

For Recording Stamp Only



Deschutes County Board of Commissioners  
1300 NW Wall St., Bend, OR 97703-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

---

**MINUTES OF THE BUSINESS MEETING**  
**DESCHUTES COUNTY BOARD OF COMMISSIONERS**

**MONDAY, OCTOBER 19, 2015**

Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

---

*Present were Commissioners Anthony DeBone, Alan Unger, and Tammy Baney. Also present were Tom Anderson, County Administrator; Erik Kropp, Deputy County Administrator; Chris Schmoyer, Community Development; and David Doyle, County Legal Counsel*

*Chair DeBone called the meeting to order at 10:00 a.m.*

---

- **PLEDGE OF ALLEGIANCE**
- **CITIZEN INPUT**

**William Kuhn:** Requested to speak regarding the Tumalo winter deer range and County process. He stated three items have been on the County's docket: text amendment and appeal of hearings officer's decision and appeal of property taxes. He stated that in June the Community Development Department agreed that the hearings officer's appeal would be held in September and then he would be in a position of whether or not to withdraw or appeal. Mr. Kuhn reported he has been informed it might not be until January. He commented since the appeal hasn't been heard and no response has been received, he has to

go ahead with the appeal on his property taxes and will prepare several subpoenas. Mr. Kuhn inquired if County Legal Counsel will be receiving the subpoenas for the various county personnel. County Counsel Doyle responded that Assistant County Counsel John Laherty will contact Mr. Kuhn.

**Frank Izzo and Jeff Izzo:** Approached the Commissioners stating there was information all over the internet that the appeal process for the solar farms would not be held. Chair DeBone noted there is a public hearing scheduled on this matter.

**3. PUBLIC HEARING** on Appeal of the Hearing Officer's Decision regarding Solar Photovoltaic Array (Solar Farms) Proposals East of Bend

Chris Schmoyer, Community Development Department, noted a written request to withdraw all three appeals was received just before 10:00 this morning. He stated that in the event of the withdrawal the appeal proceedings shall terminate on the date received. Peter Gutowsky, Community Development Department noted there were three appeals and Ms. Jensen appealed both of hers and Mr. Cain appealed his. Those appeals were timely received and both had the option of hearing and that today was the scheduled public hearing on that matter. He pointed out that procedurally, the Board is unable to hear any testimony at this point even if there is significant interest and the hearings officer decision is final. County Counsel Dave Doyle noted the Board's jurisdiction in this matter is expired here through that procedural process.

**CONSENT AGENDA:**

Commissioner Baney stated she did not have an opportunity to review the listed minutes. Commissioner Unger asked to pull Item #1 from the Consent Agenda for discussion.

**1. Consideration of Board Signature,** Document No. 2015-676 Warranty Deed Conveying the Design Center Property in Redmond from Deschutes County to John Keifer

Commissioner Unger expressed his opinion that he is glad this building was placed back on the market. Commissioner Baney noted that after review of the property it was best decided to sell it and invest the money back into other areas to best serve the community.



UNGER: Move Board Signature of Document No. 2015-676, Warranty Deed Conveying the Design Center Property in Redmond from Deschutes County to John Keifer.

BANEY Second.

VOTE: UNGER: Yes.

BANEY: Yes.

DEBONE: Chair votes yes.

## **2. Approval of Minutes**

- Work Session Minutes of September 9, 2015, September 30, 2015, and October 5, 2015

## **CONVENE AS THE GOVERNING BODY OF THE 9-1-1 COUNTY SERVICE DISTRICT**

- **Before the Board was Consideration of Approval** of Weekly Accounts Payable Vouchers for the 9-1-1 County Service District in the amount of \$20,815.50

UNGER: Move approval, subject to review

BANEY: Second

VOTE: UNGER: Yes

BANEY: Yes

DEBONE: Chair votes yes

## **CONVENE AS THE GOVERNING BODY OF THE EXTENSION/4-H COUNTY SERVICE DISTRICT**

- **Before the Board was Consideration of Approval** of Weekly Accounts Payable Vouchers for the Extension/4-H County Service District in the amount of \$188.42

UNGER: Move approval, subject to review

BANEY: Second

VOTE: UNGER: Yes

BANEY: Yes

DEBONE: Chair votes yes

**RECONVENE AS THE DESCHUTES COUNTY BOARD OF COMMISSIONERS**

- **Before the Board was Consideration of Approval** of Weekly Accounts Payable Vouchers for Deschutes County in the amount of \$593,344.74

UNGER: Move approval, subject to review

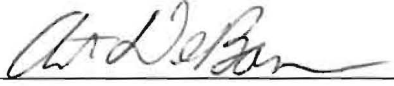
BANEY: Second

VOTE:        UNGER: Yes  
               BANEY: Yes  
               DEBONE: Chair votes yes

**ADDITIONS TO THE AGENDA:** *None were offered*

*Being no other items brought before the Board, the meeting was adjourned at 10:14 a.m.*

**DATED this** 23<sup>rd</sup> **Day of** November **2015 for the**  
**Deschutes County Board of Commissioners.**

  
\_\_\_\_\_  
Anthony DeBone, Chair

  
\_\_\_\_\_  
Alan Unger, Vice Chair

  
\_\_\_\_\_  
Tammy Baney, Commissioner

ATTEST:

  
\_\_\_\_\_  
Recording Secretary



Deschutes County Board of Commissioners  
1300 NW Wall St., Bend, OR 97703-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

---

## **BUSINESS MEETING AGENDA**

### **DESCHUTES COUNTY BOARD OF COMMISSIONERS**

**10:00 A.M., MONDAY, OCTOBER 19, 2015**

Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

---

#### **1. PLEDGE OF ALLEGIANCE**

2. **CITIZEN INPUT:** *This is the time provided for individuals wishing to address the Board, at the Board's discretion, regarding issues that are not already on the agenda. Please complete a sign-up card (provided), and give the card to the Recording Secretary. Use the microphone and clearly state your name when the Board calls on you to speak.*

*PLEASE NOTE: Citizen input regarding matters that are or have been the subject of a public hearing will NOT be included in the official record of that hearing.*

3. **PUBLIC HEARING** on Appeal of the Hearing Officer's Decision regarding Solar Photovoltaic Array (Solar Farms) Proposals East of Bend – *Chris Schmoyer, Community Development Department*

#### **CONSENT AGENDA:**

1. **Consideration of Board Signature**, Document No. 2015-676 Warranty Deed Conveying the Design Center Property in Redmond from Deschutes County to John Keifer
2. **Approval of Minutes**
  - Work Session Minutes of September 9, 2015
  - Work Session Minutes of September 30, 2015
  - Work Session Minutes of October 5, 2015

## **CONVENE AS THE GOVERNING BODY OF THE 9-1-1 COUNTY SERVICE DISTRICT**

- **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for the 9-1-1 County Service District

## **CONVENE AS THE GOVERNING BODY OF THE EXTENSION/4-H COUNTY SERVICE DISTRICT**

- **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for the Extension/4-H County Service District

## **RECONVENE AS THE DESCHUTES COUNTY BOARD OF COMMISSIONERS**

- **CONSIDERATION of Approval** of Weekly Accounts Payable Vouchers for Deschutes County

## **ADDITIONS TO THE AGENDA**

---

To watch this meeting on line, go to:

**<http://www.deschutes.org/bcc/page/board-meeting-videos>**

Please note that the video will not show up until recording begins.

You can also view past meetings on video by selecting the date shown on the website calendar.

---



Deschutes County encourages persons with disabilities to participate in all programs and activities. To request this information in an alternate format please call (541) 617-4747, or email [ken.harms@deschutes.org](mailto:ken.harms@deschutes.org).

---

PLEASE NOTE: At any time during this meeting, an executive session could be called to address issues relating to ORS 192.660(2) (e), real property negotiations; ORS 192.660(2) (h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2) (b), personnel issues; or other executive session items.

---

## **FUTURE MEETINGS:**

*(Please note: Meeting dates and times are subject to change. All meetings take place in the Board of Commissioners' meeting rooms at 1300 NW Wall St., Bend, unless otherwise indicated. If you have questions regarding a meeting, please call 388-6572.)*

Monday, October 26

- 10:00 a.m. Board of Commissioners' Business Meeting  
1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, October 28

- 10:00 a.m. Board of Commissioners' Business Meeting  
1:30 p.m. Administrative Work Session – could include executive session(s)

Thursday, October 29

- 11:00 a.m. HR Department Update – Allen Conference Room

Monday, November 2

- 10:00 a.m. Board of Commissioners' Business Meeting  
1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, November 3

- 1:30 p.m. Department Update – 9-1-1, at 9-1-1  
3:30 p.m. Regular Meeting of the Public Safety Coordinating Council

Wednesday, November 4

- 10:00 a.m. Board of Commissioners' Business Meeting  
1:30 p.m. Administrative Work Session – could include executive session(s)

Thursday, November 5

- 3:00 p.m. Joint Meeting with Fair Board, at **Fair/Expo Conference Room**

Tuesday, November 10

- 6:00 p.m. Joint Meeting with Redmond City Council, at **Redmond City Hall**

Wednesday, November 11

*Most County offices will be closed to observe Veterans' Day.*

Tuesday, November 17

10:00 a.m. Meeting of 911 Executive Board **at 911**



Deschutes County encourages persons with disabilities to participate in all programs and activities. To request this information in an alternate format please call (541) 617-4747, or email [ken.harms@deschutes.org](mailto:ken.harms@deschutes.org).



## BOARD OF COMMISSIONERS' MEETING

### REQUEST TO SPEAK

Agenda Item of Interest # 2 Date 20151019.1

Name William Kuhn

Address Re Process

Phone #s \_\_\_\_\_

E-mail address \_\_\_\_\_

☐ In Favor ☐ Neutral/Undecided ☐ Opposed

Submitting written documents as part of testimony? ☐ Yes ☐ No



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

---

## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of 10/19/15**

---

*Please see directions for completing this document on the next page.*

**DATE:** October 14, 2015

**FROM:** Chris Schmoyer                      Community Development Department                      317-3164

**TITLE OF AGENDA ITEM:**

A de novo public hearing on a conditional use permit and site plan review to allow the development of a solar voltaic array (solar farm) on property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB) subzone. Landscape Management (LM) Site Plan Review is also proposed as the development would be visible from Highway 20, the LM feature.

Peter Caine and Cathy Jensen separately appealed the Deschutes County Hearings Officer's decision on Application Nos. 247-15-000170-CU/171-SP/172-LM (Oregon Solar Land Holdings, LLC)

**PUBLIC HEARING ON THIS DATE?** Yes

**BACKGROUND AND POLICY IMPLICATIONS:**

On September 18, 2015 a County Hearings Officer issued a decision approving a conditional use permit and site plan review (247-15-000170-CU/171-SP/172-LM ) for the development of a solar voltaic array (solar farm) on a portion of the subject property.

By Order 2015-046, dated October 5, 2015, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing.

**FISCAL IMPLICATIONS:**

None

**RECOMMENDATION & ACTION REQUESTED:**

Staff recommends that the Board open the public hearing and receive testimony. Because the 150-Day review clock expires on November 7, 2015, Staff requests the Board close the record at the end of the October 19, 2015 hearing. The applicant is afforded under Statute, seven days for final legal argument (October 26, 2015).

**ATTENDANCE:** Chris Schmoyer and Peter Gutowsky

**DISTRIBUTION OF DOCUMENTS:**

CDD, Legal



## **INSTRUCTIONS FOR COMPLETING THE AGENDA REQUEST FORM**

Use “tab” to move between fields. You can use as much space as necessary within each field.

Do not leave any fields incomplete. Don’t forget the “preferred meeting date” section. Incomplete documents will be returned to the Department Director. This could cause your agenda item to miss the deadline for submission.

Monday Board business meetings typically address land use issues, and Wednesday business meetings are for other County business. (If there is only one meeting scheduled for the week, all agenda items are addressed at that time.) Agenda requests & backup for land use items are to be submitted by noon on Tuesday prior to the meeting date. Agenda requests & backup for the Wednesday meeting must be submitted to the Board Secretary no later than noon of the Wednesday prior to the meeting.

If you are submitting a contract or other document where more than one original is needed (for instance, one original for the County and one for the contractor), please submit the correct number of original documents. In addition to submitting the agenda request form with your documents, submit this form electronically to the Board Secretary.

Please e-mail the agenda request form and the document summary form to the Board Secretary and to David Inbody, Assistant to the Administrator, so that minor changes can be done if needed.

Unless your agenda item is an Order, Ordinance, Resolution or letter, a Document Summary Form is required as well.

Please see the “Board Agenda Procedures and Document Checklist” document for further directions, or contact Board staff at 388-6572.



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**TO:** Deschutes Board of County Commissioners

**FROM:** Chris Schmoyer, Associate Planner

**DATE:** October 14, 2015

**RE:** A *de novo* public hearing on appeal of a County Hearings Officers' decision approving a conditional use permit and site plan review for the development of a solar voltaic array (solar farm) on property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB) subzone. File Nos. 247-15-000170-CU/171-SP/172-LM

---

The hearing is scheduled for the Board of County Commission's (Board) morning meeting on October 19, 2015.

