orrego & Guy Insley, 20501 Russell Creek Rd, Yamhill, OR 97148  
Steve Quimby, 19200 SE Neck Road, Dayton, OR 97114  
Friends of Yamhill County, P.O. Box 1083, McMinnville, OR 97128





YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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**DATE:** November 27, 2018

**DOCKET NO.:** C-27-18/SDR-34-18

**REQUEST:** Conditional use and site design review for a solar power generation facility consisting of approximately 10 acres. The proposed solar power generation facility is located within the Exclusive Farm use zoned area of the parcel.

**APPLICANT:** Manchester Solar, LLC

**OWNER:** Anthony & Noele Hartford

**TAX LOT:** 4315-700

**LOCATION:** 18100 SE Neck Road, Dayton

**ZONE:** EF-80, Exclusive Farm Use

**CRITERIA:** Sections 402.04(M), 402.07(A and D), 1101.02 and 1202.02 of the *Yamhill County Zoning Ordinance*. Comprehensive Plan policies may also be applicable. Agricultural Lands rules under OAR 660-033-0130(38).

**COMMENTS:** *County Engineer:* No response to date.  
*Dayton Rural Fire District:* No response to date.  
*Department of Agriculture:* No response to date.  
*Department of State Lands:* No response to date.  
*DLCD:* No response to date.  
*Public Health:* No response to date.  
*City of Dayton:* No response to date.  
*Soil & Water Conservation District (SWCD):* No response to date.  
*Jane Baer, 29740 SW Mill Creek Road, Sheridan* – See letter submitted on October 22<sup>nd</sup>, 2018.  
*Steve Quinby, 19200 SE Neck Road, Dayton; October 22<sup>nd</sup>, 2018* — My only concern is that it does not effect [sic] the irrigation easement (recorded) on the SE side of the property.  
*Friends of Yamhill County* — See letter submitted on October 29<sup>th</sup>, 2018.  
*Ximena Orrego & Guy Insley (Atticus Wine), 20501 Russell Creek Road, Yamhill* — See letters submitted on October 29<sup>th</sup>, 2018.

**FINDINGS:**

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Docket C-27-18, Manchester Solar, LLC

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**A. Background Facts**

1. *Parcel Size and Request:* The parcel is approximately 27.1 acres in size. The parcel is relatively flat with little discernable slope. The applicant intends to use 10 acres 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 will consist 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. According to the applicant, none of the proposed developments will exceed 12 feet in height when ground mounted. The site plan also proposes the necessary access and safety features including access roads, perimeter roads and fencing. The proposed photovoltaic modules are supported by stationary piles driven up to 10 feet into the ground.
2. *Access:* The applicant indicates that, if approved, a new driveway would be constructed with service from SE Neck Road. This new driveway would be used for mobilization, construction, demobilization, and maintenance of the proposed solar facility.
3. *On-Site Land Use:* The property is currently dedicated to grass seed production, and these farming activities are conducted by a lessee. The applicant identified the proposed location of the solar facility in conjunction with the property owner to ensure the remaining acreage may continue to be farmed. There is a farm building located along the southern property line. There is a dwelling located on the parcel, near the eastern property line, along with a garage and accessory building.
4. *Surrounding Land Use and Zoning:* The adjacent parcels are all zoned for Exclusive Farm use, EF-80. The surrounding parcels are predominantly dedicated to commercial agricultural uses including grass seed and hay production and filbert orchards. The adjacent parcel to the southwest contains the Yamhill Landing Park. The proposed solar facility is located approximately 1 mile to the east of City of Dayton, as the crow flies.
5. *Soils:* The Natural Resources Conservation Service (NRCS) map and accompanying documents submitted by the applicant, indicate that the parcel consists of predominantly high-value soils and is therefore considered high-value farmland. The applicant's soils map indicates that approximately 66.8% of the parcel is composed of Aloha silt loam, at 0 to 3 percent slopes, a Class II soil; approximately 22.6% of the parcel is composed of Woodburn silt loam, at 12 to 20 percent slopes, a class III soil; approximately 2.3 % of the parcel is composed of Verboort silty clay loam, at 0 to 3

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percent slopes; and the remainder of the parcel is composed of Woodburn silt loam, at 20 to 55 percent slopes, which is not classified as high value soil.

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:* Dayton Rural Fire District.
9. *Overlay Districts:* Based on a review of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41071 C0435D, the subject property is not located within an identified 100-year floodplain. There are no identified historic sites or airport overlay district associated with the property. The Willamette River Greenway is congruent with the parcel's southern property line.

**B. Conditional Use Provisions and Analysis**

1. The list of conditional uses in the EF-80 zone includes Section 402.04(M) which states:

*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 applicant's request is for a commercial solar power facility which will sell this energy to the local electricity utility company. 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) 660-033-130(38).

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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*

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*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 is proposing the development of a 10 acre commercial solar power generating facility and related ancillary uses, including solar panels, inverter sheds, electrical equipment, fencing, an unknown number of aluminum support piles driven 10 feet into the ground, as well as 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 Zoning Site Plans, that the proposed facility would consist of no more than 12 acres, the applicant is requesting a 10-acre solar facility, therefore, an exception pursuant to ORS 197.732 and OAR chapter 660, division 4 would not be required. If approved, staff would recommend a condition of approval stating that the solar facility shall be established in the location and to the size depicted in the applicant's site plan.

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 states that the 10-acre project area has been 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. The neighboring farm uses include grass seed and hay production as well as nut orchards. The applicant states that, once in place, the facility will not discharge aerosols or water that could have a negative impact to neighboring farm uses. The applicant states that there will be limited traffic during construction, and presumably, during the decommissioning of the facility. The applicant proposes coordination with the Yamhill County Road Department, and this shall be condition of approval. The applicant indicates that the remainder of the farmable land will continue to produce grass seed. The proposed project area will encompass 10-acres of the parcel's approximately total area of 27.1 acres. The applicant states that, once installed, the proposed solar facility will have no negative impacts on neighboring parcels or on any farm or forest practices conducted thereon. The applicant states that there will be no impacts to air or noise quality, nor will there be any glare issues as a consequence of the installation. The applicant goes on to state that they will abide by the weed control and soil erosion and compaction plans

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submitted with the application. A condition of approval will require the applicant to sign a deed restriction that will protect the rights of accepted farm practices on adjacent lands in order to assure that the proposed solar facility does not curtail or impede accepted farm or forest operation on neighboring parcels.

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;*

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. The state statutes take into consideration and require the imposition of conditions on solar facilities which address soil erosion and compaction, weed control, and the rights of adjacent agricultural operations consistent with accepted farm practices. The applicant discusses soil erosion in Appendix 5, submitted on July 31<sup>st</sup>, 2018. The applicant submitted a Soil Erosion and Compaction Control Plan (hereafter referred to as the SECCP) which provides site specific soil compaction mitigation strategies. The applicant indicates that the parcel is composed of soils that range in soil erosion hazard rating from "slight" to "severe". The SECCP provides a number of erosion mitigation measures including, but not limited to, the preservation of existing vegetation, re-vegetating disturbed soils, mulching seeded areas, stockpiling of stripped topsoil, dust control, and the temporary stabilization of soils until the new vegetative cover is successfully established.

Section 3.0, of Appendix 5, considers the risk of soil compaction within the proposed solar facility site. The applicant indicates that on-site soils have a low to moderate soil compaction resistance and are prone to compaction due to clay content in each of the soil types present on the property. The SECCP proposes a number of soil compaction mitigation measures including the avoidance and minimization of equipment traffic on-site when the soils are saturated (i.e., during the rainy season), that traffic to keep to the designated access road, that tires are properly inflated, and

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that the applicant should avoid using oversized equipment. The applicant further acknowledges that in some cases there is some soil compaction that is unavoidable. The applicant states that soil compaction will occur in areas where the topsoil has been removed and backfilled, on ground utilized for the staging and use of construction equipment, and in areas that were trenched for the placement of underground conduits, pipes, and wires. The applicant states that soil compaction will be remediated by plowing or subsoiling techniques and replanted with deep rooted vegetation, where possible. The applicant further states that these remediation techniques are best conducted when soils are unsaturated and that these activities will avoid inversion, or the mixing of topsoil and subsoil.

Taking the applicant's SECCP into account, staff will place a condition of approval that the proposed installation of the solar facility shall not occur during the rainy season when soils are saturated and therefore more prone to erosion and soil compaction, and that the applicant has indicated that erosion and soil compaction mitigation and remediation measures are more ideally suited to times when the soil is not saturated.

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, hereafter referred to as the WCP, prepared for the applicant by Environmental Planning Group, LLC. The WCP submitted by the applicant presents best management practices that will be employed during and after construction to prevent the introduction or spread of noxious weeds. The applicant's WCP contains a list of weed species that could potentially colonize disturbed soils in the area. The applicant's consultants indicate that the property is currently devoid of any known noxious weeds. The applicant notes that the proposed construction activities are when the risk for the introduction and propagation of weeds and invasive species is greatest. The WCP states that construction crews will be provided with weed identification information published by the Oregon Department of Agriculture to assist work crews with identifying potential weeds. The WCP states that construction crews will be responsible for inspecting and washing construction equipment to ensure no seeds or pods are present that could lead to colonization of noxious weeds on the parcel. The applicant suggests several post-construction restoration guidelines to mitigate for the introduction and spread of weeds. Specifically, the applicant suggests the uniform application of a customized local seed mix selected in coordination with the Jenny Meisel, the Resource Conservationist for

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the Marion County Soil and Water Conservation District, during the construction and rehabilitation phases of development to provide active competition against any noxious weeds that may already be established onsite, and to compete with weeds that may be introduced while the ground is disturbed. If construction occurs during the dry summer or autumn months the seeds may need to be irrigated. The applicant also states a willingness to have inspections conducted by a biologist with local (Willamette Valley) ecosystem knowledge twice per year, in the spring and autumn. Staff believes this recommendation by the applicant to be a sensible condition of approval. The applicant also suggested some long-term maintenance strategies including the manual removal of weeds, mowing, planting shrubs to outcompete certain noxious weeds, mowing, livestock grazing, or the least preferred option of herbicide application by a certified professional. The applicant notes that these long term maintenance activities will be recorded in a log book documenting the date of inspection and weed maintenance. The applicant states a willingness to share with the planning department a report prepared annually, or to another standardized schedule (monthly, quarterly, or bi-annually), regarding 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. Staff believes the annual review of the Weed Management Plan report will ensure that the presence of noxious weeds is being sufficiently addressed. The annual submission of the Weed Management Plan report to the county Planning Department will be a condition of approval.

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:*

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*(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 is proposing to develop the solar facility on the portion of the parcel that contains high-value soils. The applicant states that the proposed location for the solar facility will remove 10-acres of established grass seed and hay production from the total 27.1 acre parcel. The applicant has indicated that the remaining farm land will continue to be used for farming. The surrounding land uses were discussed in section A.4. of this staff report. The land use within the larger 1-mile area from the centroid of the parcel is predominantly dedicated to farm use, with fruit and nut trees, and grass seed and hay production being the most common farm operations within this study area. The 1-mile study area also encompasses a neighborhood within the City of Dayton, the Yamhill River, as well as the Willamette River. There are no additional solar facilities approved or in place within the 1-mile 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.*

In order to ensure the condition in OAR 660-033-0130(38)(j) above has not been sufficiently addressed in the application materials submitted. Staff recommends a condition of approval that, at the end of the solar project's lifespan, the operator of the solar facility project shall completely remove the solar panels, all related infrastructure and equipment, and shall provide the County with a bond or other security instrument which imposes on Manchester Solar, LLC the responsibility for retiring the solar facility. The applicant initially acknowledged and accepted

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responsibility for the retirement of the facility. Staff believes that a bond or guarantee assuring that the applicant, who is requesting a conditional use permit to establish a solar facility on land under ownership of a third party, is a reasonable condition to place on the applicant to ensure the safe and timely removal of the solar panels and all other ancillary equipment associated with the proposed solar facility. Additionally, the Oregon Administrative Rules above, chapter 660 division 033 subsection 0130(38)(j), explicitly empowers a county to require a decommissioning bond or other security measure to ensure the photovoltaic solar power generation facility is retired at the end of its operational lifecycle. The applicant is willing to accept a condition of approval for the decommissioning and retirement of the facility. The applicant shall submit a final decommissioning estimate, prepared by a licensed professional engineer that does not include the projected salvage value of the solar facility materials prior to the issuance of any requisite building and electrical permits.

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.

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

Regarding criterion 1202.02(B), even though the majority of the Yamhill County Goals and Policies are aspirational and not to be mistaken for, or treated as, approval criteria it is required that they be considered. It is a fact that some of the goals and policies conflict with one another. They are simply to be used as a guide to aid decision makers. For example, where goals or policies conflict the decision makers need to weigh the evidence and decide which goal or policy the request best satisfies. The prominent Goals and Policy from Section VI. Energy Conservation includes:

*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.*

It is pretty clear that the proposed solar facility would satisfy the above Goal and Policy regarding the promotion of renewable solar energy resources, albeit with the

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sacrifice of the Goal and Policy related to the preservation of high-value Agricultural Lands.

Since the application is for the use of high value farmland to locate an alternative energy site, the prominent Goal and Policy from Agricultural Lands are required to be considered. The summary prior to the goals and policies contains the following guidance:

*Agriculture plays an integral role in the overall economy of the county.*

*A significant amount of land within the county has soils which are defined as having high quality agricultural capability.*

*The need to maintain the integrity and viability of the agricultural land base has been clearly recognized by Yamhill County residents.*

...

*In addition to agriculture's important role in the economy of the county, vast expanses of farm land provide county residents with scenic open space which contributes to their overall health and welfare.*

The prominent Goal and Policy from Agricultural Lands:

*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 as identified in the Capability Classification System of the U.S. Soil Conservation Service.*

The use of the site will take approximately 10 acres of high-value soils out of production for a significant amount of time, likely for multiple decades. The applicant addresses this goal and policy by suggesting that the productivity of the soils located within the project area will be preserved through the implementation of the proposed Soil Erosion and Compaction Control Plan (SECCP), and the Weed Control Plan (WCP). The applicant's erosion control plan indicates that straw bales, hay coil logs, run-off channels, silt fencing, and sediment basins are the mitigatory measures under consideration to minimize the risk of soil loss due to erosive forces. The applicant acknowledges that the Oregon Department of Environmental Quality (DEQ) may require additional permitting. A condition of approval will require that

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the applicant attain all required state and county permits prior to operation of the solar facility.