#### Summary

The applicant, Oregon Solar Land Holdings, LLC (applicant) requested conditional use and site plan approval to allow the development of a solar farm on property zoned EFU-TRB. The applicant indicates that the proposal would use approximately 80 acres of the approximate 157-acre site for the solar farm. The property is also within the Airport Safety (AS) Combining Zone associated with the Bend Municipal Airport and within the Landscape Management Combining Zone associated with Highway 20.

The property is located approximately one mile east of the Bend City Limits Boundary and Urban Growth Boundary (UGB). The property is located at the northwest corner of the intersection of Highway 20 and Erickson Road. To the west of the subject property, abutting Highway 20 is an approximate 27-acre EFU-zoned parcel owned by Pacific Power and Light that is developed with an electric substation. West of the substation lot, is property developed with a church, The Christian Life Center

The Hearings Officer issued a decision on September 18, 2015 approving the proposal subject to the applicant complying with 15 conditions of approval (Attachment 1).

On September 29, 2015, Peter Caine appealed the decision to the Board (File No. 247-15-000534-A; Attachment 2). Additionally, on September 30, 2015, Cathy Jensen also appealed the decision to the Board (File No. 247-15-000540-A; Attachment 3).

By Order 2015-046, dated October 5, 2015, the Board initiated review of this application under DCC 22.28.050 through a *de novo* hearing. Notification of the Board's October 19, 2015 hearing was mailed to all parties of interest on October 8, 2015.

### **150-day Issuance of a Final Local Decision**

The 150-day period for issuance of a final local decision for both applications under Oregon Revised Statute 215 expires on November 7, 2015. The applicant has not offered to toll the 150-day deadline. Due to this, the Board is on an extremely compressed schedule as shown below:

October 5	Work session was held and Board decided to hear the appeals <i>de novo</i> on October 19, 2015 at 10:00 am.
October 8	Notice mailed to parties of interest (everyone who has standing).
October 14	Appellants required to submit a transcript of hearing (5 days before hearing)
October 19	<i>De novo</i> public hearing to be held. Staff suggests that this hearing be opened and then closed on this date. Under Statute applicant is afforded seven days for final legal argument (October 26) <sup>1</sup>
November 2	BOCC deliberations
November 4	BOCC decisions
November 7	150-day deadline

### **Appeals**

The notice of appeal from appellant Peter Caine requested *denovo* review and describes 14 assignments of error alleging that the Hearings Officer's Decision does not comply with applicable criteria pertaining to visual impacts on neighboring properties, the provision of sufficient screening, requiring a bond in an amount that is inadequate for reclamation of the site, improper interpretation of Oregon Administrative Rules, and more. Please see Attachment 2 for Mr. Caine's Notice of Intent to Appeal.

The notice of appeal from appellant Cathy Jensen describes several assignment of error alleging that the Hearings Officer's Decision erred in applying OAR 660-033-130 (38), his interpretation of high value farmland and high value farmland soils definitions in OAR 660-033-130 (38) and ORS 195.300 (10), misinterpreting the term "commercial agricultural enterprise", suitability of the site for the proposed use DCC 18.128.015, imposition of inadequate conditions of approval pertaining to screening, fencing and maintenance of vegetative buffer, etc... Please See Attachment 3 for Mrs. Jensen's Notice of Intent to Appeal.

Appellant Cathy Jensen requested *de novo* review for two issues:

1. The application of the policies set forth in ORS 197.012 and specifically the policy implications of permitting 160 contiguous acres for the first utility-scale industrial solar farm in the County.

---

<sup>1</sup> Staff recommends at the hearing that the two Solar Farm appeals be conducted jointly for testimony purposes. Staff can alert the public at the hearing that if someone's testimony exclusively applies to just one of the applications to make it known to the Board (and staff) for record keeping.

2. The suitability of the site for the proposed uses under DCC 18.128.015, including impacts on property values.

**ATTACHMENTS:**

1. Hearings Officer's decision of approval of 247-15-000170-CU/171-SP/172-LM
2. Caine Appeal: File No. 247-15-000534-A
3. Jensen Appeal: File No. 247-15-000540-A



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### HEARINGS OFFICER DECISION

**FILE NUMBERS:** 247-15-000170-CU / 171-SP / 172-LM

**HEARING DATE:** June 30, 2015, 6:30 p.m.  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97701

**APPLICANT:** Oregon Solar Land Holdings  
3519 NE 15<sup>th</sup> Ave., Ste 325  
Portland, OR 97212

**OWNERS:** M. Thomas Collier  
PO Box 5609  
Bend, OR 97708

**ATTORNEY FOR APPLICANT:** Laura Craska Cooper  
15 SW Colorado Avenue, Suite 3  
Bend, OR 97702

Damien R Hall  
Ball Janik LLP  
101 SW Main St Ste 1100  
Portland OR 97204

**PROPOSAL:** The applicant requests approval of a conditional use permit and site plan review to allow the development of a solar voltaic array (solar farm) on property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB) subzone. Landscape Management (LM) Site Plan Review is also proposed as the development would be visible from Highway 20, the LM feature.

**STAFF REVIEWER:** Chris Schmoyer, Associate Planner

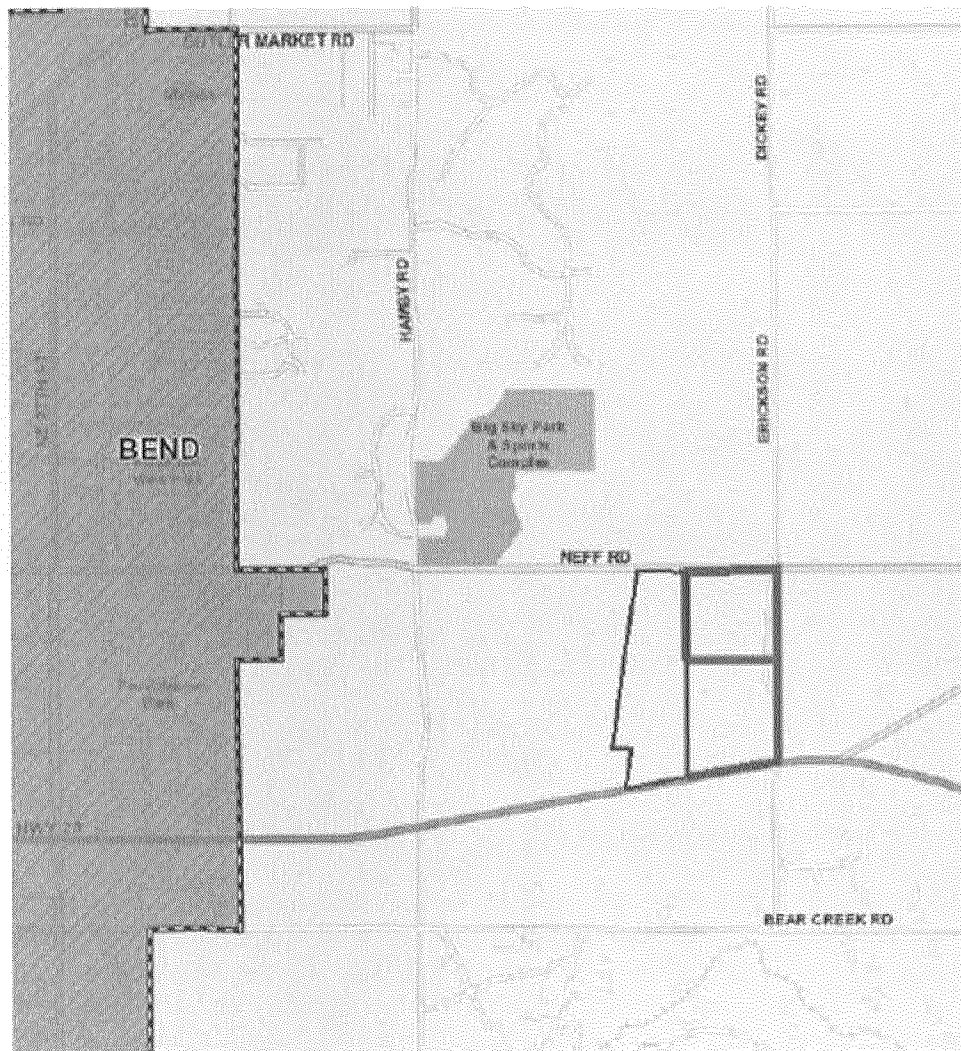
**HEARINGS OFFICER:** Dan R. Olsen

**SUMMARY OF DECISION:** Application Nos. 247-15-000170-CU / 171-SP / 172-LM are APPROVED, subject to conditions of approval imposed herein and based on the findings and conclusions below.

Except as noted by "Hearings Officer" the findings below are taken from the staff report and all are the findings of the Hearings Officer.

**I. BASIC FINDINGS:**

- A. LOCATION:** The subject property has an assigned property address of 21850 Highway 20, Bend and is also identified as Tax Lots 100, 300, 400 and 1100 on Deschutes County Assessor's Map 17-12-36.



**Source:** Deschutes County Geographic Information System

- B. ZONING:** The subject property is zoned Exclusive Farm Use – Tumalo/Redmond/Bend subzone (EFU-TRB) and is designated Agriculture by the Deschutes County Comprehensive Plan. The property is also within the Airport Safety (AS) Combining Zone associated with the Bend Municipal Airport and within the Landscape Management Combining Zone associated with Highway 20.
- C. PROPOSAL:** The applicant requests approval of a conditional use permit and site plan review to allow the development of a solar voltaic array (solar farm) on property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB) subzone. Landscape

Management (LM) Site Plan Review is also proposed as the development would be visible from Highway 20, the LM feature. The facilities to be installed include a solar array, racking, inverters, overhead poles and lines and related fencing.

- D. **SITE DESCRIPTION:** The subject property is approximately 156.84 acres in size, is currently vacant and appears to have a very mild northeastern and eastern facing slope to the topography. The property is bounded by Erickson Road to the east, Neff Road to the north and Highway 20 to the south. The property is located approximately .86 of a mile east of the Bend City Limits Boundary and approximately one mile from the Bend Urban Growth Boundary (UGB). The property supports a native vegetative cover consisting primarily of juniper trees, sage brush, bunch grass and other native shrubs and grasses. An electric power transmission line traverses the property in a roughly north-south fashion near along the west property line. The proposed use will be located on the east side of the power line easement.



Source: Google Maps 2015

- E. **SURROUNDING ZONING AND USES:** Zoning surrounding the property consists of Exclusive Farm Use, Tumalo-Redmond-Bend subzone with MUA-10 zoning to the east, across Erickson Road, and to the south and southeast across Highway 20. Uses surrounding the subject site consist of a mixture of small-scale or hobby farms with residences, developed rural residential lots, electric substations, a sports park and two churches. Most of the adjacent and nearby EFU-zoned properties developed with houses were established under conditional use permits for nonfarm dwellings.

To the north of the subject property, across Neff Road, is an approximate 118 acres parcel that is developed with a dwelling and has pending land use applications for a



solar farm (Files 247-15-000168-CU and 247-15-000169-SP). To the northwest of the site, across Neff Road, are two approximate 20 acre parcels developed with home sites established under nonfarm dwelling approvals, as well as Big Sky Sports Park. To the west of the subject property, abutting Highway 20 is an approximate 27 acre EFU-zoned parcel owned by Pacific Power and Light that is developed with an electric substation. West of the substation lot, is property developed with a church, The Christian Life Center. Also abutting the subject property to the west are two vacant EFU-zoned parcels that are 83.40 and 51.57 acres in size.

To the south, across Highway 20, are four smaller EFU-zoned properties two of which are developed with dwellings established under conditional use permits for nonfarm dwellings. To the southwest is a vacant, 57 acre, EFU-zoned parcel that does not appear to be currently devoted to a farm use. To the east of the property, across Erickson Road, are MUA-10 zoned parcels, many of which support dwellings. Also to the east, at the southeast corner of the intersection of Neff Road and Erickson Road, is an approximate .58 acre parcel that supports a small electrical substation. To the southeast, across Highway 20 and east of Torkelson Road, are MUA-10 zoned properties most of which are developed with dwellings.





**F. HEARING:**

**Hearings Officer:** A four hour public hearing was held on June 30, 2015. The Hearings Officer opened the hearing by reciting the provisions and warnings required by law. The Hearings Officer noted that he has no conflicts of interest and, except for a site visit, no ex parte contacts.

I explained that he conducted a site visit guided by Chris Schmoyer, Associate Planner on June 30, 2015. I traveled the primary roads in the area including Hwy 20, Neff Rd. and Erickson Rd. We drove through Big Sky Park, past the Christian Life Center and the substation. I noted residences in the area, the topography, visibility, vegetation and other attributes of the site. We did not walk the subject property. At the hearing, I asked if there were any questions or rebuttal to the site visit and there were none.