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 proposed site of the solar facility is on a parcel measuring approximately 27.1 acres. The parcel is of sufficient size to support a solar facility of 10 acres. The applicant will establish an access road connecting with Neck Road that will serve as the maintenance road to the proposed solar facility. The area the applicant identified as the proposed solar facility has a gentle southerly slope which will provide the most efficient area for the installation of the panels and allow the applicant to maximize the density of panels to be installed onsite. The remainder of this parcel will be suitable for continuing the commercial farming operations conducted on the parcel. Once in place, the proposed solar facility will not require the development of any new improvements to the parcel. 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 surrounding area is zoned Exclusive Farm Use, EF-80, and are dedicated to commercial agricultural uses including grass seed and hay production as well as fruit and nut orchards. The only comment or concern submitted by a neighboring property owner was by Steve Quimby. Mr. Quimby's concern is that the proposed establishment of the solar facility does not affect the irrigation easement recorded and in place on the southeastern side of the property. The Planning Department has no jurisdiction over easements. An easement is a civil agreement which does not require land use approval.

The properties adjacent to the applicant's parcel are predominantly dedicated to commercial farming operations (grass seed and hay production, fruit and nut orchards). The applicant states that the proposed facility will be passive and unoccupied once completed. The applicant states that the facility, once in place, will not impact air or noise quality nor will there be any glare issues. There is nothing in the record to suggest that the applicant's proposed facility, as sited, will substantially limit, impair, or prevent the permitted residential, farming, or commercial uses on the surrounding parcels.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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In response the applicant paraphrases the conditional use criterion stating:

"The proposed solar farm will not alter the character of the surrounding area in a manner that would limit, impair or prevent the use of surrounding properties. See also the findings in response to YCZO 402.07(A), above."

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 Dayton Rural Fire Department, and no comments or concerns were submitted by the Dayton Fire Department. The proposed use does 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 once the facility is established. The applicant has stated a willingness to coordinate with the county road department during the mobilization and demobilization phases of the facility's lifecycle, which will be a condition of approval. The county public works department was notified of the proposed use and did not submit any concerns or comments to the planning department. With conditions the proposed use appears to satisfy criterion 1202.02 (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 in Findings B. 11, and B. 12. of this staff report, the applicant has stated that the location of the 10-acre facility will not impact or conflict with existing or allowable farm, forest, or rural residential uses on neighboring properties. The applicant has indicated that the proposed use will not increase demand on existing public facilities or services.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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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 subject is located in the Exclusive Farm use, EF-80 zone. The surrounding parcels are predominantly dedicated to commercial farm uses including hay and grass seed production and nut or fruit orchards. As indicated in Findings B. 4., B. 11., and B. 12. above, the applicant has stated that once the proposed solar facility is established there are no emissions generated that could impact neighboring residential, farm, or commercial activities. The applicant has acknowledged that there is a risk of noxious weed propagation onsite, as well as soil erosion and compaction, and the applicant has submitted plans for mitigating these risks and ensuring there are no impacts to neighboring parcels. The applicant has stated a willingness to record an affidavit which recognizes the rights of adjacent agricultural operations consistent with accepted farm practices pursuant to OAR 660-033-0130(38)(i), and this requirement shall be a condition of approval.

**C. Site Design Review Criteria**

1. Section 1101 for Site Design Review requires consideration of the following factors in the review of site development plans:

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

Regarding criterion 1101.02(a) above, staff has addressed this in Section A.4 and B.14 of this report.

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

Regarding criterion 1101.02(b) above, the applicant addresses this criterion in the application, stating that the construction and operation of the solar facility may provide short-term employment opportunities during the mobilization and demobilization phases of development, as well as income to the property owner, and increased tax revenues to the County. The applicant notes that the proposed solar facility will add \$10,000 in tax revenue per year for Yamhill County.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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

Regarding criterion 1101.02(c), access to the property will be provided by the development of a new driveway which will be used to facilitate the mobilization and demobilization phases of development in addition to the maintenance activities conducted during the multi-decadal lifespan of the solar facility. The applicant acknowledges that a driveway permit must be acquired from the county road department. The applicant states that the proposed driveway and access will be built to county and Dayton Fire Department standards. The proposed site is located in an open field that has been used for grass seed and hay production. As noted in Findings B. 10., B.12., and B. 14. above, the applicant will coordinate with county road department to effectively and safely manage the projected increase in traffic during the mobilization and demobilization phases of development. This coordination with the county road department will be a condition of approval. Once the solar facility has been established there will minimal visits to the site by maintenance workers and by the biologist who will visit the site to evaluate the effectiveness of the noxious weed management plan. With conditions, the parcel is of sufficient size for appropriate internal circulation of traffic and is large enough to provide parking for the periodic visits by staff.

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

Regarding criterion 1101.02(d), as addressed in Findings B. 3., B. 4., B. 5., B. 12., and B. 14. above, the applicant states that construction activities during installation are 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 approximately 900 feet from the nearest off-site residence and is buffered on all sides by either grass seed fields, by the Willamette River and adjacent riparian vegetation, or by established stands of timber. The application indicates 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. The applicant indicates that a minimal degree of noise may be heard outside of the fenced area. The applicant maintains that these sound levels are not expected to be distinguishable above quiet rural sound levels at a distance of the nearest adjacent properties. The applicant is proposing the installation of a security fence around the perimeter of the facility. Staff believes it would be appropriate to require, as a condition of approval, that the security fence include sight obscuring slats or other sight obscuring material and be a minimum of six (6) feet in height.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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

Regarding criterion 1101.02(e) above, this criterion has been addressed in Section B.10. of this staff report. As indicated earlier, there are no natural features, aside from high value farmland, that will be removed or diminished by the establishment of the proposed solar facility.

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

Regarding criterion 1101.02(f) above, there have been no hazard areas identified on this parcel.

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

Regarding criterion 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. The only comment received by staff, from a surrounding property owner, was addressed in Section B.11. of this staff report. This neighboring property owner would like to ensure that the proposed solar facility would not negatively impact an existing irrigation easement. As mentioned in Section B.11. of this staff report, easements are civil agreements that do not require land use approval and are not under the jurisdiction of the county Planning Department. The Planning Department also received comments from Friends of Yamhill County and other residents of Yamhill County who oppose solar facilities but who are not directly or personally impacted by the applicant's proposed solar facility, in this location.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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**CONCLUSIONS FOR APPROVAL:**

1. The proposed solar facility is listed as a conditional use in the Exclusive Farm Use zone subject to site design review approval and is limited to no more than 12 acres when it is located on high-value farmland. The applicant's request is for a 10 acre solar facility.
2. With conditions, the request is consistent with the conditional use approval criteria of Section 1202.02 and 402.07 of the *Yamhill County Zoning Ordinance* and OAR 660-033-0130(38).
3. With conditions, the request is consistent with the site design review standards in Section 1101.02 of the *Yamhill County Zoning Ordinance*.

**DECISION:**

In reference to your application for conditional use and site design review for a 10-acre commercial solar facility on Tax Lot 4315-700, has been approved with 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 location and to the size described in the application and depicted on the site plan submitted with the application (Appendix 2). The total area occupied by the solar facility shall not exceed 10 acres.
2. Prior to the issuance of building permits the applicant shall submit, to the Planning Director, a contract for long-term weed control maintenance and review by a biologist with local (Willamette Valley) ecosystem knowledge. In addition, the applicant shall implement the Soil Erosion and Compaction Control Plan (Appendix 5) and Weed Control Plan (Appendix 6) as reviewed in this application.
3. The applicant shall submit the biannual report prepared by a biologist regarding the implementation of the Weed Control Plan (Appendix 6), including the submission of a copy of the applicant's weed mitigation log book. The applicant shall fully comply with the best practices outlined in the Weed Control Plan.
4. Prior to the issuance of building or electrical permits, the applicant shall install sight obscuring fencing, measuring at least 6 feet in height, around the perimeter of the solar facility.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
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5. Prior to the issuance of building or electrical permits, the applicant shall satisfy any Oregon Department of Environmental Quality (DEQ) permitting requirements
6. Prior to the issuance of building or electrical permits for the solar facility, the applicant shall submit an engineered drainage plan showing that no natural drainage is disturbed by any of the proposed activities and construction taking place on the parcel and that the runoff due to soil compaction and the establishment of the infrastructure required directly for, or in support of, the solar facility can be carried by the existing drainage system. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval. Any required improvements to the drainage system shall be done at the expense of the applicant.
7. Prior to issuance of building or electrical permits, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it 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 the 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."**
8. 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.
9. Any lighting for the facility shall be shielded, deflected, or directed on the applicant's property, so it does not shine onto adjacent parcels.
10. Construction activities shall not take place between the months of November through February.
11. Mobilization and construction activities shall take place between the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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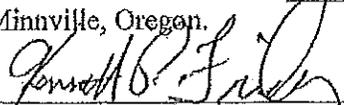
12. Prior to any development, the applicant shall obtain all required local, state and federal permits. The applicant shall obtain all necessary permits from the Building Department and the Public Works Department. These permits may include, but are not limited to building and electrical permits from the Building Department and a new or amended access permit from the County Public Works Department.
13. Prior to the sale of the rights to build this solar facility to a third party, the applicant and new prospective owner shall meet with the Planning Director to review the conditions of approval.
14. The owner of the solar facility shall submit a report, to the Planning Director, by January 2<sup>nd</sup> of each year showing the amount of power generated from the facility during the previous year.
15. 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. The materials shall be disposed of according to local, state, and federal regulations regarding safe handling of such items. Ultimately, the applicant is responsible for ensuring the agricultural land occupied by the solar facility can be returned to an agricultural use or other allowed use.
16. Prior to issuance of building or electrical permits, the applicant shall provide to the County a performance guarantee in a form described in Section 1202.04 of the *Yamhill County Zoning Ordinance* and 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. These estimates may not account for any projected salvage value from decommissioned materials from the solar facility. 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. The guarantee shall be adjusted yearly based on the Western Region Consumer Price Index.
17. This approval shall expire two years from the date of this letter unless the use has been initiated.

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

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18. 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 with the process detailed in Sections 1101.07, 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance* or revocation of the site design review as detailed in Section 1101.07 of the *Yamhill County Zoning Ordinance*.

DATED AND SIGNED this 27<sup>th</sup> day of November, 2018, at  
McMinnville, Oregon.

  
Kenneth P. Friday, Planning Director  
Yamhill County Planning and Development

KF:lw

# ATTACHMENT B

**Stephanie Curran**

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From: Alicia Schelb  
Sent: Monday, November 23, 2020 3:36 PM  
To: Stephanie Curran  
Subject: FW:H=

From: AP <[ap@evergreensolarservices.com](mailto:ap@evergreensolarservices.com)>  
Sent: Monday, November 23, 2020 2:21 PM  
To: Jessica Biggs <[biggsj@co.yamhill.or.us](mailto:biggsj@co.yamhill.or.us)>  
Cc: 'Jacob Stephens' <[j.s@evergreensolarservices.com](mailto:j.s@evergreensolarservices.com)>  
Subject: H=

[This email originated outside of Yamhill County]

Hello Jessica,

Thank you for your time today. As discussed with you and the Planning Director, here is the request extend the Condition Use Permit for Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700 for 1 year.

Address on the Docket is:  
Manchester Solar, LLC  
c/o Wework  
700 SW5th Avenue  
Portland, OR 97204

Please let us know this is approved at your earliest convenience.  
Thank you,

*Ayin Philips*

  
<http://evergreensolarservices.com>  
D. 949.293.8085  
P. 888.303.6424  
F. 703.995.4545  
[ap@evergreensolarservices.com](mailto:ap@evergreensolarservices.com)

# ATTACHMENT C

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE 4TH STREET • McMANNVILLE, OREGON 97128

Phone: 503-434-7516 • Fax: 503-434-7544 • TTY: 800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

January 21, 2021

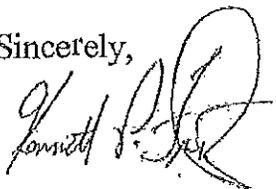
Manchester Solar, LLC  
c/o Wework  
700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

Re: Extension of Docket No. C-27-18/SDR-34-18, Tax Lot ~~4315-700~~

Regarding your request for extension of the above conditional use and site design review approval, our office will grant a one-year extension. Your approval will now expire on December 14, 2021. Please be aware that the conditions of approval stated in the original decision letter (see attached) still apply.

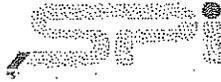
If you have any questions or require assistance, please call me at (503) 434-7516.

Sincerely,



Kenneth P. Friday  
Planning Director

# ATTACHMENT D



January 13, 2022

Via Email

Kenneth Friday

[fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)

Yamhill County Department of Planning and Development

525 NE 4<sup>th</sup> Street

McMinnville, Oregon 97128

**RE: Response to Extension of Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700 Letter**

Dear Mr. Kenneth Friday,

Hope you are well. I am Corporate Counsel for SPI Energy Co., Ltd. ("SPI") the owner of the Manchester Solar LLC, the applicant for the approved Conditional Use Permit under Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700.

SPI has just received this Letter (the "Letter") in Exhibit A for the first time even though it was dated January 21, 2021. This Letter was sent by you and addressed to Manchester Solar, LLC at the following address:

700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204.

SPI has just received this Letter for the first time in an Email (the "Email") in Exhibit B from Stephanie Curran at Yamhill County Building and Planning. SPI did not receive the Letter prior to January 12, 2022 since you sent it on January 21, 2021. The address that the Letter was sent to is not an SPI address. We believe this address was a Sulus Solar address and was sent incorrectly by Yamhill County. SPI's address is:

920 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

Based on the fact that SPI never received the Letter regarding the approved extension request of the conditional use and site design review along with the new expiration date of December 14, 2021, we kindly request that you approve our 2<sup>nd</sup> request for an extension of the conditional use and site design review approval to December 14, 2022.

SPI plans to build the Manchester Solar, LLC project in the 2022 year and will begin the Building Permit application process shortly, upon your approval of this 2<sup>nd</sup> extension request. The solar project is participating in the Oregon Community Solar Program and has signed up 95% of its capacity to provide clean, renewable energy to local residents and businesses. These residents and businesses are very excited about receiving a reduction on their bill in 2022, when this project is expected to be completed. We appreciate your consideration regarding this matter and look forward to resolving this matter with you, without further action.

Regards,

Jamie Zhang  
Corporate Counsel

SPI Solar, Inc., a subsidiary of SPI Energy Co. Ltd.  
920 SW 6<sup>th</sup> Ave, Portland OR 97204

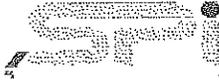


Exhibit A

**Yamhill County**  
**DEPARTMENT OF PLANNING AND DEVELOPMENT**  
325 NE 4TH STREET • MANHILL, OREGON 97128  
Phone: 503-434-7516 • Fax: 503-434-7544 • TTY: 800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

January 21, 2021

Manchester Solar, LLC  
c/o Wework  
700 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

Re: Extension of Docket No. C-27-18/SDR-34-18, Tax Lot 4315-700

Regarding your request for extension of the above conditional use and site design review approval, our office will grant a one-year extension. Your approval will now expire on December 14, 2021. Please be aware that the conditions of approval stated in the original decision letter (see attached) still apply.

If you have any questions or require assistance, please call me at (503) 434-7516.

Sincerely,

Kenneth P. Friday  
Planning Director

SPI Solar, Inc., a subsidiary of SPI Energy Co. Ltd.  
920 SW 6<sup>th</sup> Ave. Portland OR 97204



## Exhibit B

RE: FW: November 2020 Misc. Planning P - See attached report from Yamhill County

 Stephanie Curran <currans@co.yamhill.or.us>  
Wed, 12 Jan 2022 11:27:59 AM -0800 INBOX  
In "Peter Coughlin" <peter.coughlin@spigroups.com>  
"Kevin White" <kevin.white@spigroups.com>, "Ken Friday" <fridays@co.yamhill.or.us>  
Tara  
Security  [Learn more](#)

Here is the letter you requested.

Stephanie Curran  
Yamhill County Building & Planning  
525 NE 4th St.  
McMinnville, OR 97128  
[503-434-7516](tel:503-434-7516)

# ATTACHMENT E

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET ♦ McMinnville, Oregon 97128

Phone:(503) 434-7516 ♦ Fax:(503) 434-7544 ♦ Internet Address: <http://www.co.yamhill.or.us/plan/>

February 11, 2022

Jamie Zhang, Corporate Counsel  
SPI Solar  
920 SW 6<sup>th</sup> Ave.  
Portland, OR 97204

**Re: Extension of Docket C-27-18/SDR-34-18, Tax Lot 4315-700**

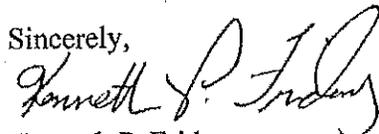
On January 13, 2022, you submitted a letter that indicated your company's desire for a second extension of the above request. Please be aware that the fee for processing an extension request is \$128.00. In addition, the following Yamhill County Zoning Ordinance criteria found in 1202.05(D) needs to be addressed:

*D. A conditional use approval involving construction shall be null and void two (2) years from the date of final approval unless completion or substantial construction has taken place. In any case where a conditional use approval does not involve construction, the approval shall be null and void one (1) year from the date of final approval unless the approval has been implemented. The Director may extend the conditional use permit for an additional period not to exceed one (1) year upon receipt of a written request from the applicant demonstrating good cause for the delay and provided that the request to extend the permit is received by the Director prior to expiration of the original conditional use approval. (Underline added).*

Your request will be considered incomplete until you submit the fee and information indicated above. Pursuant to ORS 215.427, you have 180 days from the date the application was first submitted in which to submit the requested information in order to have it considered under the land use regulations in effect at the time the application was first submitted. If you prefer not to submit the requested information, please inform our office in writing and we will process the request as-is.

Please also be aware that since your request for a second extension was received after the December 14, 2021, deadline, I do not anticipate a second extension being approved. If you have any questions, please feel free to call this office.

Sincerely,



Kenneth P. Friday  
Planning Director

Enclosure

cc: Manchester Solar, LLC, c/o Wework 700 SW 5<sup>th</sup> Avenue, Portland, OR 97204

# Yamhill County

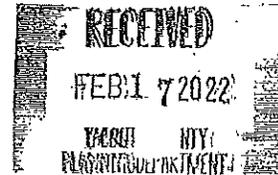
## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET ♦ McMinnville, Oregon 97128

Phone:(503) 434-7516 ♦ Fax:(503) 434-7544 ♦ Internet Address: <http://www.co.yamhill.or.us/plan/>

February 11, 2022

Jamie Zhang, Corporate Counsel  
SPI Solar  
920 SW 6<sup>th</sup> Ave.  
Portland, OR 97204



**Re: Extension of Docket C-27-18/SDR-34-18, Tax Lot 4315-700**

On January 13, 2022, you submitted a letter that indicated your company's desire for a second extension of the above request. Please be aware that the fee for processing an extension request is \$128.00. In addition, the following Yamhill County Zoning Ordinance criteria found in 1202.05(D) needs to be addressed:

*D. A conditional use approval involving construction shall be null and void two (2) years from the date of final approval unless completion or substantial construction has taken place. In any case where a conditional use approval does not involve construction, the approval shall be null and void one (1) year from the date of final approval unless the approval has been implemented. The Director may extend the conditional use permit for an additional period not to exceed one (1) year upon receipt of a written request from the applicant demonstrating good cause for the delay and provided that the request to extend the permit is received by the Director prior to expiration of the original conditional use approval. (Underline added).*

Your request will be considered incomplete until you submit the fee and information indicated above. Pursuant to ORS 215.427, you have 180 days from the date the application was first submitted in which to submit the requested information in order to have it considered under the land use regulations in effect at the time the application was first submitted. If you prefer not to submit the requested information, please inform our office in writing and we will process the request as-is.

Please also be aware that since your request for a second extension was received after the December 14, 2021, deadline; I do not anticipate a second extension being approved. If you have any questions, please feel free to call this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth P. Friday".

Kenneth P. Friday  
Planning Director

Enclosure

cc: Manchester Solar, LLC, c/o Wework 700 SW 5<sup>th</sup> Avenue, Portland, OR 97204

F:\Share\KFLTR\Incomp.ltr.wpd

**Yamhill County**  
DEPARTMENT OF PLANNING AND DEVELOPMENT  
525 NE Fourth Street  
McMinnville, OR 97128  
www.co.yamhill.or.us/plan/

RETURN SERVICE  
REQUESTED

Postnet  
First Class Mail  
Contribution



US POSTAGE  
ZIP 97128 \$ 000.42  
02 49  
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RECEIVED

FEB 17 2022

YAMHILL COUNTY  
PLANNING DEPARTMENT

*msy*

NIXIE 971 DE 1269 0002/15/22

NO RETURN TO SENDER  
IF INCORRECT ADDRESS  
UNABLE TO FORWARD

BC: 97128488125 \*1579-00380-10-12

97128488125  
BE LRAM56 97204

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET ♦ McMinnville, Oregon 97128

Phone: (503) 434-7516 ♦ Fax: (503) 434-7544 ♦ Internet Address: <http://www.co.yamhill.or.us/plan/>

April 12, 2022

Peter Coughlin, SPI Solar/CO  
2867 NW Williams Loop  
Redmond, OR 97756

### Re: Denial of Extension of Docket C-27-18/SDR-34-18, Tax Lot 4315-700

On March 9, 2022, our office received a complete application requesting extension of the above land use approval for a 10-acre industrial solar facility. This letter outlines the decision of the Department regarding your request.

#### I. Legal Provisions

The requirements for a decision regarding a second extension is found in the Yamhill County Zoning Ordinance. Specifically, the Yamhill County Zoning Ordinance criteria found in 1202.05(D) states:

*D. A conditional use approval involving construction shall be null and void two (2) years from the date of final approval unless completion or substantial construction has taken place. In any case where a conditional use approval does not involve construction, the approval shall be null and void one (1) year from the date of final approval unless the approval has been implemented. The Director may extend the conditional use permit for an additional period not to exceed one (1) year upon receipt of a written request from the applicant demonstrating good cause for the delay and provided that the request to extend the permit is received by the Director prior to expiration of the original conditional use approval. [Underline added.]*

Section 402.08 of the Yamhill County Zoning Ordinance also includes permit expiration dates for facilities approved in the Exclusive Farm zone. The relevant provision of Subsection 402.08(A) is underlined below:

#### 402.08 Permit Expiration Dates and Declaratory Statements for Dwelling Approvals

- A. Notwithstanding other provisions of this Ordinance and except as provided for in subsection 402.08 (D), a discretionary decision, except for a land division, approving a proposed development in the Exclusive Farm Use district is void two years from the date of the final decision if the development action is not initiated in that period. An extension period of up to 12 months may be granted if:*
- 1. An applicant makes a written request for an extension prior to expiration of the development approval period, stating the reasons that prevented the applicant from beginning or continuing development within the approval period; and*
  - 2. The Planning Director determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not*

## II. Factual Background

The following are the actions taken in relation to this application to-date:

- The original approval was granted November 29, 2018 and had an original expiration date of November 29, 2020.
- A request for an extension was made on November 23, 2020, and an additional year was granted to December 14, 2021. A notice of the extension approval was sent to Manchester Solar on January 21, 2021, and a new expiration date of December 14, 2021 was provided.
- The application expired on December 14, 2021.
- On January 5, 2022, after the extension had expired, an e-mail was received by the Department requesting an extension on the building permit, and a follow-up letter from Jamie Zhang, Corporate Counsel of SPI, was sent on January 13, 2022. The letter stated that SPI had not received the January 13, 2021 letter notifying them of the December 14, 2021 expiration date because the address where the notice was sent was incorrect (please note that the notice was sent to the address provided by Manchester Solar in both their application and e-mail request for extension.)
- On February 11, 2022, our office mailed a letter to Jamie Zhang, Corporate Counsel for SPI, indicating that the application was incomplete, and irrespective of that fact, the request was also made after the expiration date, so any extension request would likely be denied. The letter was mailed to the address provided by Jamie Zhang in her letter, but it was returned to our office on February 17, 2022 as undeliverable due to its "insufficient address".
- On February 17, 2022, that same letter of incompleteness was then e-mailed to Jamie Zhang, Kevin White, Jack Lee and Peter Coughlin.
- On February 23, 2022, Damien R. Hall, of Ball Janik, LLP, e-mailed a letter to Ken Friday stating that the Department had not responded to Jamie Zhang's January 13<sup>th</sup> letter, even though, as noted above, the Department's response was both mailed to the address provided by Ms. Zhang and e-mailed to her and other members of SPI Solar, Inc. as noted above.
- On March 7, 2022, Jodi Gollehon, Assistant Yamhill County Counsel II, wrote to Mr. Hall detailing the dates provided above, explaining how the request was incomplete, and including a statement that, because the request was received after the deadline, it was not expected to be approved.
- On March 9, 2022, the applicant paid for the extension request.

### III. Analysis

The standards in 1202.05(D) and 402.08(A)(1) are quite clear. They require the applicant make a request for extension *prior* to the expiration of the original approval. That unfortunately did not happen in this case, and so the request does not satisfy the requirements of the code.

Additionally, Section 402.08(C) includes a criterion related to the permit expiration date that this application does not satisfy. Specifically, this criterion states:

C. *Additional one-year extensions may be authorized by the Planning Director where applicable criteria for the decision have not changed.*

Since the original approval of this request, the criteria have changed to require an exception when the property contains Class I-IV soils. Since the subject property is predominantly Class II high-value farmland, an exception is now required, which your request does not address nor satisfy.

### IV. Conclusion

For the reasons stated herein, your extension request has been denied. Please be aware that you can reapply on this property for a new conditional use and site design review, accompanied by an exception request. Let me know if you wish to pursue this option.

If you have any questions, please do not hesitate to contact our office.

Sincerely,



Kenneth P. Friday  
Planning Director

Enclosure

cc: Manchester Solar, LLC, c/o Wework 700 SW 5<sup>th</sup> Avenue, Portland, OR 97204  
Peter Coughlin, SPI Solar, Inc., 4677 Old Ironsides Dr., Ste. 190, Santa Clara, CA, 95054  
Board of Commissioners  
Interested parties  
Damien Hall, Ball Janik LLP, 101 SW Main Street, Suite 18100, Portland, OR 97204  
SWCD  
Anthony and Noele Hartford, 18100 SE Neck Road, Dayton, OR 97114  
Jane Baer, 29740 SW Mill Creek Rd, Sheridan, OR 97378  
Ximena Orrego & Guy Insley, 20501 Russell Creek Rd, Yamhill, OR 97148  
Steve Quimby, 19200 SE Neck Road, Dayton, OR 97114  
Friends of Yamhill County, P.O. Box 1083, McMinnville, OR 97128







101 SW Main Street, Suite 18100  
Portland, Oregon 97204

balljanik.com  
t 503.228.2525  
f 503.295.1058

April 26, 2022

Damien R. Hall  
Also Admitted in California and Washington  
dhall@balljanik.com

VIA E-MAIL

Yamhill County Board of Commissioners  
434 NE Evans Street  
McMinnville, OR 97128

**Re: Appeal of Denial of Extension (Docket No. C-27-18/SDR-34-18)**

Dear Commissioners:

This firm represents Manchester Solar LLC ("Manchester"), the owner of an approved Conditional Use Permit ("CUP") to develop a 12-acre solar facility ("CUP"). Manchester requested that Yamhill County ("County") planning staff either acknowledge that no extension of the CUP was required or alternatively, to extend the CUP. This letter appeals the Planning Director's Denial of Extension dated April 12, 2022 ("Decision").