I asked for, but received no objections to jurisdiction or raising any alleged procedural error. I also asked if there was any objection to consolidating the hearing with the application for an adjacent facility by NW Energy 2. LLC, Oregon Solar Land Holdings, 247-15-000168-CU / 169-SP with the understanding that there may be factual distinctions or variations in the applicable criteria. No objection was raised.

Staff orally outlined the applicable criteria. The hearing lasted approximately 4 hours during which all persons who sought to testify were heard. Persons were encouraged to submit written comments or to sign the sign in sheet to obtain notice of the decision.

At the conclusion of the testimony, the applicant and counsel for Cathy Jensen requested that the record be kept open. The applicant proposed an initial period of 14 days, with the statutory 7 additional days for rebuttal evidence and 7 days for final applicant rebuttal but no new evidence. The application was granted and applicant's counsel confirmed for the record that this period tolls the 150 day period for a final decision.

Subsequently, the applicant requested that the initial period be extended to 21 days. Counsel for the Cathy Jensen proposed a shorter extension. The Hearings Officer issued an Order extending the record as follows:

July 21, 2015 at 5:00 p.m. for new evidence  
July 28, 2015 at 5:00 for rebuttal evidence to new evidence  
August 4, 2015 at 5:00 for applicant's rebuttal but no new evidence

Numerous written submittals were provided. With one exception, all are received. Applicant's counsel submitted a document titled Interior Vegetation Restoration Plan to staff at 5:01 p.m. That document was submitted beyond the deadline and has not been read or considered.

The application was deemed complete on May 13, 2015 which established a 150th day date of October 10, 2015. With the inclusion of the 28 days the record was left open following the June 30th hearing, the 150th day is now November 7, 2015.

- G. **NOTICE REQUIREMENT:** The applicant complied with the posted notice requirements of Section 22.23.030(B) of Deschutes County Code (DCC) Title 22. The applicant submitted a Land Use Action Sign Affidavit, dated April 14, 2015, indicating the applicant posted notice of the land use action on the property on April 13, 2015. Notice of the public hearing was sent to all property owners within 750 feet of the subject property on May 28, 2015. And the notice of public hearing was published in the Bend Bulletin on Sunday, May 31, 2015.

**Hearings Officer:** Several persons objected that the notice was not adequate for this scale of development. I found no evidence that any person entitled by code or statute failed to receive notice of the hearing.

- H. **LOT OF RECORD:** The subject property consists of three legal lots of record pursuant to a letter from staff, dated December 17, 1998 that corrected the determination made under Land use File Nos. LR-91-54 and LR-91-55. The December 17, 1998 letter determined that Tax Lots 100 and 300 are separate legal lots of record and that Tax Lot 400, together with Tax Lot 1100, constitutes one legal lot of record. **Note:** Because Tax Lots 400 and 1100 are one legal lot of record, Tax lot 1100 should be included and referenced as part of the subject property for this application.

- I. **PREVIOUS LAND USE HISTORY:** Land Use File Nos. LR-91-54 and LR-91-55.

- J. **Hearings Officer:** As with most Development Codes, many of the standards discussed below overlap. For the most part, I have not repeated findings that address what effectively are the same or very similar standards. Accordingly, the findings below should be applied in their entirety and cross-related to all similar standards.

### III. APPLICABLE STANDARDS:

#### Title 18, Deschutes County Zoning Ordinance

##### A. CHAPTER 18.16. EXCLUSIVE FARM USE ZONE

1. Section 18.16.030. Conditional Uses Permitted.

**18.16.030. Conditional Uses Permitted -High Value and Non-high Value Farmland.** *The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of DCC Title 18.*

**DD.** *Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130.*

**FINDING:** The subject property proposed for solar array usage and related facilities is zoned exclusive farm use. The proposed use is a conditional use, and therefore is subject to a conditional use permit. Compliance with the applicable conditional use criteria is addressed below. Subsection (DD) above, references Oregon Administrative Rule (OAR) 660-033-0130. Relevant provisions of the OAR are reviewed in detail below.

**18.16.040. Limitations on Conditional Uses. A. Conditional uses permitted by DCC 18.16.030 may be established subject to ORS 215.296 and applicable provisions in DCC 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use:**

- 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and**
- 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**
- 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.**

**Hearings Officer:** There are some farm uses occurring in the area, but it does not appear that forest uses occur nearby. As confirmed by the County transportation engineer, the proposed use will generate less traffic than most typical uses such as farm or rural residential as, after construction, the only vehicles to the site will be occasional maintenance vehicles. No odors will be generated. The applicant submitted expert testimony that the noise generated will be minimal. Staff correctly concluded that impacts from the proposed use are virtually nonexistent as they pertain to farm and forest uses on surrounding lands.

In response to an inquiry from the Hearings Officer, Evan Riley for the applicant testified that dust from farm or forest operations is not a hindrance to its operation and that the panels periodically are cleaned (typically once per year). Staff correctly concluded that the proposed use is one that would not create impacts causing surrounding farm or forest uses to alter their resource practices or increase the cost of carrying out such activities. The applicant will be required to record a waiver of objection to customary farm/forest practices.

18.16.040(3) is more complex. According to staff, approximately 114 acres or 73% of the property is comprised of Unit 58C, Gosney-Rock Outcrop-Deskamp complex. Approximately 35.84 acres or 23% of the property is comprised of Unit 36A, Deskamp loamy sand. Approximately seven (7) acres or 4% of the property is comprised of Soil Unit 36B, Deskamp loamy sand. Approximately 73 percent of the property consists of soil unit 58C, which has a soil rating between class 6 and 8, depending on the which portion of the soil complex is represented, and is not considered high value farmland. Soil units 36A and 36B are considered high value farmland where irrigated. However, due to the absence of water rights for irrigation, Units 36A and 36B have an NRCS agricultural classification rating of class 6, thus are not considered high value farmland. The solar array and related structures are proposed for a location that would place them on portions of all three soils. Soil Unit 58C has a range forage productivity listed by the NRCS of 558 pounds of forage per year while soil Units 36A and 36B have range forage productivities of 900 pounds of forage per year. The proposal covers 80 acres of the 114 acre site. According to the Agricultural Feasibility Report submitted by the applicant, and the site plan, some portions of the 36A and B soils on the southern portion are not covered by facilities.

The applicant asserts in its application that the property consists of Class VII soils. The Agricultural Feasibility report says that the area is "mostly Capability Class 7-8 soils and with small local areas of Class 6 soil." The consultant suggests that about 20 acres in the SE corner may have had a failed attempt at dry land farming – at least a good portion of that area appears

to be in the area not proposed to be covered with panels and is the only portion potentially suitable for "range seedlings". He concludes the site could sustain about 8500 net pounds of forage, resulting in \$15-\$130 annually gross income. Significant and costly range improvements would be necessary. Overall, he concludes that the site is not suitable for commercially viable agriculture or rangeland. The field plots in the report suggest that the southern area generally not proposed to be covered by structures is potentially the most productive (Plots 10-14).

Since it imposes a relative standard, this criterion is hard to apply to a site that, as this one, is entirely unsuitable but may have some areas that are marginally less unsuitable. Read literally, it would appear to not permit any large scale non-agricultural uses in many cases since it would not be unusual to have some areas of a site that are less unsuitable than others. That seems inconsistent with permitting solar facilities as conditional uses and, in particular, inconsistent with OAR 660-033-0130 (38) (h) authorizing solar facilities of 320 acres on nonarable lands. See later discussion. It is likely that OAR 660-033-0130 influenced the "least suitable" standard, or at least provides context for the standard. But that rule only applies the least suitable placement/location standard to dwellings and similar uses. The standard similarly seems intended to deal with dwellings or similar uses by preserving the suitable areas for agricultural use and not to large solar facilities and other similar facilities that may be located on nonarable land as provided in that same OAR.

In *Publishers Paper v Umatilla County*, LUBA No. 82-035 (1982) LUBA addressed a similar, albeit somewhat mirror-image, issue involving code language requiring such uses to be on "lands least suitable for forest production." The applicant proposed a dwelling on a 27.4 acre parcel all of which the County found "equally suited for forest production" but nevertheless approved the dwelling. LUBA found that this standard was not misapplied after focusing on the overall intent of the forest land preservation standards, including potential for conflicts with forest uses or altering the stability of the surrounding forest land use pattern.

In this case, the evidence is that the entire site is unsuitable. The facility will not be located on what appears to be a substantial portion of the relatively less unsuitable area. It seems incongruous to permit a use to be located on a property that is entirely suitable but not on one that is entirely unsuitable for commercial agricultural production. Ultimately, assuming this decision is appealed, the Board of Commissioners may have to interpret this provision and may do so differently than I have, but I conclude that in the context of the standard, this site and the findings later in this decision on the OAR relating to solar facilities, Section 18.16.040 is met.

2. Section 18.16.060, Dimensional Standards.

***D. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet, except as allowed in DCC 18.120.040.***

**FINDING:** The submitted plans identify the height of the solar panels at 12 feet and the supplemental burden of proof indicates the no structure other than the proposed power poles would exceed 12 feet in height.

**Hearings Officer:** At the hearing, confirmed in its 8-4-15 final rebuttal, the applicant testified that no power pole or other structure would be greater than 30 feet. With that assurance, this standard is met.

3. Section 18.16.070, Yards.

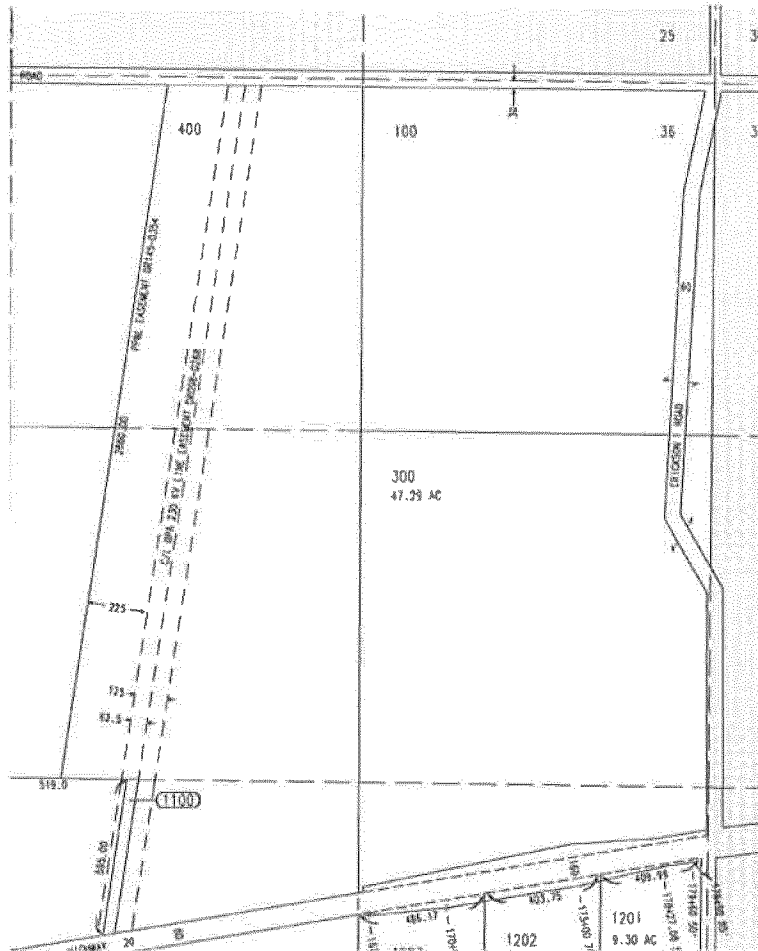
- A. *The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.***

**FINDING:** The property has three front yards as it abuts Erickson Road to the east, Highway 20 to the south and Neff Road to the north. Erickson Road is classified as a Rural Collector street on the County's Transportation System Plan (TSP), thus, requires a setback of 60 feet. Neff Road is classified as a Rural Arterial street on the County's Transportation System Plan (TSP), requiring a 100 foot setback. State Highway 20 is classified as a Primary Arterial on the County Transportation System Plan (TSP), thus requires a setback of 100 feet.

Based on the revised site plans, received May 13, 2015, the proposal complies with the front yard requirements of this subsection as the solar panels are shown to be set back approximately 150 feet from Neff Road, 570 feet or farther from the property line associated with the right-of-way of Highway 20 and 100 feet or farther from the property line associated with the right-of-way of Erickson Road, satisfying the requirements of this section.