Manchester is appealing the Decision because it has already vested its rights to the CUP and no extension is necessary by initiating the development action under CUP. The Decision incorrectly applies Yamhill County Zoning Ordinance ("YCZO") 402.08.A,<sup>1</sup> which establishes that any "development action" that has been "initiated" under the CUP results in the vesting of the CUP. The Decision does not consider the extensive evidence that development actions under the CUP have been initiated. Such evidence includes the following development actions by Manchester:

1. Investment of approximately \$756,912 in development costs including designing and engineering of the project to a permit-ready level of detail;
2. Submitted for structural and electrical permits in November 2020, including paying the County \$17,700.24 in permit fees;
3. Submitting for an extension of the CUP;
4. Causing PGE to design grid improvements for interconnection, to purchase equipment for interconnection, and to make improvements to existing grid infrastructure.

<sup>1</sup> YCZO 402.08.A establishes that: "[A] discretionary decision, except for a land division, approving a proposed development in the Exclusive Farm Use district is void two years from the date the final decision if the development action is not initiated in that period..." (emphasis added).

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Yamhill County Board of Commissioners  
April 26, 2022  
Page 2

Despite Manchester's significant development actions and investments in the project approved by the CUP, the Decision summarily denies any further extension and does not address Manchester's request that the County acknowledge that no extension is needed.

To the extent that the Decision finds the CUP to be expired, the Decision impermissibly revokes Manchester's vested rights to continue development under the CUP. Revocation of the CUP is only permissible pursuant to the process and procedure in YCZO 1202.07, which is also not addressed in the Decision.

Given Manchester's level of investment in this project, the assertion in the Decision that the CUP has expired is truly concerning and of significant consequence, and not just to Manchester. Should the Board decline to intercede, the County will not reap the benefits of this already approved and designed project. Such opportunity cost includes tens of thousands of dollars of permit fees, millions of dollars of property tax, and numerous jobs for local construction contractors.

It is Manchester's intent to undertake every avenue of application and appeal to protect its right to continue development of the project approved by the CUP. The exhibit following this letter preserves additional legal arguments and documents the multiple instances of failed notice and confused communication with the County in this matter. However, it is our hope to avoid any protracted process or dispute with the County.

To that end, Manchester respectfully requests that the Board of Commissioners alternatively: (1) hold a hearing to review the Decision, or (2) direct the Planning Director to address whether any "development action" was initiated thereby vesting the CUP and negating the need for any further extension.

We appreciate your consideration in this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hall", written over a white background.

Damien R. Hall

cc: Ken Friday  
Christian Boesnich  
Colton Totland  
Jodi Gollehon  
Manchester Solar LLC

## EXHIBIT – ADDITIONAL LEGAL ARGUMENTS

For the reasons explained below, the YCZO allows the County to either:

- 1) Extended the for an additional year expiring on December 14, 2022; or
- 2) The substantial construction deadline is November 29, 2022.

Manchester presents these options and legal arguments in the alternative to the CUP being vested, as discussed in the body of the letter preceding this exhibit.

### **I. CUP Substantial Completion Deadline: Twelve Months of Prohibited Construction to Date.**

Pursuant to YCZO 1202.05.D, the applicant has three years (two years plus a one-year extension which has been granted) to achieve substantial construction of the facility approved under the CUP. Since approval of the CUP, there will be a total of 12 months of the County-imposed construction blackout period to date. These months are not properly included in the calculation of the substantial construction deadline because no construction can take place and the applicant is incapable of advancing toward substantial construction during the construction blackout period.

Thus, to be consistent with and give effect to the purpose of YCZO 1202.02, the CUP substantial construction deadline should be extended to November 29, 2022. In the alternative, because YCZO 1202.05.D expressly allows for an additional extension "not to exceed one (1) year", the Board should grant a one-year extension expiring on December 14, 2022<sup>2</sup>.

### **II. Development Timeline: Delay Due to Circumstances Outside of Manchester's Control and Good Faith Efforts by Manchester.**

Since the CUP was approved on November 29, 2018, Manchester has made significant investments in the development of the Manchester Solar project and has been limited by the CUP construction blackout period and the ongoing pandemic. There have been a number of factors that have extended construction commencement. These factors include macroeconomic issues associated with the ongoing pandemic, supply chain delays, and labor shortages.

These factors also include the construction blackout period and less than clear direction and communication from the County. Specifically, as the original CUP approval was set to expire on November 29, 2020, Manchester timely requested a one-year extension on November 23, 2020. On December 1, 2020, during a phone call between Peter Coughlin, Manchester's Director of Project Management, and Stephanie Curran at the County Building and Planning Department, Mr. Coughlin requested that all notifications regarding the extension request be emailed directly to him. Shortly after, Ms. Curran confirmed the request via email on the same day.

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<sup>2</sup> On January 21, 2021, the County granted Manchester's first extension request which was set to expire in the same year on December 14, 2021. An additional one-year extension would thus expire on December 14, 2022.

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Nevertheless, contrary to the agreed request on December 1, 2020, the County sent a notice of extension to an incorrect address on January 21, 2021. At the start of this year, Manchester learned about the miscommunication. Since then, correspondences and emails have been exchanged by both parties regarding an extension request. Notably, in response to Manchester's extension request, without considering Manchester's good faith efforts and the impact of the construction blackout period on the substantial construction deadline (as discussed above), the County denied Manchester request on April 12, 2022.

None of the above factors were in Manchester's control. Even with these setbacks, Manchester has made significant investment in advancing this project including design and engineering, rent payments, and interconnection payments. The total project development costs to date is approximately \$756,912. These investments have put Manchester in a position to proceed with pulling building permits and initiating construction in Q2 of 2022, which follows the recent construction blackout period. Active construction is anticipated to take approximately four months and can be completed prior to the substantial construction deadline as discussed above and the beginning of the next construction blackout period.

### **III. Grounds for Appeal: The Decision Suffers from Legal and Factual Shortcomings.**

The Decision suffers from legal and factual shortcomings. The Decision is inconsistent with the purpose and effect of YCZO 1202.05.D as discussed below:

1. The Decision is inconsistent with the purpose and effect of the three-year substantial construction deadline under YCZO 1202.05.D (two years plus a one-year extension which has been granted). As noted above, to date, a total of 12 months of the construction blackout period has been imposed on Manchester. The calculation of the substantial construction deadline should account for the construction blackout period consistent with three-year substantial construction deadline.
2. Contrary to the findings in the Decision and consistent with the plain text of YCZO 1202.05.D, Manchester is allowed "an additional extension not to exceed one (1) year."
3. The Decision fails to consider factors outside of Manchester control that contributed to the delay. The Decision specifically fails to consider these facts that were outside of Manchester control:
  - a. Construction blackout period applied to each calendar year;
  - b. Miscommunications by the County when the County incorrectly sent the notice of approval for the first extension; and
  - c. Macroeconomic factors associated with the ongoing pandemic, supply chain delays, and labor shortages.
4. The Decision fails to consider Manchester good faith efforts since obtaining the CUP approval. As noted above, Manchester has invested approximately \$756,912 in total project development costs to date. With

these investments, Manchester can proceed with pulling building permits and initiating construction as soon as an extension is granted.

5. The Decision considers standards in YCZO 402.08 and YCZO 1202.05.D that are arbitrarily and inconsistently applied. Specifically, the Decision fails to consider whether "development action" has been "initiated" under YCZO 402.08.A. The Decision also fails to consider whether the three-year substantial construction deadline under YCZO 1202.05.D accounts for the construction blackout period. Consequently, the Decision applies arbitrary standards to reach an artificial result that simply denies Manchester's CUP in its entirety.
6. Despite the limitation for reviewing an administrative decision under YCZO 402.08.B, the Decision is subject to review as a land use decision. See ORS 197.015(b)(A). The Decision adopts discretionary interpretations of standards contrary to YCZO 402.08.A and the purpose and effect of YCZO 1202.05.D. The Decision applies discretionary interpretations by failing to consider applicable standards below:
  - a. YCZO 402.08.A: The Decision fails to address the "development action" standard under YCZO 402.08.A, which establishes that any "development action" that is "initiated" under the CUP results in the vesting of the CUP. The Decision does not consider the extensive evidence that development actions under the CUP have been initiated.
  - b. YCZO 1202.05.D: Contrary to the purpose and effect of YCZO 1202.05.D, the Decision fails to consider whether the three-year substantial construction deadline (two years plus a one-year extension which has been granted) accounts for the construction blackout period. The Decision does not consider twelve months of prohibited construction to date.

#### **IV. Requests**

For the reasons above, Manchester respectfully requests that Board order review of the Decision on its own motion pursuant to YCZO 402.08.B and grant either request to: (1) extend the CUP for an additional year expiring on **December 14, 2022**; or (2) authorize the substantial construction deadline as **November 29, 2022**.

## Ken Friday

---

**From:** Ken Friday  
**Sent:** Tuesday, May 17, 2022 11:53 AM  
**To:** Hall, Damien  
**Cc:** Patel, Nikesh J.  
**Subject:** RE: Manchester Solar - Appeal of Denial of Extension (Docket No. C-27-18/SDR-34-18)

Mr. Hall, I hope this e-mail finds you well.

On April 28, 2022 you submitted an "Appeal Application" on behalf of Manchester Solar related to denial of their request for an extension. As you are aware the Director's decision cannot be appealed since an extension is not a land use decision. In your letter of April 26, 2022 you requested that the Board intervene. I just wanted to let you know that the Board declined to review the director's decision.

Please do not hesitate to contact me if you have further questions.

Ken Friday

Planning Director

**From:** Ken Friday  
**Sent:** Friday, April 22, 2022 2:41 PM  
**To:** Patel, Nikesh J. <npatel@balljanik.com>  
**Cc:** Hall, Damien <dhall@balljanik.com>  
**Subject:** RE: Manchester Solar - Appeal of Denial of Extension (Docket No. C-27-18/SDR-34-18)

The property is in the exclusive farm use zone so it is governed by Section 402 of the zoning Ordinance. Permit extension are guided by Section 402.08(A)-(C). Please note that 402.08(B) states the approval or denial of an extension is not a land use decision and not subject to appeal. For your convenience I have copied Section 402.08(A)-(C) below and highlighted the aforementioned provision.

As I indicated previously in the letter, a new application can be made for the solar facility. You would simply need to address the new provisions. Please do not hesitate to contact me if you have questions.

I hope both you and Mr. Hall have a great weekend as well. The weather is supposed to be nice.

Sincerely,

Ken Friday  
Planning Director  
503-434-7516

### **402.08 Permit Expiration Dates and Declaratory Statements for Dwelling Approvals**

- A. Notwithstanding other provisions of this Ordinance and except as provided for in subsection

402.08 (D), a discretionary decision, except for a land division, approving a proposed development in the Exclusive Farm Use district is void two years from the date of the final decision if the development action is not initiated in that period. An extension period of up to 12 months may be granted if:

1. An applicant makes a written request for an extension prior to expiration of the development approval period, stating the reasons that prevented the applicant from beginning or continuing development within the approval period; and
  2. The Planning Director determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
- B. Approval or denial of an extension granted under this rule is an administrative decision, is not a land-use decision described in ORS 197.015, and is not subject to appeal as a land-use decision. However, the Board, on its own motion, may order review of the decision of the Director within 15 days of the decision.
- C. Additional one-year extensions may be authorized by the Planning Director where applicable criteria for the decision have not changed.

**From:** Patel, Nikesh J. <[npatel@balljanik.com](mailto:npatel@balljanik.com)>  
**Sent:** Friday, April 22, 2022 1:23 PM  
**To:** Ken Friday <[fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)>; Planning <[planning@co.yamhill.or.us](mailto:planning@co.yamhill.or.us)>  
**Cc:** Hall, Damien <[dhall@balljanik.com](mailto:dhall@balljanik.com)>  
**Subject:** Manchester Solar - Appeal of Denial of Extension (Docket No. C-27-18/SDR-34-18)

Hello Ken,

Following-up from my voice message today, we received the denial of the CUP extension dated April 12, 2022 (Docket No. C-27-18/SDR-34-18). We will be filing an appeal on behalf of Manchester Solar LLC by the 15-day appeal deadline, which is this coming Wednesday, April 27. Please let us know the process for filing an appeal. Thank you.

Have a good weekend,

Nikesh

Nikesh Patel  
Associate  
t 503.944.6009  
[npatel@balljanik.com](mailto:npatel@balljanik.com)  
Ball Janik LLP



101 SW Main Street, Suite 1800  
Portland, Oregon 97204  
balljanik.com  
t 503.228.2525  
f 503.295.1058



May 24, 2022

Damien R. Hall  
Also Admitted in California and Washington  
dhall@balljanik.com

VIA FIRST-CLASS MAIL

Land Use Board of Appeals  
775 Summer Street NE, Suite 330  
Salem, OR 97301-1283

Re: Notice of Intent to Appeal  
*Manchester Solar, LLC v. Yamhill County*

Dear Clerk:

Enclosed please find an original and two copies of Notice of Intent to Appeal, along with a check in the amount of \$300 representing the filing fee.

Thank you for your courtesies in this matter.

Sincerely,

Damien R. Hall

Enclosures

cc: Yamhill County Counsel, Christian Boenisch

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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

MANCHESTER SOLAR, LLC,  
  
Petitioner,  
  
v.  
  
YAMHILL COUNTY,  
  
Respondent.

LUBA No. \_\_\_\_\_

NOTICE OF INTENT TO APPEAL

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that Manchester Solar, LLC ("Petitioner") intends to appeal Respondent's decision entitled "Manchester Solar - Appeal of Denial of CUP Extension (Docket No. C-27-18/SDR-34-18)" dated May 17, 2022 ("Decision"). Notice of the Decision was received by email from Mr. Ken Friday, Yamhill County Planning Director, to counsel for Petitioner, which is attached as Exhibit A hereto. The notice of Decision determines that a prior decision of the County Planning Director ("Director's Decision) attached as Exhibit B hereto, was not a land use decision and reports that the County Board of Commissioners declined to hear an appeal of the Director's Decision. A copy of the Decision and the Director's Decision are attached as Exhibits A and B, respectively, to this Notice of Intent to Appeal.

II.

1 The Decision became final on May 17, 2022, and this Notice of Intent to  
2 Appeal is thereby timely filed pursuant to OAR 661-010-0015(1)(a).  
3

III.

4 Petitioner is represented by:

5 Damien R. Hall, OSB No. 083465  
6 Ball Janik, LLP  
7 101 SW Main Street, Suite 1800  
8 Portland, OR 97204  
9 (503) 228-2525

10 Nikesh J. Patel, OSB No. 181524  
11 Ball Janik, LLP  
12 101 SW Main Street, Suite 1800  
13 Portland, OR 97204  
14 (503) 944-6009

IV.

15 Respondent, Yamhill County, has its mailing address and telephone number  
16 as follows:

17 Yamhill County Board of Commissioners  
18 535 NE 5th Street  
19 McMinnville, OR 97128  
20 (503) 434-7501

21 Christian Boenisch, OSB No. 972170  
22 Yamhill County Counsel's Office  
23 535 NE 5th Street  
24 McMinnville, OR 97128  
25 (503) 434-7502

26 Ken Friday  
Yamhill County Planning Department  
525 NE 4th Street  
McMinnville, OR 97128  
(503) 434-7516

V.

The applicant was Manchester Solar, LLC who has its mailing address and telephone number as follows:

Manchester Solar, LLC  
4677 Old Ironsides Dr., Ste 190  
(541) 815-2353

VI.

To the best of Petitioner's knowledge, the only persons provided written notice of the Decision are set forth in the Decision itself, which is attached as Exhibit A.

**NOTICE**

Other than the persons identified in Paragraph IV above, a person must file a motion to intervene pursuant to OAR 661-010-0050 to participate in the review proceeding.

DATED: May 24, 2022

BALL JANIK LLP

By:   
Damien R. Hall, OSB No. 083465  
[dhall@balljanik.com](mailto:dhall@balljanik.com)  
Nikesh J. Patel, OSB No. 181524  
[npatel@balljanik.com](mailto:npatel@balljanik.com)  
101 SW Main Street, Ste. 1800  
Portland, OR 97204  
(503) 228-2525  
*Of Attorneys for Petitioner*

CERTIFICATE OF FILING AND SERVICE

1 I hereby certify that on May 24, 2022, I caused to be filed an original and  
2 two copies of this **NOTICE OF INTENT TO APPEAL** by certified first-class  
3 mail at the United States Post Office in Portland, Oregon on the following:

4 Land Use Board of Appeals  
5 775 Summer Street NE, STE 330  
6 Salem, OR 97301-1283

7 On the same date, I cause to be served a true and correct copy by first-class  
8 mail, postage prepaid, on all persons listed in Paragraphs IV and V of this  
9 **NOTICE OF INTENT TO APPEAL**.

10  
11 BALL JANIK LLP

12  
13 By: 

14 Damien R. Hall, OSB No. 083465  
15 [dhall@balljanik.com](mailto:dhall@balljanik.com)  
16 Nikesh J. Patel, OSB No. 181524  
17 [npatel@balljanik.com](mailto:npatel@balljanik.com)  
18 101 SW Main Street, Ste. 1800  
19 Portland, OR 97204  
20 (503) 228-2525  
21 *Of Attorneys for Petitioner*

## EXHIBIT A

**From:** Ken Friday  
**To:** Hall, Damien  
**Cc:** Patel, Nikesh J.  
**Subject:** RE: Manchester Solar - Appeal of Denial of Extension (Docket No. C-27-18/SDR-34-18)  
**Date:** Tuesday, May 17, 2022 11:53:36 AM

---

Mr. Hall, I hope this e-mail finds you well.

On April 28, 2022 you submitted an "Appeal Application" on behalf of Manchester Solar related to denial of their request for an extension. As you are aware the Director's decision cannot be appealed since an extension is not a land use decision. In your letter of April 26, 2022 you requested that the Board intervene. I just wanted to let you know that the Board declined to review the director's decision.

Please do not hesitate to contact me if you have further questions.

Ken Friday

Planning Director

**From:** Ken Friday  
**Sent:** Friday, April 22, 2022 2:41 PM  
**To:** Patel, Nikesh J. <npatel@balljanik.com>  
**Cc:** Hall, Damien <dhall@balljanik.com>  
**Subject:** RE: Manchester Solar - Appeal of Denial of Extension (Docket No. C-27-18/SDR-34-18)

The property is in the exclusive farm use zone so it is governed by Section 402 of the zoning Ordinance. Permit extension are guided by Section 402.08(A)-(C). Please note that 402.08(B) states the approval or denial of an extension is not a land use decision and not subject to appeal. For your convenience I have copied Section 402.08(A)-(C) below and highlighted the aforementioned provision.

As I indicated previously in the letter, a new application can be made for the solar facility. You would simply need to address the new provisions. Please do not hesitate to contact me if you have questions.

I hope both you and Mr. Hall have a great weekend as well. The weather is supposed to be nice.

Sincerely,

Ken Friday  
Planning Director  
503-434-7516

**402.08 Permit Expiration Dates and Declaratory Statements for Dwelling Approvals**

A. Notwithstanding other provisions of this Ordinance and except as provided for in subsection 402.08 (D), a discretionary decision, except for a land division, approving a proposed development in the Exclusive Farm Use district is void two years from the date of the final decision if the development action is not initiated in that period. An extension period of up to 12 months may be granted if:

1. An applicant makes a written request for an extension prior to expiration of the development approval period, stating the reasons that prevented the applicant from beginning or continuing development within the approval period; and
2. The Planning Director determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

B. Approval or denial of an extension granted under this rule is an administrative decision, is not a land-use decision described in ORS 197.015, and is not subject to appeal as a land-use decision. However, the Board, on its own motion, may order review of the decision of the Director within 15 days of the decision.

C. Additional one-year extensions may be authorized by the Planning Director where applicable criteria for the decision have not changed.

**From:** Patel, Nikesh J. <npatel@balljanik.com>

**Sent:** Friday, April 22, 2022 1:23 PM

**To:** Ken Friday <fridayk@co.yamhill.or.us>; Planning <planning@co.yamhill.or.us>

**Cc:** Hall, Damien <dhall@balljanik.com>

**Subject:** Manchester Solar - Appeal of Denial of Extension (Docket No. C-27-18/SDR-34-18)

Hello Ken,

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Have a good weekend,

Nikesh

**Nikesh Patel**  
Associate

t 503.944.6009  
npatel@balljanik.com  
Ball Janik LLP

EXHIBIT B

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET ♦ McMinnville, Oregon 97128

Phone: (503) 434-7516 ♦ Fax: (503) 434-7544 ♦ Internet Address: <http://www.co.yamhill.or.us/plandev/>

**COPY**

April 12, 2022

You are receiving this because

state law requires notice of this

decision to surrounding property

owners

Peter Coughlin, SPI Solar/CO  
2867 NW Williams Loop  
Redmond, OR 97756

**Re: Denial of Extension of Docket C-27-18/SDR-34-18, Tax Lot 4315-700**

On March 9, 2022, our office received a complete application requesting extension of the above land use approval for a 10-acre industrial solar facility. This letter outlines the decision of the Department regarding your request.

### I. Legal Provisions

The requirements for a decision regarding a second extension is found in the Yamhill County Zoning Ordinance. Specifically, the Yamhill County Zoning Ordinance criteria found in 1202.05(D) states:

*D. A conditional use approval involving construction shall be null and void two (2) years from the date of final approval unless completion or substantial construction has taken place. In any case where a conditional use approval does not involve construction, the approval shall be null and void one (1) year from the date of final approval unless the approval has been implemented. The Director may extend the conditional use permit for an additional period not to exceed one (1) year upon receipt of a written request from the applicant demonstrating good cause for the delay and provided that the request to extend the permit is received by the Director prior to expiration of the original conditional use approval. [Underline added.]*

Section 402.08 of the Yamhill County Zoning Ordinance also includes permit expiration dates for facilities approved in the Exclusive Farm zone. The relevant provision of Subsection 402.08(A) is underlined below:

#### 402.08 Permit Expiration Dates and Declaratory Statements for Dwelling Approvals

*A. Notwithstanding other provisions of this Ordinance and except as provided for in subsection 402.08 (D), a discretionary decision, except for a land division, approving a proposed development in the Exclusive Farm Use district is void two years from the date of the final decision if the development action is not initiated in that period. An extension period of up to 12 months may be granted if:*

- 1. An applicant makes a written request for an extension prior to expiration of the development approval period, stating the reasons that prevented the applicant from beginning or continuing development within the approval period; and*
- 2. The Planning Director determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not*

## II. Factual Background

The following are the actions taken in relation to this application to-date:

- The original approval was granted November 29, 2018 and had an original expiration date of November 29, 2020.
- A request for an extension was made on November 23, 2020, and an additional year was granted to December 14, 2021. A notice of the extension approval was sent to Manchester Solar on January 21, 2021, and a new expiration date of December 14, 2021 was provided.
- The application expired on December 14, 2021.
- On January 5, 2022, after the extension had expired, an e-mail was received by the Department requesting an extension on the building permit, and a follow-up letter from Jamie Zhang, Corporate Counsel of SPI, was sent on January 13, 2022. The letter stated that SPI had not received the January 13, 2021 letter notifying them of the December 14, 2021 expiration date because the address where the notice was sent was incorrect (please note that the notice was sent to the address provided by Manchester Solar in both their application and e-mail request for extension.)
- On February 11, 2022, our office mailed a letter to Jamie Zhang, Corporate Counsel for SPI, indicating that the application was incomplete, and irrespective of that fact, the request was also made after the expiration date, so any extension request would likely be denied. The letter was mailed to the address provided by Jamie Zhang in her letter, but it was returned to our office on February 17, 2022 as undeliverable due to its "insufficient address".
- On February 17, 2022, that same letter of incompleteness was then e-mailed to Jamie Zhang, Kevin White, Jack Lee and Peter Coughlin.
- On February 23, 2022, Damien R. Hall, of Ball Janik, LLP, e-mailed a letter to Ken Friday stating that the Department had not responded to Jamie Zhang's January 13<sup>th</sup> letter, even though, as noted above, the Department's response was both mailed to the address provided by Ms. Zhang and e-mailed to her and other members of SPI Solar, Inc. as noted above.
- On March 7, 2022, Jodi Gollehon, Assistant Yamhill County Counsel II, wrote to Mr. Hall detailing the dates provided above, explaining how the request was incomplete, and including a statement that, because the request was received after the deadline, it was not expected to be approved.
- On March 9, 2022, the applicant paid for the extension request.

### III. Analysis

The standards in 1202.05(D) and 402.08(A)(1) are quite clear. They require the applicant make a request for extension prior to the expiration of the original approval. That unfortunately did not happen in this case, and so the request does not satisfy the requirements of the code.

Additionally, Section 402.08(C) includes a criterion related to the permit expiration date that this application does not satisfy. Specifically, this criterion states:

C. Additional one-year extensions may be authorized by the Planning Director where applicable criteria for the decision have not changed.

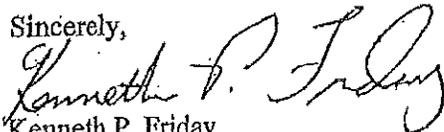
Since the original approval of this request, the criteria have changed to require an exception when the property contains Class I-IV soils. Since the subject property is predominantly Class II high-value farmland, an exception is now required, which your request does not address nor satisfy.

### IV. Conclusion

For the reasons stated herein, your extension request has been denied. Please be aware that you can reapply on this property for a new conditional use and site design review, accompanied by an exception request. Let me know if you wish to pursue this option.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

  
Kenneth P. Friday  
Planning Director

Enclosure

cc: Manchester Solar, LLC, c/o Wework 700 SW 5<sup>th</sup> Avenue, Portland, OR 97204  
Peter Coughlin, SPI Solar, Inc., 4677 Old Ironsides Dr., Ste. 190, Santa Clara, CA, 95054  
Board of Commissioners  
Interested parties  
Damien Hall, Ball Janik LLP, 101 SW Main Street, Suite 18100, Portland, OR 97204  
SWCD  
Anthony and Noele Hartford, 18100 SE Neck Road, Dayton, OR 97114  
Jane Baer, 29740 SW Mill Creek Rd, Sheridan, OR 97378  
Ximena Orrego & Guy Insley, 20501 Russell Creek Rd, Yamhill, OR 97148  
Steve Quimby, 19200 SE Neck Road, Dayton, OR 97114  
Friends of Yamhill County, P.O. Box 1083, McMinnville, OR 97128

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

MANCHESTER SOLAR, LLC,  
*Petitioner,*

vs.

YAMHILL COUNTY,  
*Respondent.*

LUBA No. 2022-051

FINAL OPINION  
AND ORDER

**RECEIVED**  
AUG 16 2022  
YAMHILL COUNTY COUNSEL

Appeal from Yamhill County.

Damien R. Hall and Nikesh J. Patel represented petitioner.

Jodi Gollehon represented respondent.

ZAMUDIO, Board Chair; RUDD, Board Member; RYAN, Board  
Member, participated in the decision.

REMANDED 08/12/2022

You are entitled to judicial review of this Order. Judicial review is  
governed by the provisions of ORS 197.850.

1

Zamudio, Board Chair.

2

The parties request that the decision challenged in this appeal be remanded.

3

Accordingly, the decision is remanded.

## Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2022-051 on August 12, 2022, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Christian Boenisch  
Yamhill County Counsel's Office  
535 NE 5th Street  
McMinnville, OR 97128

Damien R. Hall  
Ball Janik LLP  
101 SW Main Street, Suite 1800  
Portland, OR 97204

Dated this 12th day of August, 2022.



Jessica Loftis  
Executive Support Specialist

Manchester Solar, LLC Remand  
Findings of Fact

---

Erin Pence  
Executive Support Specialist

**Jodi Gollehon**

---

**From:** Patel, Nikesh J. <npatel@balljanik.com>  
**Sent:** Tuesday, September 27, 2022 3:55 PM  
**To:** Ken Friday  
**Cc:** Jodi Gollehon; Hall, Damien  
**Subject:** Request for Initiation of Remand Proceedings (LUBA Case No. 2022-051)  
**Attachments:** Final\_Opinion\_and\_Order.pdf

**Caution:** This email originated outside of the Yamhill County email system

Ken:

Pursuant to ORS 215.435(2)(a), Manchester Solar, LLC ("Applicant") hereby requests that the County initiate remand proceedings and schedule a hearing before the County Board of Commissioners ("Board") for the above-referenced case. The scope of the remand should be limited to the following issues:

1. Has the Applicant vested the right to complete development of the CUP by initiating development action pursuant to YCZO 402.08(A)?
  - Note: To answer question #1, the Board should interpret YCZO 402.08(A) and YCZO 1202.05(D) to give meaning and purpose to both sections.
  - Note: If question #1 is answered in the negative, the Board should consider question #2.
2. Should the CUP's construction blackout time periods be excluded from the substantial completion deadline required under YCZO 1202.05(D)?