- B. *Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.***
- C. *Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet. Chapter 18.16 32 ( 04/2014)***
- D. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.***

**FINDING:** As described under the Basic Findings Section, the subject property consists of three legal lots of record pursuant to a letter from staff, dated December 17, 1998 that corrected the determination made under Land use File Nos. LR-91-54 and LR-91-55. The December 17, 1998 letter determined that Tax Lots 100 and 300 are separate individual legal lots of record and that Tax Lot 400, together with Tax Lot 1100, constitutes one legal lot of record. Because the common tax lot lines between Tax Lots 100, 300 and 400 are legal lot lines (rear and side property lines), the applicable setbacks need to be observed, including the solar setback from the north property line of the Tax Lot 300. Below is an excerpt from Deschutes County Assessor Map for 17-12-36 depicting the tax lots:



Observing setbacks from these property lines would require a revision to the submitted plans and possibly submittal of a land use permit for a modification of application. Alternatively, the applicant could place the applications on hold to process a lot consolidation unless it could be imposed as a condition of approval.

If the legal lots of record were to be consolidated, the proposal would comply with (B) and (C) above, as the proposed solar panels are shown on the revised plans to be set back at least 450 feet or farther from the from the western (rear and side) property lines and comply with solar setback requirements. Staff is unaware of any other setbacks imposed by building or structural codes adopted by the State of Oregon or the County, but those requirements would be reviewed by the County Building Division upon submittal of required permits. An excerpt of the revised site plan (Sheet 3 of the May 13, 2015 submittal) is depicted below:



**FINDING:** Staff finds that the unmanned facility will not require a developed parking area and is not subject to the requirements of this section. This proposal does not include buildings for employees and only involves occasional traffic from maintenance and service technicians that will park in the internal road as driving throughout the site while conducting and providing service and maintenance.

## **Chapter 18.124, Site Plan Review**

### **1. Section 18.124.010. Purpose**

***DCC 18.124.010 provides for administrative review of the design of certain developments and improvements in order to facilitate safe, innovative and attractive site development compatible with the natural and man-made environment.***

### **2. Section 18.124.020. Elements of Site Plan**

***The elements of a site plan are: The layout and design of all existing and proposed improvements, including, but not limited to, buildings, structures, parking, circulation areas, outdoor storage areas, bicycle parking, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill sections, accessways, pedestrian walkways, buffering and screening measures and street furniture.***

**FINDING:** The May 13<sup>th</sup> submittal of additional application materials by the applicant provided the required and relevant elements of site plan review.

### **3. Section 18.124.030, Approval Required**

**A. *No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.***

**B. *The provisions of DCC 18.124.030 shall apply to the following:***

- 1. *All conditional use permits where a site plan is a condition of approval;***
- 2. *Multiple-family dwellings with more than three units;***
- 3. *All commercial uses that require parking facilities;***
- 4. *All industrial uses;***
- 5. *All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and***
- 6. *As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).***



- D. *Noncompliance with a final approved site plan shall be a zoning ordinance violation.***
- E. *As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to issuance of any permits.***

**FINDING:** The proposed use is a photovoltaic solar power generation facility, as a commercial utility facility, for the purpose of generating power for public use and as such requires a land use permit. Therefore, site plan review is required under B (5) above.

4. Section 18.124.060, Approval Criteria

***Approval of a site plan shall be based on the following criteria:***

- A. *The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.***

**FINDING:** The property supports a native vegetative cover consisting primarily of juniper trees, sage brush, bunch grass and other native shrubs and grasses and has a very mild northeastern and eastern facing slope to the topography. The property is bounded by Erickson Road to the east, Neff Road to the north and Highway 20 to the south. The subject property is currently vacant.

Uses surrounding the subject site consist of a mixture of small-scale or hobby farms with residences, developed rural residential lots, electric substations, a public sports park and two churches. Most of the adjacent and nearby EFU-zoned properties developed with houses were established under conditional use permits for nonfarm dwellings. To the north of the subject property, across Neff Road, is an approximate 118 acres parcel that is developed with a dwelling and has pending land use applications for a solar farm (Files 247-15-000168-CU and 247-15-000169-SP). To the northwest of the site, across Neff Road, are two approximate 20 acre parcels developed with home sites established under nonfarm dwelling approvals, as well as Big Sky Sports Park. To the west of the subject property, abutting Highway 20 is an approximate 27 acre EFU-zoned parcel owned by Pacific Power and Light that is developed with an electric substation. West of the substation lot, is property developed with a church, The Christian Life Center. Also abutting the subject property are two vacant EFU-zoned parcels that are 83.40 and 51.57 acres in size. To the south, across Highway 20, are four smaller EFU-zoned properties two of which are developed with dwellings established under conditional use permits for nonfarm dwellings. To the southwest is a vacant, 57 acre, EFU-zoned parcel that does not appear to be currently devoted to a farm use. To the east of the property, across Erickson Road, are MUA-10 zoned parcels, many of which support dwellings. Also to the east, at the southeast corner of the intersection of Neff Road and Erickson Road, is an approximate .58 acre parcel that supports a small electrical substation. To the southeast, across Highway 20 and east of Torkelson Road, are MUA-10 zoned properties most of which are developed with dwellings. Views of the Cascade Mountains to the west can be seen in various locations in the area.

The applicant has proposed measures to reduce visual impacts through the proposed tan colored mesh screens on fencing, removal of the previously proposed 3-strand barbed wire at the top of the fence, and proposed glow tree hedging. Staff understands neighbors to argue that these measures are insufficient to minimize visual impacts or cause the facility to relate

harmoniously to nearby residences. Staff requests that the Hearings Officer evaluate and determine if this proposal minimizes visual impacts and relates harmoniously to the natural environment and existing development.

Staff believes that the only views protected under this criterion would be limited views of the Cascades to the west. Due to the low height of the solar panels and inverters (not to exceed 12 feet in height), Staff does not believe the proposed facility would hinder views of the Cascade Mountain range and other natural features as seen from properties east of the site. Sheet 6 of the revised plans identifies solar panels that would reach a maximum height of 12 feet. The supplemental burden of proof statement, quoted above, indicates the height of the solar panels will vary between 4 and 7 feet and the inverters would be a maximum of ten (10) feet above grade. The applicant should clarify this for the Hearings Officer.

**Hearings Officer:** This issue generated more concerns or objections than any other. Most of the testimony expressed generalized concerns relating to aesthetic impacts of the proposal. These included for example, that the scope of the proposal would insert what essentially is an industrial appearing facility into a rural and rural residential environment. Comments also argued that the proposed fencing and landscaping is inadequate, particularly in those areas where the topography either on-site or adjacent would make the facility visible over the fencing and landscaping (such as along part of Hwy 20). Others suggested increased setbacks of as much as 100'.

The applicant states that the solar panels are "non-reflective" and on average will be between 5 and 7 feet in height from the ground (depending upon the time of day, as the panels tilt with the position of the sun to capture the maximum amount of light possible). The Design Sheet of the Site Plan, however, shows that, at least part of the time, the panels could reach to 12'. In its final rebuttal the applicant states that the Applicant anticipates that the actual height of the solar panels will vary between 4 and 7 feet, but could be 12' depending on the "height of framing and racking equipment made available by suppliers". The panels constitute over 99% of the facility. The applicant stated that the inverters will be a maximum of ten feet from grade and will constitute 0.1% of the array. At the hearing, Evan Riley testified for the applicant that the inverters are 8' tall, but sometimes are placed on a concrete foundation. One inverter is near the edge of the proposed array. The applicant testified that the others are interior to the site, essentially mixed in with the panels. Nothing, except the power poles, will exceed twelve (12) feet in height from grade.

The panels are designed to absorb light rather than to reflect it. See the attached "Figure 16: Reflectivity Produced by Different Surfaces" from the "Technical Guidance for Evaluating Selected Solar Technologies on Airports" prepared by the Federal Aviation Administration and dated November 2010, attached as Exhibit D. That figure appears to indicate that the solar panels reflect less sunlight than many natural features in this area, including bare soil and vegetation. See also discussion under of glare re 18.80.044(C). The polycrystalline cells are a dark blue and the frame is matte silver. All materials are recyclable and non-toxic (basically refined sand, glass and aluminum). The racking is constructed primarily of galvanized steel and is also a matte silver/grey color. The racking consists primarily of galvanized piles that are driven into the ground as the foundation for the system. There is also a motor on each sub-array that rotates the panels.

The landscaping plan submitted by the applicant proposes to retain significant existing vegetation around the entire periphery of the proposed installation. Many of the trees to remain are well over ten (10) feet in height. In addition, the applicant is proposing a perimeter ring of

new trees to be spaced not further than ten (10) feet apart. They will be permitted to grow to a height of twelve (12) feet. In addition, the six (6) foot perimeter fence will be covered with a mesh screen that is tan colored (a photograph sample is enclosed with the application), which will blend in with the surrounding high desert landscape, thereby further buffering views from surrounding properties and roads.

The site is adversely visually impacted by fairly extensive major power lines. On the site visit the Hearings Officer noted that the substation is not screened and does not appear to have been well maintained aesthetically. Staff was unable to reach a firm conclusion regarding aesthetic impacts.

I find that the applicant's proposed aesthetic mitigation measures, while a start, are not adequate given the scale of the facility proposed. The statement in rebuttal regarding height of the panels suggests that lower structures are available and feasible, albeit perhaps more expensive or harder to obtain. The steps necessary to adequately lessen the impact do not appear to be particularly onerous and this standard can be met by modifying the measures as follows:

- a) Install the 6 foot cyclone fence with tan/sand or green colored mesh screening. No barbed wire is permitted. At all times, the fence and mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.
- b) Plant the perimeter shrubs/trees in the locations shown on the approved Landscape Plan. They shall be a minimum of 6 feet at the time of planting. All plantings shall be kept alive and attractive.
- c) No solar panel shall exceed 8' in height from existing ground level at its maximum extension, within the area that is 100' more or less from any exterior property line (not internal parcel line, see discussion above re side setbacks). More or less is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In addition, no panel shall exceed 8' from existing ground level at its maximum extension in the area between the southern fence line (i.e. facing Hwy 20) to the most southerly proposed compacted soil access road shown on the site plan. In no event shall anything other than the power poles exceed 12' from existing ground level.

See Condition Nos. 6 and 8. See also, discussion under 18.84.

***B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.***

**FINDING:** The applicant indicates that the installation of the solar array would prevent maintenance of existing landscaping where the array is placed, but that strips of land, of varying width, around the proposed array would remain untouched. The applicant also indicates that the topography of the property would remain virtually unchanged as only minor grading around the twelve (12) inverter areas/pads would require grading.

The applicant states that the solar array should pose no risk to the trees and shrubs that are to remain undisturbed. Staff understands this criterion to require preservation of existing landscaping and topography to the greatest extent possible and still allow certain permitted and conditional uses to occur. That is, trees and vegetation that do not need to be removed to accommodate the proposed use should be retained. Likewise, topography of the property that does not need to be graded to accommodate the use should remain as such.

Staff suggests that, if the applicant's request is approved, a condition of approval be imposed to comply with this criterion.

**Hearings Officer:** The applicant took issue with this condition, suggesting that it is ambiguous and unnecessary. I find, however, that preservation of existing vegetation and minimizing disturbance to the extent feasible is important to meeting the compatibility criteria and the applicant has said as much. I understand that any such condition is somewhat ambiguous but anticipate that the applicant and County staff can work in good faith to comply with the intent. Accordingly, the following condition of approval is appropriate:

Existing Landscape and topography shall be preserved to the greatest extent feasible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected. All new plantings shall be regularly watered and otherwise cared for until certified by a landscape professional to be fully established. Dead, dying or diseased vegetation in the landscape area shall be replaced within 90 days of being discovered and properly tended until established. Any existing trees preserved on the site over 6' tall that become diseased or die shall be replaced with a minimum 6' comparable tree within 90 days of being discovered and properly tended until established. See condition No. 9.

***C. The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.***

**FINDING:** The design of the proposed facility appears to provide a safe environment. The applicant proposes a permanent 6-foot high cyclone fence with mesh screening and a shrub hedge around the perimeter of the array to limit access and provide a safe and secure environment. The applicant proposes to retain natural landscaping surrounding the fenced areas, as well as in areas of the site between the facility and abutting roads. The project site is not staffed and it is not open to the public. Access to the site is limited to periodic visits by employees for monitoring and maintenance of the facility. Staff believes this criterion is met.

**Hearings Officer:** In addition to the above finding, there is the issue of the barbed wire. On one hand, this would assist in maintaining a safe site, but there were objections based on aesthetics. The applicant expressed no strong position either way, so I find that the barbed wire shall not be installed. The applicant also indicates its intent is that the color of the screening blends in with the environment. I find that tan/sand or green color is appropriate.

***D. When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.***

**FINDING:** There is no need for people, other than an occasional maintenance person, to access the site. The proposed use is one that is not open to the general public, thus staff does

not believe that this criterion is applicable to the proposed use. However, the Building Division will review all plans for conformance with ADA standards when building permits are submitted. For these reasons, staff believes that if applicable, this criterion can be satisfied.