Please let us know possible hearing dates and if have any questions or concerns. Thank you.

Sincerely,

Nikesh

Nikesh Patel  
Associate  
t 503.944.6009  
npatel@balljanik.com  
Ball Janik LLP

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON  
00 JUL 13 P2:16

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Interpretation )  
of the Yamhill County Zoning )  
Ordinance Provisions Allowing ) BOARD ORDER 00- 514  
Extension of Land Use Permission )  
Due to Substantial Construction )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on July 13, 2000, commissioners Ted Lopuszynski, Thomas E.E. Bunn, and Robert Johnstone being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. The Yamhill County Zoning Ordinance commonly assigns an expiration date to land use permission stating that the permission is valid only for a certain period, unless "substantial construction" has occurred on the property.
- B. The Director of the Yamhill County Planning Department has requested an interpretation of the phrase "substantial construction" to aid in determining whether it has occurred in specific cases.
- C. Oregon state law states that a property owner's right to build vests upon the satisfaction of a multi-factor test that includes but is not limited to criteria: substantial expenditures incurred, the type of expenditures, and good faith reliance of the landowner. Webber v. Clackamas County, 42 Or. App. 151, 152, 600 P. 2d 448 (1979); Clackamas County v. Holmes, 265 Or. 193, 198-99, 508 P.2d 190 (1973).
- D. Yamhill County retains the right to interpret its own ordinances and determine their meaning. Clark v. Jackson County, 313 Or 508, 836 P.2d 710 (1992); Smith v. Clackamas County, 313 Or 519, 836 P.2d 716 (1992). NOW, THEREFORE

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

- 1. The Board interprets Yamhill County Zoning Ordinance in the following manner: In determining whether "substantial construction" or "substantial development" has occurred on a previously approved land use application, the Planning Director shall consider criteria including but not limited to substantial expenditures incurred, the type of expenditures, the ratio of expenditures incurred to the estimated total project cost, good faith reliance of the landowner, and similar factors, as these examples illustrate:
  - a. Architectural, building, engineering, or consultants' plans, drawings, or studies,
  - b. Grading or levelling,
  - c. Paving or access acquisition,
  - d. Test boring, drilling, or installation of a well or water system,
  - e. Septic tank plans or installation,
  - f. Storing or stockpiling of building materials on the site,
  - g. Moving a mobile or temporary dwelling onto the site after obtaining the necessary permits, for use during construction,

BOARD ORDER 00- 514

Page 1

Exhibit A-2  
Page 1 of 2

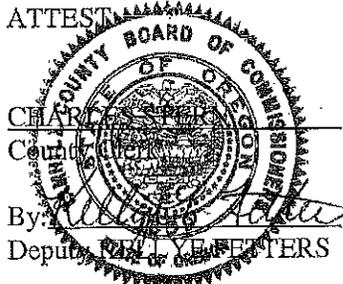
- h. Obtaining financing from a bank or lending institution,
- i. Any other substantial effort or investment that indicates intent to develop the site.

No single criterion will necessarily suffice to establish substantial construction or development. Rather, it is the combination of these factors and the sums spent on each that could lead the Planning Director to make the determination that substantial construction or development has occurred.

2. The Yamhill County Planning Director shall take the factors set forth in Paragraph (1) *supra* into account when deciding whether substantial construction or development of the site has occurred. If the Planning Director determines substantial construction or development of the site has occurred after a land use application was approved but prior to the expiration of the stated development rights, he shall authorize the requested development permit.

3. The decision of the Yamhill County Planning Director on any matter considered under this Board Order shall have no effect whatever on the Planning Director or the Board's determination on any request for a "vested rights exemption" under the Yamhill County Transportation System Development Charge ordinance.

DONE at McMinnville, Oregon on July 13, 2000.



YAMHILL COUNTY BOARD OF COMMISSIONERS

Ted Lopuszynski  
Chairman TED LOPUSZYNSKI

Thomas E.E. Bunn  
Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

Rick Sanai  
Rick Sanai  
Assistant County Counsel

Robert Johnstone  
Commissioner ROBERT JOHNSTONE

F:\ADMIN\SANAI\NUSbstConstrBO.wpd

Date	Voucher	Catalogy	Transaction text	Currency	Amount currency(total)	Manchester	Ref
6/7/2019	006	Consultant fees	Centerline Concepts Land Surveying, Inc. - Land Survey, Oregon-Manchester	USD	1,000.00	1,000.00	
6/19/2019	022	Consultant fees	Blue Oak Energy, LLC - Mobilization Fee on OR Portfolio project-Oregon	USD	4,290.00	713.00	
7/2/2019	018	Consultant fees	FOLEY & LARDNER LLP - Consultant fee for the reviewing work of MIPA for OR project	USD	20,000.00	3,383.33	Yamhill_001
10/7/2019	026	Consultant fees	Blue Oak Energy, LLC - Design Service fee on the OR Portfolio project-F	USD	16,669.38	2,779.23	Yamhill_002
11/7/2019	027	Consultant fees	Rebusement to Kevin White - Insurance Cost for Oregon Projects; Pay to Marsh USA, Inc.	USD	3,488.20	581.37	
11/29/2019	056	Consultant fees	Centerline Concepts Land Surveying, Inc. - Project Oregon Land Survey for 7 jobs	USD	7,000.00	1,000.00	
12/30/2019	085	Interconnection fees	Reimbursement to Sulos for the interconnection payment dep	USD	10,000.00	10,000.00	Yamhill_003
12/30/2019	097	SPI project acquisition fee	purchase Manchester project from Sulos LLC	USD	183,600.00	183,600.00	Yamhill_004
2/11/2020	057	CMS acquisition fee	Energy Solutions - for Oregon Projects: Cork, Dover, Waterford, Clayfield & Manchester Solar Projects - ID#PGE-2020-11-16-19	USD	50,850.00	10,170.00	Yamhill_005
3/9/2020	029	Interconnection fees	Portland General Electric General Account - Manchester Solar Project interconnection design milestone II	USD	46,834.00	46,834.00	Yamhill_006
4/20/2020	043	CMS acquisition fee	Sulos LLC - Renewable Energy Colation Fee	USD	3,435.50	572.58	
4/20/2020	044	Consultant fees	Sanger Thompson P/C - Consulting fee for community solar program for OR project	USD	7,500.00	1,250.00	
4/29/2020	050	Consultant fees	Leargas, LLC - Sulos Solar Co work Owner and Light Building - Project management support	USD	97,500.00	6,250.00	Yamhill_007
6/25/2020	031	Consultant fees	to Foley & Lardner LLP, NY#40225913 - Oregon Projects Professional service rendered regarding	USD	2,630.25	438.38	
7/7/2020	033	Land Lease fee	Sulos LLC - Pre-Annual lease Payment for Cork & Dover, Manchester, Waterford	USD	4,800.00	800.00	
7/29/2020	041	Interconnection fees	Paid to Portland General Electric co for interconnection design (Manchester)	USD	46,834.00	46,834.00	Yamhill_008
9/1/2020	029	Consultant fees	Marsh USA, Inc. - The insurance cost for Oregon Projects	USD	3,488.25	581.37	
10/1/2020	016	Consultant fees	Paid to Sanger Thompson P/C for advanced payment Oregon Cousu	USD	10,000.00	1,666.67	
10/22/2020	034	Engineering fees	Paid to E.S.S. LLC for building permit application (Manchester)	USD	14,000.00	14,000.00	Yamhill_009
11/25/2020	035	Consultant fees	Paid to Foley & Lardner LLP for consulting fee for Oregon	USD	6,893.40	1,148.90	
12/10/2020	035	Consultant fees	Paid to Marsh USA, Inc for insurance for the additional GL endorsement	USD	511.50	85.25	
1/7/2021	024	Consultant fees	Peter Coughlin - Invoice no: 0000075 wk ended Dec 18//25, 2020	USD	3,047.82	507.97	
1/13/2021	029	Consultant fees	Paid to G. Schwabe, Williamson & Wyatt P/C Depositor/ Account for ma	USD	56,469.11	9,411.52	Yamhill_023
1/29/2021	050	Consultant fees	Peter Coughlin for invoice no. 0000077 & 0000079 Week ended Jan 8	USD	5,217.08	1,036.18	
2/3/2021	012	Consultant fees	Paid to Sanger Thompson for solar cancellation Manchester	USD	3,349.50	3,349.50	Yamhill_026
2/23/2021	037	Consultant fees	Paid to Luminate for IE service	USD	145.50	24.25	
2/25/2021	041	Consultant fees	Paid to Peter Coughlin	USD	10,000.00	1,666.67	
3/9/2021	022	Consultant fees	paid to Novogradac for OR and HI portfolio appraisal report	USD	6,853.92	1,142.32	
3/22/2021	045	Consultant fees	Paid to Sanger Thompson for consulting fee	USD	22,750.00	3,791.67	Yamhill_028
3/22/2021	045	Consultant fees	Paid to Sanger Thompson for consulting fee	USD	3,780.20	3,780.20	Yamhill_027
3/22/2021	046	Consultant fees	Paid to Sanger Thompson for consulting fee	USD	8,335.70	1,389.28	
3/22/2021	046	Consultant fees	Paid to Luminate for IE service	USD	5125.50	920.92	
3/26/2021	048	Consultant fees	Paid to Peter Coughlin	USD	6,947.02	1,142.32	
4/19/2021	043	Consultant fees	Paid to Peter Coughlin	USD	3,426.96	571.16	

5/6/2021	010	Consultant fees	Paid to Sanger, Thompson, PC for Consulting fee	USD	3,423.20	570.53	
5/7/2021	013	Consultant fees	Paid to Novogradac Company, LLP	USD	0,000.00	1,666.67	Yamhill-029
5/12/2021	020	Consultant fees	Paid to Peter Coughlin	USD	6,853.82	1,142.32	
5/19/2021	029	Legal fees	Paid for Sulus LLC legal fee	USD	1,200.00	333.33	
5/20/2021	033	Consultant fees	Paid to Peter Coughlin for state renewal	USD	1,300.00	200.00	
6/4/2021	009	Legal fees	Paid to ADR Service for legal of Sulus	USD	3,750.00	625.00	
6/9/2021	015	Consultant fees	Paid to Peter Coughlin	USD	7,913.46	1,318.96	
6/9/2021	016	Legal fees	Paid to ADR Service for Sulus	USD	3,250.00	541.67	
6/23/2021	030	Consultant fees	Paid to Novogradac for OR and HI for appraisal report	USD	13,000.00	2,166.67	Yamhill-080
6/23/2021	032	Consultant fees	Paid to Centerline concepts land surveying update fee	USD	1,075.00	1,075.00	
6/23/2021	044	CMS acquisition fee	Paid to Common Energy for service fee	USD	7,801.73	1,300.29	
7/8/2021	022	Consultant fees	Paid to Peter Coug	USD	5,116.60	1,529.95	Yamhill-031
7/25/2021	Outstanding	Consultant fees	solar land lease agreement consulting service fee May res	USD	122,268.67	20,378.11	Allocation fee
8/2/2021	022	Consultant fees	Paid to Luminate for ISA report	USD	27,974.37	6,148.21	Yamhill-033
8/9/2021	059	Consultant fees	SPI Groups Holding paid to Baker, Bots for Oregon loan	USD	130,203.36	28,616.12	Yamhill-034
8/12/2021	034	Interconnection fees	Paid to Portland General Electric for interconnect mile 4 Manchester	USD	46,834.00	46,834.00	Yamhill-032
8/12/2021	035	Consultant fees	Paid to Peter Coug	USD	5,682.52	1,420.63	
8/16/2021	043	Consultant fees	Paid to Sanger, Thompson for consulting fee	USD	4,740.00	1,185.00	
8/19/2021	048	Consultant fees	Paid to Peter Coug	USD	2,930.80	747.70	
8/19/2021	048	Consultant fees	Paid to Peter Coug	USD	2,990.80	747.70	
10/7/2021	Outstanding	Consultant fees	solar project lending consultant fee	USD	249,188.42	41,531.40	Allocation fee
10/7/2021	Outstanding	Consultant fees	past legal service rendered, responsible by Jamie	USD	164,227.70	10,702.62	Allocation fee
10/15/2021	044	Consultant fees	Paid to Peter Coug	USD	2,990.80	747.70	
10/15/2021	045	Consultant fees	Paid to Peter Coug	USD	2,691.72	672.93	
10/21/2021	060	Legal fees	Paid to ADR Service for legal fee (Sulus)	USD	5,000.00	833.33	
11/9/2021	018	Consultant fees	Paid to Peter Coug	USD	2,691.72	672.93	
11/13/2021	019	Consultant fees	Paid to Peter Coug	USD	2,691.72	672.93	
11/22/2021	039	Consultant fees	Paid to Peter Coug	USD	2,691.72	672.93	
11/22/2021	040	Consultant fees	Paid to Peter Coug	USD	2,691.72	672.93	
11/22/2021	041	Legal fees	Paid to Schwab for Sulus Arbitration legal fee	USD	31,681.10	7,192.59	Yamhill-022
12/6/2021	002	Land Lease fee	Paid to Anthony for bi-annual rent fee (Manchester)	USD	1,634.63	1,634.63	Yamhill-025
12/21/2021	024	Consultant fees	Paid to Peter Coug	USD	4,486.20	1,121.55	
12/22/2021	026	Land Lease fee	Paid to Noele Hartford for Bi-annual rent fee	USD	1,634.63	1,634.63	Yamhill-024
1/28/2022	062	Consultant fees	Paid to Centerline Concepts Land Surveying, Inc	USD	1,260.00	1,260.00	Yamhill-010
1/31/2022	065	Consultant fees	Paid to Luminate LLC for IE Service	USD	9,789.46	1,631.58	Yamhill-011
1/31/2022	068	Consultant fees	Paid to Novogradac & Company LLP for OR and HI solar app	USD	9,750.00	1,625.00	Yamhill-012
2/9/2022	028	Consultant fees	Paid to Sanger Law P.C	USD	3,258.00	543.00	
2/9/2022	029	Legal fees	Paid to Ball Janik LLP for Attorney's fee for land use permit	USD	1,400.00	1,400.00	Yamhill-013
2/11/2022	034	Consultant fees	Paid to Marsh & McClean Agency LLC for insurance	USD	4,357.75	726.29	
3/10/2022	013	Consultant fees	Paid to Luminate LLC for IE Service	USD	457.00	76.17	
3/14/2022	022	Land Lease fee	Paid to Anthony Hartford for Bi-annual rental fee	USD	2,618.30	2,618.30	Yamhill-014
3/25/2022	041	Land Lease fee	Paid to Noele Hartford for Bi-annual rent fee	USD	2,618.30	2,618.30	Yamhill-015
4/5/2022	006	Legal fees	Paid to Haglund Kelley LLP for Sulus legal	USD	32,038.50	5,339.75	Yamhill-016
4/26/2022	053	Legal fees	Paid to Ball Janik for Manchester CUP Renewal Litigation	USD	6,950.96	6,960.96	Yamhill-017
5/4/2022	Outstanding	Engineering fees	Manchester PSA payment for Building permits #3	USD	24,000.00	24,000.00	
5/6/2022	010	Legal fees	Paid to Ball Janik for Manchester Retainer to CUP Appeal	USD	25,000.00	25,000.00	Yamhill-018
5/26/2022	044	Engineering fees	Paid to ESS LLC for PSA building permit of Manchester	USD	24,000.00	24,000.00	Yamhill-035

6/30/2022	059	SPI project acquisition fee	adjust. Sullus MIPA cost of Manchester	USD	54,700.00	54,700.00	Yamhill-019
6/30/2022	060	SPI project acquisition fee	Sullus settlement of Manchester	USD	176,537.92	176,537.92	Allocation fee
7/18/2022		Consultant fees	Paid/Bak Jankki LLP for manchester	USD	31,005.00	31,005.00	Yamhill-021
8/3/2022		Land/Lease fee	Paid to Cindy Christenson	USD	5,265.53	5,265.53	Yamhill-036
9/10/2022	Outstanding	Consultant fees	Payment of Termination term sheet	USD	188,051.88	31,341.98	Allocation fee
9/10/2022	Outstanding	Consultant fees	past legal service rendered	USD	45,332.33	7,555.33	Allocation fee
9/10/2022	Outstanding	Consultant fees	#265519 professional service rendered	USD	28,097.63	3,849.61	Allocation fee
9/15/2022	Outstanding	Consultant fees	DR and HI solar portfolio appraisal report #10533905_10536	USD	21,808.33	7,269.44	Allocation fee
9/30/2022	Outstanding	Engineering fees	Change orders #1 for module change updates Manchester	USD	13,252.00	13,252.00	
10/25/2022	Outstanding	SPI project acquisition fee	Adjustment to Sullus payment	USD	200,000.00	33,333.33	Allocation fee
10/25/2022	Outstanding	Consultant fees	Desktop Review Cultural ORBIC IPAC OARRA (Manchester)	USD	1,425.00	1,425.00	
	Outstanding	Consultant fees	Other Deposits-Seminole Financial Services	USD	55,000.00	9,166.87	Allocation fee
	Total				2,365,627.81	1,022,096.32	

1,022,096.32



To Yamhill County Official,

Evergreen Solar Services is the EPC being contracted to construct the Manchester Solar project. Capital construction costs (materials and labor) for the Manchester Solar project are estimated at .74 cents per watt DC. The project is designed to be 2.544 MW DC, thus the total last estimated capital construction costs is \$1,881,838.00

Thanks,

Jacob Stephens/Member

YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
STAFF REPORT

---

**DATE:** November 27, 2018

**DOCKET NO.:** C-27-18/SDR-34-18

**REQUEST:** Conditional use and site design review for a solar power generation facility consisting of approximately 10 acres. The proposed solar power generation facility is located within the Exclusive Farm use zoned area of the parcel.

**APPLICANT:** Manchester Solar, LLC

**OWNER:** Anthony & Noele Hartford

**TAX LOT:** 4315-700

**LOCATION:** 18100 SE Neck Road, Dayton

**ZONE:** EF-80, Exclusive Farm Use

**CRITERIA:** Sections 402.04(M), 402.07(A and D), 1101.02 and 1202.02 of the *Yamhill County Zoning Ordinance*. Comprehensive Plan policies may also be applicable. Agricultural Lands rules under OAR 660-033-0130(38).

**COMMENTS:** *County Engineer:* No response to date.  
*Dayton Rural Fire District:* No response to date.  
*Department of Agriculture:* No response to date.  
*Department of State Lands:* No response to date.  
*DLCD:* No response to date.  
*Public Health:* No response to date.  
*City of Dayton:* No response to date.  
*Soil & Water Conservation District (SWCD):* No response to date.  
*Jane Baer, 29740 SW Mill Creek Road, Sheridan* – See letter submitted on October 22<sup>nd</sup>, 2018.  
*Steve Quimby, 19200 SE Neck Road, Dayton; October 22<sup>nd</sup>, 2018* — My only concern is that it does not effect [*sic*] the irrigation easement (recorded) on the SE side of the property.  
*Friends of Yamhill County* — See letter submitted on October 29<sup>th</sup>, 2018.  
*Ximena Orrego & Guy Insley (Atticus Wine), 20501 Russell Creek Road, Yamhill* — See letters submitted on October 29<sup>th</sup>, 2018.

**FINDINGS:**

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Docket C-27-18, Manchester Solar, LLC

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**A. Background Facts**

1. *Parcel Size and Request:* The parcel is approximately 27.1 acres in size. The parcel is relatively flat with little discernable slope. The applicant intends to use 10 acres 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 will consist 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. According to the applicant, none of the proposed developments will exceed 12 feet in height when ground mounted. The site plan also proposes the necessary access and safety features including access roads, perimeter roads and fencing. The proposed photovoltaic modules are supported by stationary piles driven up to 10 feet into the ground.
2. *Access:* The applicant indicates that, if approved, a new driveway would be constructed with service from SE Neck Road. This new driveway would be used for mobilization, construction, demobilization, and maintenance of the proposed solar facility.
3. *On-Site Land Use:* The property is currently dedicated to grass seed production, and these farming activities are conducted by a lessee. The applicant identified the proposed location of the solar facility in conjunction with the property owner to ensure the remaining acreage may continue to be farmed. There is a farm building located along the southern property line. There is a dwelling located on the parcel, near the eastern property line, along with a garage and accessory building.
4. *Surrounding Land Use and Zoning:* The adjacent parcels are all zoned for Exclusive Farm use, EF-80. The surrounding parcels are predominantly dedicated to commercial agricultural uses including grass seed and hay production and filbert orchards. The adjacent parcel to the southwest contains the Yamhill Landing Park. The proposed solar facility is located approximately 1 mile to the east of City of Dayton, as the crow flies.
5. *Soils:* The Natural Resources Conservation Service (NRCS) map and accompanying documents submitted by the applicant, indicate that the parcel consists of predominantly high-value soils and is therefore considered high-value farmland. The applicant's soils map indicates that approximately 66.8% of the parcel is composed of Aloha silt loam, at 0 to 3 percent slopes, a Class II soil; approximately 22.6% of the parcel is composed of Woodburn silt loam, at 12 to 20 percent slopes, a class III soil; approximately 2.3 % of the parcel is composed of Verboort silty clay loam, at 0 to 3

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percent slopes; and the remainder of the parcel is composed of Woodburn silt loam, at 20 to 55 percent slopes, which is not classified as high value soil.

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:* Dayton Rural Fire District.
9. *Overlay Districts:* Based on a review of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41071C0435D, the subject property is not located within an identified 100-year floodplain. There are no identified historic sites or airport overlay district associated with the property. The Willamette River Greenway is congruent with the parcel's southern property line.

**B. Conditional Use Provisions and Analysis**

1. The list of conditional uses in the EF-80 zone includes Section 402.04(M) which states:

*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 applicant's request is for a commercial solar power facility which will sell this energy to the local electricity utility company. 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) 660-033-130(38).

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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*

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*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 is proposing the development of a 10 acre commercial solar power generating facility and related ancillary uses, including solar panels, inverter sheds, electrical equipment, fencing, an unknown number of aluminum support piles driven 10 feet into the ground, as well as 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 Zoning Site Plans, that the proposed facility would consist of no more than 12 acres, the applicant is requesting a 10-acre solar facility, therefore, an exception pursuant to ORS 197.732 and OAR chapter 660, division 4 would not be required. If approved, staff would recommend a condition of approval stating that the solar facility shall be established in the location and to the size depicted in the applicant's site plan.

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 states that the 10-acre project area has been 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. The neighboring farm uses include grass seed and hay production as well as nut orchards. The applicant states that, once in place, the facility will not discharge aerosols or water that could have a negative impact to neighboring farm uses. The applicant states that there will be limited traffic during construction, and presumably, during the decommissioning of the facility. The applicant proposes coordination with the Yamhill County Road Department, and this shall be condition of approval. The applicant indicates that the remainder of the farmable land will continue to produce grass seed. The proposed project area will encompass 10-acres of the parcel's approximately total area of 27.1 acres. The applicant states that, once installed, the proposed solar facility will have no negative impacts on neighboring parcels or on any farm or forest practices conducted thereon. The applicant states that there will be no impacts to air or noise quality, nor will there be any glare issues as a consequence of the installation. The applicant goes on to state that they will abide by the weed control and soil erosion and compaction plans

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submitted with the application. A condition of approval will require the applicant to sign a deed restriction that will protect the rights of accepted farm practices on adjacent lands in order to assure that the proposed solar facility does not curtail or impede accepted farm or forest operation on neighboring parcels.

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;*

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. The state statutes take into consideration and require the imposition of conditions on solar facilities which address soil erosion and compaction, weed control, and the rights of adjacent agricultural operations consistent with accepted farm practices. The applicant discusses soil erosion in Appendix 5, submitted on July 31<sup>st</sup>, 2018. The applicant submitted a Soil Erosion and Compaction Control Plan (hereafter referred to as the SECCP) which provides site specific soil compaction mitigation strategies. The applicant indicates that the parcel is composed of soils that range in soil erosion hazard rating from "slight" to "severe". The SECCP provides a number of erosion mitigation measures including, but not limited to, the preservation of existing vegetation, re-vegetating disturbed soils, mulching seeded areas, stockpiling of stripped topsoil, dust control, and the temporary stabilization of soils until the new vegetative cover is successfully established.

Section 3.0, of Appendix 5, considers the risk of soil compaction within the proposed solar facility site. The applicant indicates that on-site soils have a low to moderate soil compaction resistance and are prone to compaction due to clay content in each of the soil types present on the property. The SECCP proposes a number of soil compaction mitigation measures including the avoidance and minimization of equipment traffic on-site when the soils are saturated (i.e., during the rainy season), that traffic to keep to the designated access road, that tires are properly inflated, and

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that the applicant should avoid using oversized equipment. The applicant further acknowledges that in some cases there is some soil compaction that is unavoidable. The applicant states that soil compaction will occur in areas where the topsoil has been removed and backfilled, on ground utilized for the staging and use of construction equipment, and in areas that were trenched for the placement of underground conduits, pipes, and wires. The applicant states that soil compaction will be remediated by plowing or subsoiling techniques and replanted with deep rooted vegetation, where possible. The applicant further states that these remediation techniques are best conducted when soils are unsaturated and that these activities will avoid inversion, or the mixing of topsoil and subsoil.

Taking the applicant's SECCP into account, staff will place a condition of approval that the proposed installation of the solar facility shall not occur during the rainy season when soils are saturated and therefore more prone to erosion and soil compaction, and that the applicant has indicated that erosion and soil compaction mitigation and remediation measures are more ideally suited to times when the soil is not saturated.

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, hereafter referred to as the WCP, prepared for the applicant by Environmental Planning Group, LLC. The WCP submitted by the applicant presents best management practices that will be employed during and after construction to prevent the introduction or spread of noxious weeds. The applicant's WCP contains a list of weed species that could potentially colonize disturbed soils in the area. The applicant's consultants indicate that the property is currently devoid of any known noxious weeds. The applicant notes that the proposed construction activities are when the risk for the introduction and propagation of weeds and invasive species is greatest. The WCP states that construction crews will be provided with weed identification information published by the Oregon Department of Agriculture to assist work crews with identifying potential weeds. The WCP states that construction crews will be responsible for inspecting and washing construction equipment to ensure no seeds or pods are present that could lead to colonization of noxious weeds on the parcel. The applicant suggests several post-construction restoration guidelines to mitigate for the introduction and spread of weeds. Specifically, the applicant suggests the uniform application of a customized local seed mix selected in coordination with the Jenny Meisel, the Resource Conservationist for

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the Marion County Soil and Water Conservation District, during the construction and rehabilitation phases of development to provide active competition against any noxious weeds that may already be established onsite, and to compete with weeds that may be introduced while the ground is disturbed. If construction occurs during the dry summer or autumn months the seeds may need to be irrigated. The applicant also states a willingness to have inspections conducted by a biologist with local (Willamette Valley) ecosystem knowledge twice per year, in the spring and autumn. Staff believes this recommendation by the applicant to be a sensible condition of approval. The applicant also suggested some long-term maintenance strategies including the manual removal of weeds, mowing, planting shrubs to outcompete certain noxious weeds, mowing, livestock grazing, or the least preferred option of herbicide application by a certified professional. The applicant notes that these long term maintenance activities will be recorded in a log book documenting the date of inspection and weed maintenance. The applicant states a willingness to share with the planning department a report prepared annually, or to another standardized schedule (monthly, quarterly, or bi-annually), regarding 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. Staff believes the annual review of the Weed Management Plan report will ensure that the presence of noxious weeds is being sufficiently addressed. The annual submission of the Weed Management Plan report to the county Planning Department will be a condition of approval.