- E.     *The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.***

**FINDING:** In response to this criterion, the applicant's revised burden of proof provided the following:

*Applicant Response: The revised site plan does identify proposed vehicular circulation roads and maneuvering areas. The proposed drive aisles will provide easy access to the maintenance technician during quarterly inspections. As no public access to the site or interaction/connectivity with adjacent property is planned, no road connections need to be made. The appearance of the roads will be screened from view via native vegetation, the perimeter ring of trees proposed and the tan-colored mesh over the perimeter fence. Access aisles will be compacted prior to construction to reduce rutting. Gravel will be used in high traffic or poorly drained areas during construction. Soil access aisles will be scarified, aerated and re-seeded after construction. Only one entryway is proposed.*

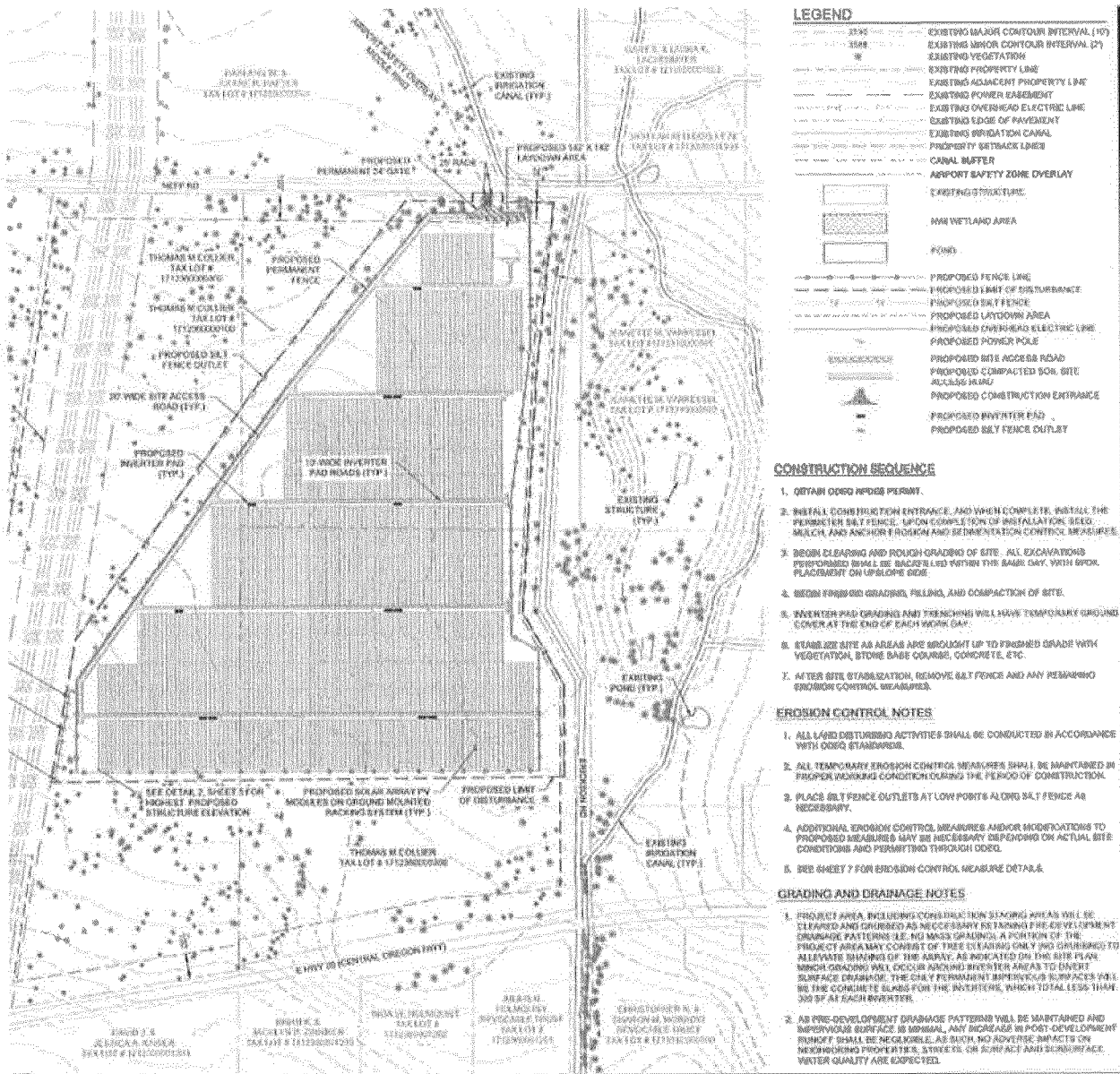
With infrequent usage of the internal roads, during occasional maintenance, one point of access to the facility on the north side of the property off of Neff Road, coupled with screened fencing, a hedge, and perimeter trees, this criterion is met.

- F.     *Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.***

**FINDING:** No existing drainage problems have been identified for the site. Drainage problems typically result from significant changes in the grade of the site or increase in impervious areas on the site. In response to the incomplete application letter, mailed April 22, 2015, the applicant submitted a drainage plan and stated in the supplemental burden of proof statement:

*"The revised site plan includes a drainage plan. The panels will be cleaned by the maintenance technician as needed, but no more often than once a year, using only water. No chemicals are used. The drainage plan will assure that water stays on site. No automatic cleaning mechanisms are proposed.*

Submitted as Sheet 4 of the revised plans, received on May 13, 2015, is a Grading, Drainage and Erosion Control Plan. In addition to depicting elevation contours, at 2 foot intervals, Sheet 4 identifies a Silt Fence that is proposed for select portions of the site as depicted below:



As indicated above, the perimeter silt fence would be installed following Oregon Department of Environmental Quality (DEQ) National Pollutant Discharge Elimination (NPDES) permit and construction of the entrance (items 1 and 2 under the construction sequence). Item 7 indicates the silt fence would be removed following site stabilization and any other remaining control measures.

In addition to drainage control measures, the soils on the property are described by NRCS as being somewhat rapidly drained to rapidly drain with rapid permeability. More specifically, according to NRCS data, Gosney soils are somewhat excessively drained with rapid permeability with an available water capacity is about 1 inch and the Deskamp soils are somewhat excessively drained with a rapid over moderate permeability and available water capacity of 3 to 5 inches. Additionally, the internal access roads will remain a dirt surface to allow for effective drainage. Further, the proposed perimeter shrub hedge and existing native trees and vegetation should assist in absorbing any excessive drainage. Since no significant

changes in grade or increases in impervious surface area are proposed. Staff believes that this criterion will be met.

No comments were received from Oregon Department of Environmental Quality (DEQ) in response to this proposal, however, the applicant's grading, drainage and erosion control plan, received on May 13, 2015, indicates that the applicant will be required to obtain an Oregon DEQ National Pollutant Discharge Elimination (NPDES) Permit from DEQ for the use. Staff finds that this permitting process will ensure that surface and subsurface water quality will not be adversely impacted and recommends the Hearings Officer condition any approval of this application on the applicant obtaining this permit.

**Hearings Officer:** I concur with staff's finding that this permitting process will ensure that surface and subsurface water quality will not be adversely impacted. As recommended by staff, the following condition of approval is imposed:

Prior to initiation of the use, the applicant shall provide evidence of DEQ National Pollutant Discharge Elimination (NPDES) Permit approval for the proposed use to the Planning Division. See Condition No. 4

- G. *Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.***

**Hearings Officer:** I agree with staff that the majority of the facility falls under the categories described in this criterion [Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures] and that the facility must be designed, located and buffered or screened to minimize adverse impacts on neighboring properties. The applicant has proposed to screen the facility with tan or green colored mesh for fencing and a shrub hedge at a ten foot spacing surrounding the perimeter of the facility. Staff notes that Exhibit B of the Applicant's supplemental burden of proof indicates the mesh screening only has a one year warranty, therefore, staff recommends a condition of approval should require maintenance of the screen.

The applicant indicates that the Moonglow Juniper shrubs would be a minimum of four (4) feet at the time of planting, however, staff suggests this height be increased to a minimum of six (6) feet to help mitigate visual impacts more immediately. Staff suggested a condition of approval to address these concerns. This standard relates to the findings above regarding aesthetics. I concur but find that the aesthetic mitigation does not go far enough to address the compatibility of the use and aesthetics as discussed above. Compatibility with this criterion will be met under this proposal, as conditioned, above.

- H. *All above-ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.***

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:



*As shown on the attached site plan drawings, the applicant is proposing a relatively short above-ground power line, which is necessary for transporting the electricity generated on-site from the facility to the nearby Pacific Power substation. The applicant has arranged such line to be parallel to the existing, much-larger power lines so that the additional impact on view will be minimal. In addition, the proposed lines would run perpendicular to the critical view corridor along Highway 20, thereby further minimizing the impact on views.*

The property currently supports multiple power poles and transmission lines that traverse the west property line extending from the Pacific Power substation situated to the west of the site. Power poles/lines run along both sides of Neff Road and the east side of Erickson Road. The submitted site plan identifies the eight (8) proposed poles for a location at the southwest corner of the facility, approximately 900 feet north of Highway 20, and adjacent and to the east of the existing transmission line. The proposed power poles are a necessary element of the proposed facility and to be placed in a location that is not only practical, but approximately 1,500 feet or farther from the nearest residence (which is located to the south across Highway 20). As proposed by the applicant, this criterion appears to be met.

**Hearings Officer:** I concur with staff but note that this standard relates to the discussion above and is conditioned accordingly.

- I.      *Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).***

**FINDING:** The applicable criteria in the EFU zone have been addressed above.

- J.      *All exterior lighting shall be shielded so that direct light does not project off-site.***

**FINDING:** The applicant indicates that exterior lighting is not proposed.

- K.      *Transportation access to the site shall be adequate for the use.***
- 1.      *Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.***
  - 2.      *Mitigation for transportation-related impacts shall be required.***
  - 3.      *Mitigation shall meet applicable County standards in DCC 17.16 and DCC 17.48, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.***

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:

*No improvements or new roads are proposed. The only trips to the site will be an occasional maintenance person. Accordingly, no new traffic will be generated to or on the site, and there will be no real impact on existing transportation systems and no need for any additional improvements. As noted on the site plan drawings, the site will generally be monitored remotely. A maintenance person will inspect the site quarterly*



*and as needed. During the growing season for any installed landscaping, a contractor will be on site once a month to care for the trees and related landscaping. In short, except for the installation and decommissioning of the site, there will be very little traffic generated by the propose use.*

**Hearings Officer:** The applicant's revised site plan depicts one proposed gravel access road onto the site is proposed from Neff Road, a county paved Major Arterial Road. The County Road Department provided a response of "no comment" in regards to notification of the proposal. The County Transportation Planner provided comments that the use will result in less than 50 new weekday trips and, thus, no traffic analysis is required. Additionally, the County Transportation Planner also indicates that SDCs are not required for the use. For these reasons access is adequate for the use.

5. Section 18.124.070, Required Minimum Standards

**B. Required Landscaped Areas**

**1. *The following landscape requirements are established for multi-family, commercial and industrial developments, subject to site plan approval:***

- a. *A minimum of 15 percent of the lot area shall be landscaped.***
- b. *All areas subject to the final site plan and not otherwise improved shall be landscaped.***

**FINDING:** These criteria do not apply because the proposed use is not a multi-family, commercial or industrial development.

**2. *In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking or loading areas:***

- a. *A parking or loading area shall be required to be improved with defined landscape areas totaling no less than 25 square feet per parking space.***
- b. *In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscape strip at least five feet in width.***
- c. *A landscaped strip separating a parking or loading area from a street shall contain:***
  - 1) *Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.***
  - 2) *Low shrubs not to reach a height greater than three feet zero inches spaced no more than eight feet apart on the average.***
  - 3) *Vegetative ground cover.***
- d. *Landscaping is a parking or loading area shall be located in defined landscape areas which are uniformly distributed throughout the parking or loading area.***

- e. *The landscaping in a parking area shall have a width of not less than five feet.*
- f. *Provision shall be made for watering planting areas where such care is required.*
- g. *Required landscaping shall be continuously maintained and kept alive and attractive.*
- h. *Maximum height of tree species shall be considered when planting under overhead utility lines.*

**FINDING:** These criteria do not apply because parking and loading areas are not required. Additionally, staff does not believe that the parking requirements of Section 18.116.030 of the Deschutes County Zoning Ordinance apply to the proposal as the use is not open to the general public, does not include buildings for employees and only involves occasional traffic from maintenance and service technicians that will park in the internal road as driving throughout the site while conducting and providing service and maintenance.

**C. *Nonmotorized Access.***

- 1. *Bicycle Parking. The development shall provide the number and type of bicycle parking facilities as required in DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities shall be indicated on the site plan.*

**FINDING:** Bicycle parking is only required under DCC 18.116.031 and 18.116.035 where vehicular parking is required. Since no vehicular parking spaces are required, no bicycle parking spaces are required.