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:*

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*(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 is proposing to develop the solar facility on the portion of the parcel that contains high-value soils. The applicant states that the proposed location for the solar facility will remove 10-acres of established grass seed and hay production from the total 27.1 acre parcel. The applicant has indicated that the remaining farm land will continue to be used for farming. The surrounding land uses were discussed in section A.4. of this staff report. The land use within the larger 1-mile area from the centroid of the parcel is predominantly dedicated to farm use, with fruit and nut trees, and grass seed and hay production being the most common farm operations within this study area. The 1-mile study area also encompasses a neighborhood within the City of Dayton, the Yamhill River, as well as the Willamette River. There are no additional solar facilities approved or in place within the 1-mile 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.*

In order to ensure the condition in OAR 660-033-0130(38)(j) above has not been sufficiently addressed in the application materials submitted. Staff recommends a condition of approval that, at the end of the solar project's lifespan, the operator of the solar facility project shall completely remove the solar panels, all related infrastructure and equipment, and shall provide the County with a bond or other security instrument which imposes on Manchester Solar, LLC the responsibility for retiring the solar facility. The applicant initially acknowledged and accepted

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responsibility for the retirement of the facility. Staff believes that a bond or guarantee assuring that the applicant, who is requesting a conditional use permit to establish a solar facility on land under ownership of a third party, is a reasonable condition to place on the applicant to ensure the safe and timely removal of the solar panels and all other ancillary equipment associated with the proposed solar facility. Additionally, the Oregon Administrative Rules above, chapter 660 division 033 subsection 0130(38)(j), explicitly empowers a county to require a decommissioning bond or other security measure to ensure the photovoltaic solar power generation facility is retired at the end of its operational lifecycle. The applicant is willing to accept a condition of approval for the decommissioning and retirement of the facility. The applicant shall submit a final decommissioning estimate, prepared by a licensed professional engineer that does not include the projected salvage value of the solar facility materials prior to the issuance of any requisite building and electrical permits.

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.

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

Regarding criterion 1202.02(B), even though the majority of the Yamhill County Goals and Policies are aspirational and not to be mistaken for, or treated as, approval criteria it is required that they be considered. It is a fact that some of the goals and policies conflict with one another. They are simply to be used as a guide to aid decision makers. For example, where goals or policies conflict the decision makers need to weigh the evidence and decide which goal or policy the request best satisfies. The prominent Goals and Policy from Section VI. Energy Conservation includes:

*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.*

It is pretty clear that the proposed solar facility would satisfy the above Goal and Policy regarding the promotion of renewable solar energy resources, albeit with the

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sacrifice of the Goal and Policy related to the preservation of high-value Agricultural Lands.

Since the application is for the use of high value farmland to locate an alternative energy site, the prominent Goal and Policy from Agricultural Lands are required to be considered. The summary prior to the goals and policies contains the following guidance:

*Agriculture plays an integral role in the overall economy of the county.*

*A significant amount of land within the county has soils which are defined as having high quality agricultural capability.*

*The need to maintain the integrity and viability of the agricultural land base has been clearly recognized by Yamhill County residents.*

...

*In addition to agriculture's important role in the economy of the county, vast expanses of farm land provide county residents with scenic open space which contributes to their overall health and welfare.*

The prominent Goal and Policy from Agricultural Lands:

*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 as identified in the Capability Classification System of the U.S. Soil Conservation Service.*

The use of the site will take approximately 10 acres of high-value soils out of production for a significant amount of time, likely for multiple decades. The applicant addresses this goal and policy by suggesting that the productivity of the soils located within the project area will be preserved through the implementation of the proposed Soil Erosion and Compaction Control Plan (SECCP), and the Weed Control Plan (WCP). The applicant's erosion control plan indicates that straw bales, hay coil logs, run-off channels, silt fencing, and sediment basins are the mitigatory measures under consideration to minimize the risk of soil loss due to erosive forces. The applicant acknowledges that the Oregon Department of Environmental Quality (DEQ) may require additional permitting. A condition of approval will require that

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the applicant attain all required state and county permits prior to operation of the solar facility.

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 proposed site of the solar facility is on a parcel measuring approximately 27.1 acres. The parcel is of sufficient size to support a solar facility of 10 acres. The applicant will establish an access road connecting with Neck Road that will serve as the maintenance road to the proposed solar facility. The area the applicant identified as the proposed solar facility has a gentle southerly slope which will provide the most efficient area for the installation of the panels and allow the applicant to maximize the density of panels to be installed onsite. The remainder of this parcel will be suitable for continuing the commercial farming operations conducted on the parcel. Once in place, the proposed solar facility will not require the development of any new improvements to the parcel. 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 surrounding area is zoned Exclusive Farm Use, EF-80, and are dedicated to commercial agricultural uses including grass seed and hay production as well as fruit and nut orchards. The only comment or concern submitted by a neighboring property owner was by Steve Quimby. Mr. Quimby's concern is that the proposed establishment of the solar facility does not affect the irrigation easement recorded and in place on the southeastern side of the property. The Planning Department has no jurisdiction over easements. An easement is a civil agreement which does not require land use approval.

The properties adjacent to the applicant's parcel are predominantly dedicated to commercial farming operations (grass seed and hay production, fruit and nut orchards). The applicant states that the proposed facility will be passive and unoccupied once completed. The applicant states that the facility, once in place, will not impact air or noise quality nor will there be any glare issues. There is nothing in the record to suggest that the applicant's proposed facility, as sited, will substantially limit, impair, or prevent the permitted residential, farming, or commercial uses on the surrounding parcels.

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In response the applicant paraphrases the conditional use criterion stating:

“The proposed solar farm will not alter the character of the surrounding area in a manner that would limit, impair or prevent the use of surrounding properties. See also the findings in response to YCZO 402.07(A), above.”

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 Dayton Rural Fire Department, and no comments or concerns were submitted by the Dayton Fire Department. The proposed use does 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 once the facility is established. The applicant has stated a willingness to coordinate with the county road department during the mobilization and demobilization phases of the facility's lifecycle, which will be a condition of approval. The county public works department was notified of the proposed use and did not submit any concerns or comments to the planning department. With conditions the proposed use appears to satisfy criterion 1202.02 (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 in Findings B. 11, and B. 12. of this staff report, the applicant has stated that the location of the 10-acre facility will not impact or conflict with existing or allowable farm, forest, or rural residential uses on neighboring properties. The applicant has indicated that the proposed use will not increase demand on existing public facilities or services.

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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 subject is located in the Exclusive Farm use, EF-80 zone. The surrounding parcels are predominantly dedicated to commercial farm uses including hay and grass seed production and nut or fruit orchards. As indicated in Findings B. 4., B. 11., and B. 12. above, the applicant has stated that once the proposed solar facility is established there are no emissions generated that could impact neighboring residential, farm, or commercial activities. The applicant has acknowledged that there is a risk of noxious weed propagation onsite, as well as soil erosion and compaction, and the applicant has submitted plans for mitigating these risks and ensuring there are no impacts to neighboring parcels. The applicant has stated a willingness to record an affidavit which recognizes the rights of adjacent agricultural operations consistent with accepted farm practices pursuant to OAR 660-033-0130(38)(i), and this requirement shall be a condition of approval.

**C. Site Design Review Criteria**

1. Section 1101 for Site Design Review requires consideration of the following factors in the review of site development plans:

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

Regarding criterion 1101.02(a) above, staff has addressed this in Section A.4 and B.14 of this report.

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

Regarding criterion 1101.02(b) above, the applicant addresses this criterion in the application, stating that the construction and operation of the solar facility may provide short-term employment opportunities during the mobilization and demobilization phases of development, as well as income to the property owner, and increased tax revenues to the County. The applicant notes that the proposed solar facility will add \$10,000 in tax revenue per year for Yamhill County.

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

Regarding criterion 1101.02(c), access to the property will be provided by the development of a new driveway which will be used to facilitate the mobilization and demobilization phases of development in addition to the maintenance activities conducted during the multi-decadal lifespan of the solar facility. The applicant acknowledges that a driveway permit must be acquired from the county road department. The applicant states that the proposed driveway and access will be built to county and Dayton Fire Department standards. The proposed site is located in an open field that has been used for grass seed and hay production. As noted in Findings B. 10., B.12., and B. 14. above, the applicant will coordinate with county road department to effectively and safely manage the projected increase in traffic during the mobilization and demobilization phases of development. This coordination with the county road department will be a condition of approval. Once the solar facility has been established there will minimal visits to the site by maintenance workers and by the biologist who will visit the site to evaluate the effectiveness of the noxious weed management plan. With conditions, the parcel is of sufficient size for appropriate internal circulation of traffic and is large enough to provide parking for the periodic visits by staff.

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

Regarding criterion 1101.02(d), as addressed in Findings B. 3., B. 4., B. 5., B. 12., and B. 14. above, the applicant states that construction activities during installation are 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 approximately 900 feet from the nearest off-site residence and is buffered on all sides by either grass seed fields, by the Willamette River and adjacent riparian vegetation, or by established stands of timber. The application indicates 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. The applicant indicates that a minimal degree of noise may be heard outside of the fenced area. The applicant maintains that these sound levels are not expected to be distinguishable above quiet rural sound levels at a distance of the nearest adjacent properties. The applicant is proposing the installation of a security fence around the perimeter of the facility. Staff believes it would be appropriate to require, as a condition of approval, that the security fence include sight obscuring slats or other sight obscuring material and be a minimum of six (6) feet in height.

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

Regarding criterion 1101.02(e) above, this criterion has been addressed in Section B.10. of this staff report. As indicated earlier, there are no natural features, aside from high value farmland, that will be removed or diminished by the establishment of the proposed solar facility.

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

Regarding criterion 1101.02(f) above, there have been no hazard areas identified on this parcel.

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

Regarding criterion 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. The only comment received by staff, from a surrounding property owner, was addressed in Section B.11. of this staff report. This neighboring property owner would like to ensure that the proposed solar facility would not negatively impact an existing irrigation easement. As mentioned in Section B.11. of this staff report, easements are civil agreements that do not require land use approval and are not under the jurisdiction of the county Planning Department. The Planning Department also received comments from Friends of Yamhill County and other residents of Yamhill County who oppose solar facilities but who are not directly or personally impacted by the applicant's proposed solar facility, in this location.

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**CONCLUSIONS FOR APPROVAL:**

1. The proposed solar facility is listed as a conditional use in the Exclusive Farm Use zone subject to site design review approval and is limited to no more than 12 acres when it is located on high-value farmland. The applicant's request is for a 10 acre solar facility.
2. With conditions, the request is consistent with the conditional use approval criteria of Section 1202.02 and 402.07 of the *Yamhill County Zoning Ordinance* and OAR 660-033-0130(38).
3. With conditions, the request is consistent with the site design review standards in Section 1101.02 of the *Yamhill County Zoning Ordinance*.

**DECISION:**

In reference to your application for conditional use and site design review for a 10-acre commercial solar facility on Tax Lot 4315-700, has been approved with 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 location and to the size described in the application and depicted on the site plan submitted with the application (Appendix 2). The total area occupied by the solar facility shall not exceed 10 acres.
2. Prior to the issuance of building permits the applicant shall submit, to the Planning Director, a contract for long-term weed control maintenance and review by a biologist with local (Willamette Valley) ecosystem knowledge. In addition, the applicant shall implement the Soil Erosion and Compaction Control Plan (Appendix 5) and Weed Control Plan (Appendix 6) as reviewed in this application.
3. The applicant shall submit the biannual report prepared by a biologist regarding the implementation of the Weed Control Plan (Appendix 6), including the submission of a copy of the applicant's weed mitigation log book. The applicant shall fully comply with the best practices outlined in the Weed Control Plan.
4. Prior to the issuance of building or electrical permits, the applicant shall install sight obscuring fencing, measuring at least 6 feet in height, around the perimeter of the solar facility.

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5. Prior to the issuance of building or electrical permits, the applicant shall satisfy any Oregon Department of Environmental Quality (DEQ) permitting requirements
6. Prior to the issuance of building or electrical permits for the solar facility, the applicant shall submit an engineered drainage plan showing that no natural drainage is disturbed by any of the proposed activities and construction taking place on the parcel and that the runoff due to soil compaction and the establishment of the infrastructure required directly for, or in support of, the solar facility can be carried by the existing drainage system. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval. Any required improvements to the drainage system shall be done at the expense of the applicant.
7. Prior to issuance of building or electrical permits, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it 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 the 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."**
8. 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.
9. Any lighting for the facility shall be shielded, deflected, or directed on the applicant's property, so it does not shine onto adjacent parcels.
10. Construction activities shall not take place between the months of November through February.
11. Mobilization and construction activities shall take place between the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday.

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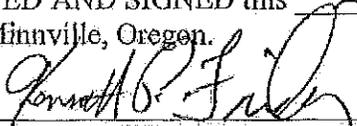
12. Prior to any development, the applicant shall obtain all required local, state and federal permits. The applicant shall obtain all necessary permits from the Building Department and the Public Works Department. These permits may include, but are not limited to building and electrical permits from the Building Department and a new or amended access permit from the County Public Works Department.
13. Prior to the sale of the rights to build this solar facility to a third party, the applicant and new prospective owner shall meet with the Planning Director to review the conditions of approval.
14. The owner of the solar facility shall submit a report, to the Planning Director, by January 2<sup>nd</sup> of each year showing the amount of power generated from the facility during the previous year.
15. 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. The materials shall be disposed of according to local, state, and federal regulations regarding safe handling of such items. Ultimately, the applicant is responsible for ensuring the agricultural land occupied by the solar facility can be returned to an agricultural use or other allowed use.
16. Prior to issuance of building or electrical permits, the applicant shall provide to the County a performance guarantee in a form described in Section 1202.04 of the *Yamhill County Zoning Ordinance* and 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. These estimates may not account for any projected salvage value from decommissioned materials from the solar facility. 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. The guarantee shall be adjusted yearly based on the Western Region Consumer Price Index.
17. This approval shall expire two years from the date of this letter unless the use has been initiated.

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18. 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 with the process detailed in Sections 1101.07, 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance* or revocation of the site design review as detailed in Section 1101.07 of the *Yamhill County Zoning Ordinance*.

DATED AND SIGNED this 27<sup>th</sup> day of November, 2018, at  
McMinnville, Oregon.

  
Kenneth P. Friday, Planning Director  
Yamhill County Planning and Development

KF:lw