- 2. ***Pedestrian Access and Circulation***
  - a. *Internal pedestrian circulation shall be provided in new commercial, office and multi-family residential developments through the clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.*
  - b. *Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On-site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi-family, public or park use.*
  - c. *Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.*
  - d. *Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.*

- e. *To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent are permitted, but are treated as ramps with special standards for railings and landings.*

**FINDING:** This section does not apply because the project is not a commercial, office or multi-family residential use and there are no buildings to connect with walkways.

## **CHAPTER 18.128, CONDITIONAL USES**

### **1. Section 18.128.015, General Standards Governing Conditional Uses**

*Except for those conditional uses permitting individual single-family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:*

**A. *The site under consideration shall be determined to be suitable for the proposed use based on the following factors:***

**1. *Site, design and operating characteristics of the use;***

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:

*The site is well-suited for its intended purpose – generation of solar power. The site has convenient access to a Pacific Power substation, which will allow the generated power to be transmitted where needed. The relatively flat topography of the site is ideally suited to a solar array. The lack of large buildings or other structures that could shade the array makes this a desirable location for a solar array.*

The operating characteristics include the initial construction activity, and after completion, periodic inspection of the site, with maintenance and possible repair, if it becomes necessary. The applicant indicates that a technician will visit the site quarterly or as needed and a landscape contractor will visit the site monthly during the growing season to provide care and maintenance to the landscaping. The site will be monitored remotely. Staff concurs that site is suitable for a solar power generation facility, given the site, design and operating characteristics of the use.

**Hearings Officer:** Nearly all of the testimony stressed the importance of solar power to the community both locally and at large. There was much testimony, however, contending that the site is inappropriate, primarily due to its location, and that more remote sites, or co-location with other structures in the urban area are preferable. I find that this site, subject to compliance with all other standards, is appropriate. Proximity to power infrastructure is important for reasons of economy and power conservation. The testimony establishes that large scale solar installations are an important part of the "mix" to meet energy needs, address environmental concerns and promote the economic viability of solar power. Moving the area "farther out" is more likely to impact agricultural or forestry operations. There was testimony that the use should not be permitted because this area is close to Bend and therefore, should be preserved for eventual urban development. The area is outside the UGB and the applicant presented information from the City of Bend indicating that the current estimate shows an eventual need for 2000 acres, but

the city is focusing on non-resource lands and the maps submitted do not appear to include this area as areas under consideration. Moreover, given this it is doubtful that, absent some provision in the County code, potential urbanization in the distant future is a factor.

**2. Adequacy of transportation access to the site; and**

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:

*There is little need of transportation access or facilities because after the array is installed, the only access will be an occasional maintenance person and an infrequent landscaping contractor until decommissioning.*

Regarding factor (A) (2) above, the site is also suitable for the proposed use as transportation to the site is adequate. The applicant's revised site plan depicts one (1) gravel access road onto the site extending from Neff Road, a county paved Major Arterial Road. With infrequent usage of the internal roads, during occasional maintenance, one point of access to the facility is proposed. Based on responses provided by the Deschutes County Road Department and Transportation Planner, the transportation is adequate to the site for the use.

**3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

**FINDING:** The applicant's supplemental burden of proof statement provides the following in response to this criterion:

*The applicant notes that some neighbors have raised concerns about impacts on wildlife. The applicant conducted a Level 1 Environmental Assessment and as part of that consulted with the U.S. Fish and Wildlife Services. Based upon that Assessment and the correspondence from U.S. Fish and Wildlife, the proposed use will "not likely affect listed or existing protected species or critical habitats." See attached **Exhibit F.** (to staff report)*

Staff believes that the subject site is suitable for the use based on factor (A) (3) above as the natural and physical features of the site and topography appear to be conducive for the proposed use. The topography of the portion of the property proposed for the facility appears to have a very mild northeastern and eastern facing slope to it with a vegetative cover of juniper trees and natural shrubs and grasses. Sheet 4 of the May 13<sup>th</sup> revised plan submittal identifies an elevation of 3,594 feet at the southwest corner and 3,572 and the northwest corners of the solar array. Staff was unable to locate any information identifying the history of natural hazards occurring on the subject property. The property is not likely to be subject to an increased chance of occurrence of a natural hazard due to the presence of the proposed use.

Regarding factor (A)(3), Staff notes that the property is not identified as being located within a Wildlife Area Combining zone and is not within a Sensitive Bird and Mammal Habitat Combining Zone. The applicant's supplemental burden of proof acknowledges that some neighbors have raised concerns about the impacts the proposed use may have on wildlife.

As quoted above, the applicant indicates that they have conducted a Level 1 Environmental Assessment and as part of that consulted with the U.S. Fish and Wildlife Services. The "Revised Phase 1 Environmental Site Assessment", prepared by Terracon Consultants, Inc. of

Portland, Oregon, has been included as Exhibit "F" of the applicant's supplemental burden of proof statement received May 13, 2015. The applicant establishes that *...based on the Assessment and the correspondence from U.S. Fish and Wildlife, the proposed use will "not likely affect listed or existing protected species or critical habitats."*

Although the applicant provided quotes from the Environmental Assessment, submitted as Exhibit "F", a specific page reference is not provided for these quotes contained within this technical 147 page environmental assessment document. The Conclusions subsection of the Executive Summary section of the Environmental Site Assessment in Exhibit "F" of the applicant's supplemental burden of proof statement states:

### **Conclusions**

We have performed a Phase I ESA consistent with the procedures included in ASTM Practice E 1527-13 at 62435 Erickson Road, Bend, Deschutes County, Oregon, the site. Terracon did not identify any recognized environmental conditions (RECs) in connection with the site.

Following the Environmental Assessment, Exhibit "F" of the applicant's supplemental burden of proof, also includes an email, dated January 09, 2015, from Jerry Cordova, Fish and Wildlife Biologist with U.S. Fish and Wildlife Services to Todd Baker and Cally Podd, applicant's consultants. This email is titled: "Proposed Solar Installation Sites in Central Oregon". Mr. Cordova's email, as with the Environmental Assessment of Exhibit "F", addresses five (5) sites within central Oregon, one of which is the subject property. Below is an excerpt of Mr. Cordova's email:

Podd, Cally M

From: Cordova, Jerry <jerry\_cordova@fws.gov>  
Sent: Friday, January 09, 2015 4:26 PM  
To: Baker, Todd; Podd, Cally M  
Subject: Proposed Solar Installation Sites in Central Oregon  
Attachments: GEarthMap of H and E sites.pdf

Todd/Calanetta

Terracon Consultants, Inc. on behalf of Cyress Creek Renewables, LLC. requested comment from the U.S. Fish and Wildlife Service (Service) on December 12, 2014, regarding five proposed solar installation sites within central Oregon. The Service has determined that the proposed activities at the following five sites - Terracon Project No. 82147828 (B), (C), (E), (H) and (I) "will not affect ESA listed or proposed species". The Service has no information that would counter your determination of No Effect/no adverse modification to ESA listed species resulting from the construction and use of these proposed solar sites.

The Service also evaluated the sites with respect to the Bald and Golden Eagle Protection Act. Two of the proposed sites - Terracon Project No. 82147828 (E) [aka Culver] and (H) [aka Kirkwood] have the potential, during construction, to impact the golden eagle during the nesting period. Seasonal restrictions or mitigation may be required to protect eagles at these two locations. Both of these proposed solar sites are within 1 mile of a golden eagle territory.

Nancy Breuner, Deschutes District Wildlife Habitat Biologist with ODFW, submitted the following comment received via email on 6/11/15:

*ODFW's Deschutes Watershed District office has reviewed Oregon Solar Land Holdings' conditional use permit and site plan application and a landscape management site plan (247-15-000170-CU and 247-15-000171-SP and 247-15-000172) located at 21850 Highway 20, Bend, OR. The proposed solar voltaic array (solar farm) development is not located in a Wildlife Area Combining Zone.*

*Per Division of Land Conservation and Development's Oregon Administrative Rule (OAR) 660-033-0130 (38) paragraph (E), regarding Goal 5 resource protection in Deschutes County's Comprehensive Plan, ODFW finds no information in this application to suggest that special status species or wildlife habitats will be impacted. OAR 660-033-0130(38) paragraph (F) stipulates that ODFW determine if there is potential for solar power generation facility proposals to adversely affect state or federal status species or habitats or big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs. ODFW Wildlife staff has reviewed the application and our preliminary findings are that there would be no potential for adverse effects to the species or habitats listed above.*

*Therefore, ODFW Deschutes Watershed District has no further comments. This is based on the understanding that Deschutes County will implement the relevant provisions in*

*the Comprehensive Plan such that impacts to natural resources will be minimized. Please provide detailed information to ODFW if this project is anticipated to adversely impact wetlands, riparian habitats, big game habitat, sensitive bird and mammal species or involves large acreages.*

*If Deschutes County requires habitat mitigation for permit approval, ODFW will work with the County and the project developer, using ODFW's Fish and Wildlife Habitat Mitigation policy as guidance to develop and implement a mitigation plan.*

Based on the conclusions of the applicant's Environmental Site Assessment Report, comments from ODFW and the comments provided from Jerry Cordova of U.S. Department of Fish & Wildlife provided in Exhibit "F" of the applicant's supplemental burden of proof statement, it appears to Staff that the site is suitable for the proposed use considering natural resource values (including wildlife habitat) as stipulated in factor (A) (3) above. It is Staff's opinion that compliance with the criteria of this section has been demonstrated by the applicant.

**Hearings Officer:** There were several generalized comments expressing concern about impacts on wildlife. Nothing was submitted that has either the level of specificity or expertise necessary to override Staff's finding.

***B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).***

**FINDING:** Uses surrounding the subject site consist of a mixture of small-scale or hobby farms with residences, developed rural residential lots, electric substations, a sports park and two churches. Most of the adjacent and nearby EFU-zoned properties developed with houses were established under conditional use permits for nonfarm dwellings. To the north of the subject property, across Neff Road, is an approximate 118 acres parcel that is developed with a dwelling and has pending land use applications for a solar farm (Files 247-15-000168-CU and 247-15-000169-SP). To the northwest of the site, across Neff Road, are two approximate 20 acre parcels developed with home sites established under nonfarm dwelling approvals, as well as Big Sky Sports Park. To the west of the subject property, abutting Highway 20 is an approximate 27 acre EFU-zoned parcel owned by Pacific Power and Light that is developed with an electric substation. West of the substation lot, is property developed with a church, The Christian Life Center. Also abutting the subject property are two vacant EFU-zoned parcels that are 83.40 and 51.57 acres in size.

To the south, across Highway 20, are four smaller EFU-zoned properties two of which are developed with dwellings established under conditional use permits for nonfarm dwellings. To the southwest is a vacant, 57 acre, EFU-zoned parcel that does not appear to be currently devoted to a farm use. To the east of the property, across Erickson Road, are MUA-10 zoned parcels, many of which support dwellings. Also to the east, at the southeast corner of the intersection of Neff Road and Erickson Road, is an approximate .58 acre parcel that supports a small electrical substation. To the southeast, across Highway 20 and east of Torkelson Road, are MUA-10 zoned properties most of which are developed with dwellings.

The nearest residence to the west is on Tax Lot 600, 17-12-36 (21695 Neff Road, Bend) and is sited approximately 2,000 feet west of the west property line of the subject property and about 3,150 feet from the nearest solar panels. The nearest residence to the northwest is on Tax Lot 400, 17-12-25 (21700 Neff Road, Bend), is on the north side of Neff Road and approximately 2,300 feet from the nearest solar panels. The nearest residence to the north is

on Tax Lot 501, 17-12-25 (62435 Erickson Road, Bend) and is approximately 430 feet from the north property line of the subject property and roughly 570 feet from the nearest proposed solar panel. Tax Lot 501 is the site with the pending land use applications for the NorWest Energy 2, LLC solar farm.

The nearest residence to the northeast is on Tax Lot 1100, 17-13-30 (62410 Erickson Road, Bend) and located at the northeast corner of the intersection of Neff Road and Erickson Road. The dwelling on Tax Lot 1100 is located approximately 690 feet from the nearest proposed solar panels. The nearest residence to the east is on Tax Lot 600, 17-13-31 (62260 Erickson Road). This appears to be the closest residence to any solar panel at an estimated 370 feet from the nearest solar panels. The closest residence to the south appears to be on Tax Lot 1203, 17-12-36 (62091 Torkelson Road, Bend). The residence on Tax Lot 1203 is on the south side of Highway 20 and sited an estimated 1,600 feet south of the nearest proposed solar panels. The closest residence to the southeast appears to be on Tax Lot 500, 17-13-31C (22025 Highway 20, Bend) and is located at the southwest intersection of Highway 20 and Torkelson Road. The residence on Tax Lot 500 appears to be approximately 1,285 feet from the nearest solar panel.

This section requires the proposed Solar Farm to be compatible with existing and projected uses on surrounding properties based on the factors of 18.128.015 (A), which are as follows:

**1. Site, design and operating characteristics of the use;**

**FINDING:** Staff finds that there is no evidence in the record that proposed facility will adversely impact surrounding agricultural activities. Staff is uncertain if public concerns regarding potential impacts to aviation use can be considered under this criterion, as the airport may not be regarded as a surrounding property, as it is over 1.5 miles away. Staff requests that the Hearings Officer evaluate if potential aviation use impacts can be considered under this criterion.

Public comments have identified potential adverse impacts to residential and recreational use.

Identified potential impacts to surrounding residential use include noise, visual, and decreases in property value. Regarding noise, the applicant's burden of proof statement, quoted above, states:

*The site will produce little, if any, noise that is audible off-site (see the enclosed report from the Massachusetts Department of Energy Resources noting that the noise from a solar array is generated by the inverters and it is inaudible at between 50 and 150 feet. No inverter is proposed to be located within less than 150 feet of the boundary of the property.).*

Based on this, it appears that noise generated from the use (inverters) will not impact residences on surrounding properties. Regarding visual impacts, the applicant has proposed fenced screening, plantings, and retention of existing vegetation where possible. Staff incorporates herein by reference the detailed description of these screening, plantings, and retention of existing vegetation provided above. The Hearings Officer will need to determine if the proposed screening measures are sufficient to prevent significant adverse impacts to the residential use of surrounding properties.

Some comments received from neighbors, express concern for potential decrease in property values resulting from the solar facility. Although the affect a use has upon property values in the



area does not appear to be a specifically stated criterion of review, staff notes this as a legitimate concern to neighbors in regards to the proposed project. Regarding potential decreases in property values, staff notes that prior decisions by Hearings Officers have found that potential property value impacts must be substantiated with evidence in the record in order to be considered. Additionally, staff is uncertain if potential property value impacts would adversely impact the site, design or operating characteristics or nearby residential uses under this criterion.

If the Hearings Officer believes that the potential for decreased property values should be considered in evaluating compliance with this criterion, perhaps the submittal of expert testimony from a licensed real estate appraiser can be provided by the applicant and/or interested parties for consideration and review.

**Hearings Officer:** The aesthetic component of this standard is addressed above. As regards, property values, I am not convinced that this standard is intended to address property values, at least in the absence of strong evidence of significant or unusual impacts. My experience is that few codes address property values and, if that is intended, the language should be clear. Nearly all conditional uses may have some negative impact on property values, particularly with a site that has for a long time been essentially vacant and, to some extent, serves as open space for the area.

Nevertheless, there was some evidence of adverse impacts on property values beyond generalized concerns. For example, some area brokers submitted comments (and others described conversations with brokers) stating that area property values would be adversely impacted and some potential sales may have been lost, or interest waned, when the proposal became known. The applicant submitted a detailed market analysis of impacts on property values by a qualified expert on July 21, 2015, Gregory W. Moore MAI. It evaluates the impact of other large solar facilities and the proposal at issue. It concludes that, as proposed, the facility is unlikely to have a significant impact on marketability, particularly as the nearest solar panels are more than 150' from any residence. My experience reflects the expert's conclusion that the uncertainties in advance of almost any project can have short term impacts, but after completion and assuming appropriate landscaping, screening and other conditions, the impacts are negligible. I find, that assuming that impact on property values is placed at issue under this criteria, the proposal meets the compatibility test with compliance with the conditions imposed herein.

As regards the airport, I do not read this Code as intending it to be included as a "surrounding property". In any event, the impact on the airport and aviation is discussed under 18.80, below.

## **2. *Adequacy of transportation access to the site; and***

**FINDING:** Regarding factor (A)(2) above, as referenced through 18.128.015 (B), for the reasons discussed in the finding for (A)(1) regarding factor (A) (2), staff believes that transportation to the site as proposed is adequate and will not adversely impact transportation to existing and projected uses on surrounding properties.

## **3. *The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.***

**FINDING:** There is no evidence in the record that the facility will impact off-site topography or increase the risk of natural hazards on surrounding properties. Based on the comments provided by the US Fish and Wildlife Service and Oregon Department of Fish and Wildlife, staff believes the facility will not adversely impact the natural resource values (farm, forestry, or wildlife habitat) of surrounding properties.

**Hearings Officer:** As noted above, there were several generalized comments expressing concern about impacts on wildlife. Nothing was submitted that has either the level of specificity or expertise necessary to override staff's finding.

2. Section 18.128.040, Specific Use Standards

***A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through 18.128.370.***

**FINDING:** The proposed photovoltaic array is subject to the standards addressed in this staff report. Deschutes County Code (DCC) 18.128.045 through DCC 18.128.370 are not relevant, however, as those sections deal with uses unrelated to the proposed use.

3. Section 18.128.380, Procedure for Taking Action on Conditional Use Application

***The procedure for taking action on a conditional use application shall be as follows:***

- A. A property owner may initiate a request for a conditional use by filing an application on forms provided by the Planning Department.***
- B. Review of the application shall be conducted according to the terms of DCC Title 22, the Uniform Development Procedures Ordinance.***

**FINDING:** The applicant has submitted the required application form for a conditional use permit. The conditional use permit application is being processed in accordance with DCC Title 22.

**CHAPTER 18.80, AIRPORT SAFETY COMBINING ZONE**

1. Section 18.80.028, Height Limitations

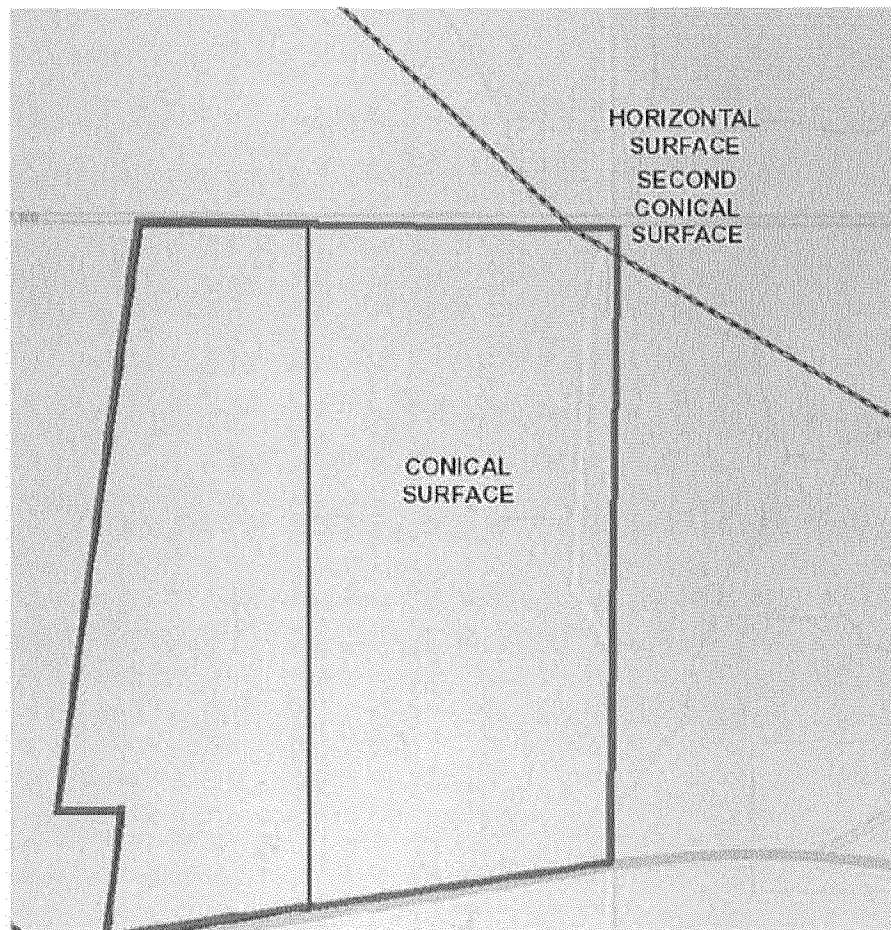
***All uses permitted by the underlying zone shall comply with the height limitation in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control.***

- A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plan or other object of natural growth shall penetrate an airport imaginary surface.***
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structure and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures of up to 35 feet in height.***

\*\*\*\*

**FINDING:** The property is within the Airport Safety (AS) Combining Zone of the Bend Municipal Airport and is sited approximately 10,200 feet from the airport runway. The property is outside the approach and transition surfaces, but within the horizontal surface of the Bend Municipal Airport. The site is mostly within the conical and partially within the secondary conical surfaces. The applicant indicates that except for the eight (8) proposed power poles, the proposed array and related facilities will be a maximum of twelve (12) feet in height, well under 35 feet.

Staff was unable to locate a reference to the height of the proposed power poles in the submitted plans and application materials. However, it is staff's opinion, that the proposed power poles are accessory to the proposed solar panels and inverters, thus included in the conditional use permit review. As long as these poles are below a height of 200 feet, they are exempt from the height requirements of the EFU zone. However, at a possible height of over 35 feet, FAA regulations may impose design standards and other requirements. Staff recommends that the applicant provide the Hearings Officer with information and drawings for the proposed power poles to verify the height and also provide written evidence that the height and design of the power poles complies with FAA requirements.



**Source:** Deschutes County GIS

**Hearings Officer:** The applicant has confirmed that no pole or other structure will be higher than 30 feet, well within the height limitation.

2. 18.80.044, Land Use Compatibility.

*Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body.*

- A. Noise.** *Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]*

**FINDING:** The proposed use is not one that is noise-sensitive and is not located within the noise impact boundary associated with the Bend Airport.

- B. Outdoor lighting.** *No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.*

**FINDING:** The applicant indicates that exterior lighting not proposed.

- C. Glare.** *No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.*

**FINDING:** In the incomplete application letter, dated April 22, 2015, staff provided the following comment:

**STAFF COMMENT:** The submitted burden of proof statement states: "*The subject property is not within the approach surface for the airport. Additionally, no reflective materials shall be used.*" The site is outside of an approach surface, however, it could be interpreted that the site is "...on nearby lands where glare could impede a pilots vision". Please provide a detailed response, and any supporting evidence, as to how the design and materials of the proposed solar array complies with this criterion. What materials and finishes would be used for the panels, frame and inverters? What are their reflective qualities? Can you provide samples, color photographs and cut-sheets for the solar array to clarify this?

The applicant provided the following response to Staff's comment above in their supplemental burden of proof statement:

*Applicant Response:* *As described above, the proposed materials are non-reflective. Photographs are enclosed as **Exhibit C**. As noted in the FAA Technical Guidance for Evaluating Selected Solar Technologies on Airports referenced above and attached as **Exhibit D**, the panels are designed to absorb rather than reflect light. The reflectivity of the panels is significantly lower than that of bare soil or vegetation. As noted by the FAA letters the applicant submitted, the FAA has no concerns about the proposed array posing any risk to aircraft.*

Submitted with the application is an FAA letter, issued March 26, 2015, concluding that aeronautical study no. 2015-ANM-165-OE, associated with the site, is determined to have no aeronautical hazard to air aviation. Additionally, comments from Gary Judd, Manager for Bend Municipal Airport, indicate he does not see any issues with the proposal.

The applicant contends that the solar panels used for the project will not produce significant reflection or glare as it will utilize photovoltaic (PV) modules using "non-reflective" glass. The applicant refers to the photos in Exhibit C of the supplemental burden of proof as visual evidence to verify that the surface material of the solar panels is not reflective. Additionally, the applicant also refers to the FAA Technical Guidance for Evaluating Selected Solar Technologies on Airports for evidence that the proposed panels are designed to absorb rather than reflect light and that the reflectivity of the panels is significantly lower than that of bare soil or vegetation.

The applicant also references the Study of the Hazardous Glare Potential to Aviators from Utility-Scale Flat-Plate Photovoltaic Systems, published by the International Scholarly Research Network (ISRN) and included as Exhibit D to the applicant's supplemental burden of proof statement. The applicant provides a quote from this ISRN paper concluding that "*the potential for hazardous glare from flat-plate PV systems is similar to that of smooth water and not expected to be a hazard to air navigation*".

A specific page reference was not provided by the applicant and staff believes it would be helpful for the Hearing's Officer in efficiently reviewing the large volume of supplemental materials submitted with this application. Staff suggests the applicant also provide a page reference for these quotes and all future quotes, as well as a written summary of any reference to future supplemental materials or exhibits, which could address specifically how it pertains to

their request and to clarify why they believe it is important. Staff sent an email to the applicant's attorney on June 2, 2015 and requested summaries and references for all submitted exhibits.

Staff does not possess the expertise to effectively evaluate and assess the reflective qualities or glare potential of solar panels as described in the above referenced publications. Unless the Hearings Officer is comfortable reviewing and interpreting the submitted materials, Staff suggests that the Hearings Officer request the applicant to provide written expert testimony to effectively evaluate the effect of glare and reflectivity of the specific solar panels on aircraft and pilots.

Such an expert, retained by the applicant, should provide a written summary with specific references to pages, tables, figures, etc... regarding the glare and reflective qualities of the proposed panels, to the Hearings Officer for consideration.

As discussed above, it is unclear to staff that the proposed panels would consist of a material that would not produce glare "...on nearby lands where glare could impede a pilot's vision". As such, staff finds this criterion is not satisfied.

**Hearings Officer:** At the hearing, there was much debate about the potential for glare or similar impacts on aviation. Much of this was generalized. The most compelling evidence came from Gary E. Miller, President of the Central Oregon Chapter of the Oregon Pilot's Association and a member of other pilot associations and clubs. He indicated significant initial skepticism and concerns on his part and that of other pilots. He supplemented his testimony with a July 1, 2015 email, concluding that, "if the projects are built as currently specified, with a requirement to mitigate unforeseen glare with programming, the CO-OPA and the OPA have no objection..." In particular, his analysis concluded that any noticeable "uplift" will be outside the normal airport traffic area. As regards glare, he reran the SGHAT with "more accurate data" that any potential glare would be south of the FAA recommended air traffic pattern and of a lesser intensity" than anticipated and, therefore, not a significant concern. To a certain extent this contradicts the applicant's assertion that there effectively is no glare, but the convincing evidence is that any glare is minimal and not a hazard.

Note, however, that this is dependent on proper programming of the panels and unforeseen glare issues could arise. The applicant committed to working with aviation interests to resolve any issues. I find that a condition of approval to that effect is necessary to ensure on-going compliance. See condition No. 10.

- D. *Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.***

**FINDING:** The proposed use will not generate any emissions of smoke, dust or steam.

- E. *Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio***

***communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.***

**FINDING:** The proposed use should not cause or create any electrical interference with navigational signals or radio communications between the Bend airport and aircraft.

- F. Limitations and Restrictions on Allowed Uses in the RPZ, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table I, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.***

**FINDING:** The proposed use listed as "Utility" DCC 18.80 Table I. The subject property is located in a secondary impact area where note L (5) specifies, "the proposed height of utilities shall be coordinated with the airport sponsor and the Department of Aviation." Comments received from the Bend Municipal Airport Manager express no concerns for the proposed use.

- 3. Section 18.80.054, Conditional Uses.**

***Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.***

**FINDING:** The proposed use is permitted conditionally in the underlying zone, which is Exclusive Farm Use.

- 4. Section 18.80.064, Procedures**

***An applicant seeking a land use or limited land use approval in an area within this overlay zone shall provide the following information in addition to any other information required in the permit application:***

***A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The Community Development Department shall provide the applicant with appropriate base maps upon which to locate the property.***

***Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level.***



\*\*\*\*

**FINDING:** The submitted site plan drawings comply with these criteria.

5. Section 18.80.078, FAA Notification (Form 7460-1).

A. ***Federal and State Notice.***

***Federal Aviation Regulation (FAR) Part 77 requires that anyone proposing to construct anything which may obstruct the use of airspace by aircraft to provide a notice to that effect to the FAA. In addition, OAR 738.070.0060 requires notice also be sent to the Oregon Department of Aviation. Generally, construction proposals in the vicinity of airports may obstruct airspace. Notice to the FAA and Oregon Department of Aviation is required for anything which may affect landing areas, either existing or planned, which are open to the public, or are operated by one of the armed forces.***

\*\*\*

**FINDING:** The applicant submitted form 7460-1 with the application.

**CHAPTER 18.84. LANDSCAPE MANAGEMENT COMBINING ZONE**

1. Section 18.84.020. Application of provisions.

***The provisions of this chapter shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of this chapter shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified a landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitation in this section shall not unduly restrict accepted agricultural practices.***

**FINDING:** Highway 20 is identified on the County Zoning Map as the landscape management feature. Because the subject property fronts along Highway 20, approximately 1,320 feet of the property is within the LM Combining Zone. A portion of the proposed solar farm facility is within the LM Combining Zone; therefore, the provisions of this chapter are applicable.

2. Section 18.84.030. Uses Permitted Outright.

***Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.***

**FINDING:** The proposed use is listed as a conditional use in the underlying zone, thus is permitted as a conditional use in the LM zone, subject to the requirements of this section.

3. Section 18.84.050. Use Limitations.



- A. Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.**

**FINDING:** The proposed use involves new structures that require building permits, thus is subject to landscape management review.

4. Section 18.84.080. Design review standards.

- A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act or agricultural use of the land.**

**FINDING:** In response to this criterion, the applicant's burden of proof statement provides the following:

*Proposed Finding: As shown on the attached site plan drawings, the applicant proposes retaining existing tree and shrub cover surrounding the proposed use, and where necessary, to install additional trees and shrubs, in order to provide a buffer from Highway 20.*

There is a fair amount of mature juniper trees, shrubs and natural grasses and vegetation between the Highway 20 and the proposed facility that provide some screening and help mitigate impacts as seen from Highway 20. A condition of approval that existing trees and vegetation between the facility and Highway 20 be retained should be imposed.

**Hearings Officer:** I concur. See Condition Nos. 6, 8, 9.

- B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.**

**FINDING:** The applicant provided the following response in the submitted burden of proof statement:

*Proposed Finding: The applicant is not proposing to construct any buildings. The solar array and related facilities will be non-reflective. Photos of similar arrays are included in the accompanying materials. To minimize impacts on surrounding properties and views from Highway 20, the applicant is proposing a buffer of existing landscaping surrounding the proposed use. As discussed above, if after installation of the array, the density of vegetation along the south boundary of the array (i.e., the area facing Highway 20) does not provide at least one row of trees and shrubs of at least four (4) feet in height no*

*further than sixteen (16) feet apart, the applicant will install additional trees and shrubs of at least four (4) feet in height to meet this standard.*

In the incomplete application letter, dated April 22, 2015, staff provided the following comment:

**STAFF COMMENT:** Subsection (B) recommends that new structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the proposed site. The burden of proof statement indicates that the solar array and related facilities will be non-reflective and that photos of similar arrays are included with the application, but the photos were not included. In addition to a detailed written response, please submit the color photos of similar arrays along with color and material samples of the solar array and associated structures.

In response, the applicant's supplemental burden of proof statement provides the following:

*Applicant Response: The applicant is enclosing photos of a similar array as **Exhibit C**. As described above, the applicant is submitting photos of the various components of the array as well. It is not feasible to install panels or inverters that are finished in muted earth tones because the panels and inverters are not available in such colors. However, as explained above, the applicant is proposing to use a mesh wrap over the perimeter fence that will be tan colored and should blend well with the surrounding vegetation and landscape. Additionally, the applicant has proposed surrounding the site with a perimeter ring of juniper trees, as described above. Together, the fencing, the existing vegetation that is to be retained and the proposed new trees should serve to provide a very good buffer from surrounding properties and for travelers along Highway 20.*

As quoted above, the applicant indicates that it is not feasible to install panels or inverters that are finished in muted earth tones because the panels and inverters are not available in such colors. Although it may be accurate that the inverters and racking and other equipment associated with the solar array is not provided from the manufacturer in muted earth tone colors, they must comply with applicable criteria. Additionally, although use of a tan colored mesh screen covering the perimeter fence would likely blend well with the surrounding vegetation and landscape, at a height of 6 feet, it may not provide enough screening to mitigate visual impacts of the 10 foot high inverters and 12 foot high solar panels with associated racking and equipment.

The applicant indicates that the panels are to be dark blue in color and non-reflective. The photos in Exhibit "C" of the applicant's supplemental burden of proof, appears to show the inverters to be white or silver and the frames and racking to be a matte silver. Based on submitted photos, and the applicant's supplemental burden of proof statement, the proposed solar panels, frames, supports, motors and inverters are not proposed to be finished in muted earth tones that blend with and reduce contrast (e.g. glare) with surrounding vegetation and landscaping on site. Staff notes that this criterion is phrased as a recommendation and is uncertain if the applicant's proposal complies with this criterion. Staff requests that the Hearings Officer make specific findings on these issues.

**Hearings Officer:** I address this issue below.

**C. *No large areas, including roofs, shall be finished with white, bright or reflective materials. Metal roofing material is permitted if it is non-reflective and of a color which blends with the surrounding***

**vegetation and landscape. This subsection shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.**

**FINDING:** In response to this criterion, the burden of proof statement provides the following:

*As the applicant is proposing no buildings, there will be no roofs. The applicant is not proposing any structures with large areas.*

In the incomplete application letter, dated April 22, 2015, staff provided the following comment:

**STAFF COMMENT:** Because the solar array meets the definition of structure that is large in area, it must comply with this criterion. In addition to a detailed written response to this criterion, please provide color and material samples of all structural and surface elements related to the solar array (including fencing and poles), color photographs and any other evidence or materials you feel would help clarify compliance with this criterion.

In response, the applicant's supplemental burden of proof statement provides the following:

*Applicant Response:* None of the array will be finished with bright or reflective materials, as shown in the various attached photos. The inverters are white, but there are a limited number of them and they do not qualify as "large areas". They are approximately 7.5 feet in height (on an approximately two-foot high pad), 3 feet in depth and 8 feet in width (90 inches x 38 inches x 101 inches). As noted above, the applicant is using vegetation and fencing to provide buffering from surrounding view corridors, including residences and Highway 20.

This criterion requires that a large area, which includes the proposed solar array, not be finished with white, bright or reflective materials. Section 18.04.030 provides the following definition for a structure: "Structure means something constructed or built having a fixed base on, or fixed connection to, the ground or another structure".

Staff believes that the solar farm constitutes a large area, thus shall not be finished with white, bright or reflective materials. As with the criterion (B) above, the applicant could have the inverters, racking, and other related equipment painted a flat earth tone color that is not white, bright or reflective, before installation to help attain compliance with this criterion.

However, the glass surface of the proposed solar panels may produce glare, therefore may be reflective and bright. As mentioned above, the photos in Exhibit "C" of the applicant's supplemental burden of proof, appears to show the inverters to be white or silver and the frames and racking to be a matte silver. As discussed in the finding for 18.80.044 (C) regarding glare, staff does not possess the expertise to effectively evaluate and assess the reflective qualities or glare potential of solar panels as described in the above referenced publications. For these reasons stated above, staff is uncertain if the applicant has complied with this criterion and requests that the Hearings Officer make specific findings on these issues.

**Hearings Officer:** Since criteria A, B and C address similar issues, I will address them together. I concur with staff. As regards glare or reflectivity, as discussed above regarding aviation, the evidence indicates that the panels will not cause significant glare or reflectivity. It is evident that the panels themselves cannot be earth tone or coated. As regards the support

structures, such as inverters and racking, the evidence is that they are not readily available from manufacturers in those colors. That is different from evidence that they cannot be obtained or made to conform to the standard. As staff notes, the "earth tone" language is a recommendation and not a fixed standard. But these standards also relate to the compatibility standards discussed above and should be read in that context. Nothing in the record convinces me that the applicant could not "special order" the inverters and racking in such colors or have them painted or powder coated before installation. Accordingly a condition of approval will be imposed requiring all inverters, racking and similar structures, other than the panels, located in the LMCZ be flat earth tones. In addition, the 8' height limit is imposed for the distance between the southern fence line (i.e. facing Hwy 20) to the most southerly proposed compacted soil access road shown on the site plan to address any residual reflectivity or glare that might be present. See Condition Nos. 6, 7 and 8.

- D. *Subject to applicable rimrock setback requirements or rimrock setback exception standards in Section 18.84.090, all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream.***

**FINDING:** In response to this criterion, the applicant's burden of proof provides the following:

*Proposed Finding: The applicant is not proposing any buildings. The array and all related facilities will be no taller than an average one-story barn or other outbuilding. The highest point above natural grade will not exceed twelve (12) feet. As noted in the attached site plan drawings and as discussed above, the applicant is proposing to retain native vegetation surrounding the proposed array.*

The subject property does not contain rimrock. According to the revised plans, the proposed solar panels and inverters are set back 550 feet or farther from the front property line/right-of-way of Highway 20. On the west end of the facility, abutting the transmission line, the solar panels are sited approximately 900 feet from the front property line. Based on elevations on Sheet 4 of the May 13<sup>th</sup> submittal, the topography of that portion of the property proposed for the solar array, racking and inverters within the LM Combining Zone boundary varies between 8 and 12 feet lower in elevation than Highway 20. It appears that the applicant has sited the proposed facility in a location to take advantage of existing vegetation, trees and topography in compliance with this criterion.

**Hearings Officer:** This criterion is met with compliance with the above described conditions of approval.

- E. *Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flagpoles or other projections from the roof of the structure. This section shall not apply to agricultural structures located at least 50 feet from a rimrock.***

**FINDING:** The applicant indicates that the proposed array will not exceed twelve (12) feet in height from natural grade. Based on the revised plans, the applicant proposes eight (8) power poles that would be located within the LM Combining Zone. The northern most power pole is

sited approximately 1,250 feet north of the centerline of Highway 20. Therefore, the requirements of this section limit the height of the power poles to 30 feet.

**Hearings Officer:** As noted above, the applicant has provided assurances that no pole or other structure will exceed 30'.

- F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.***

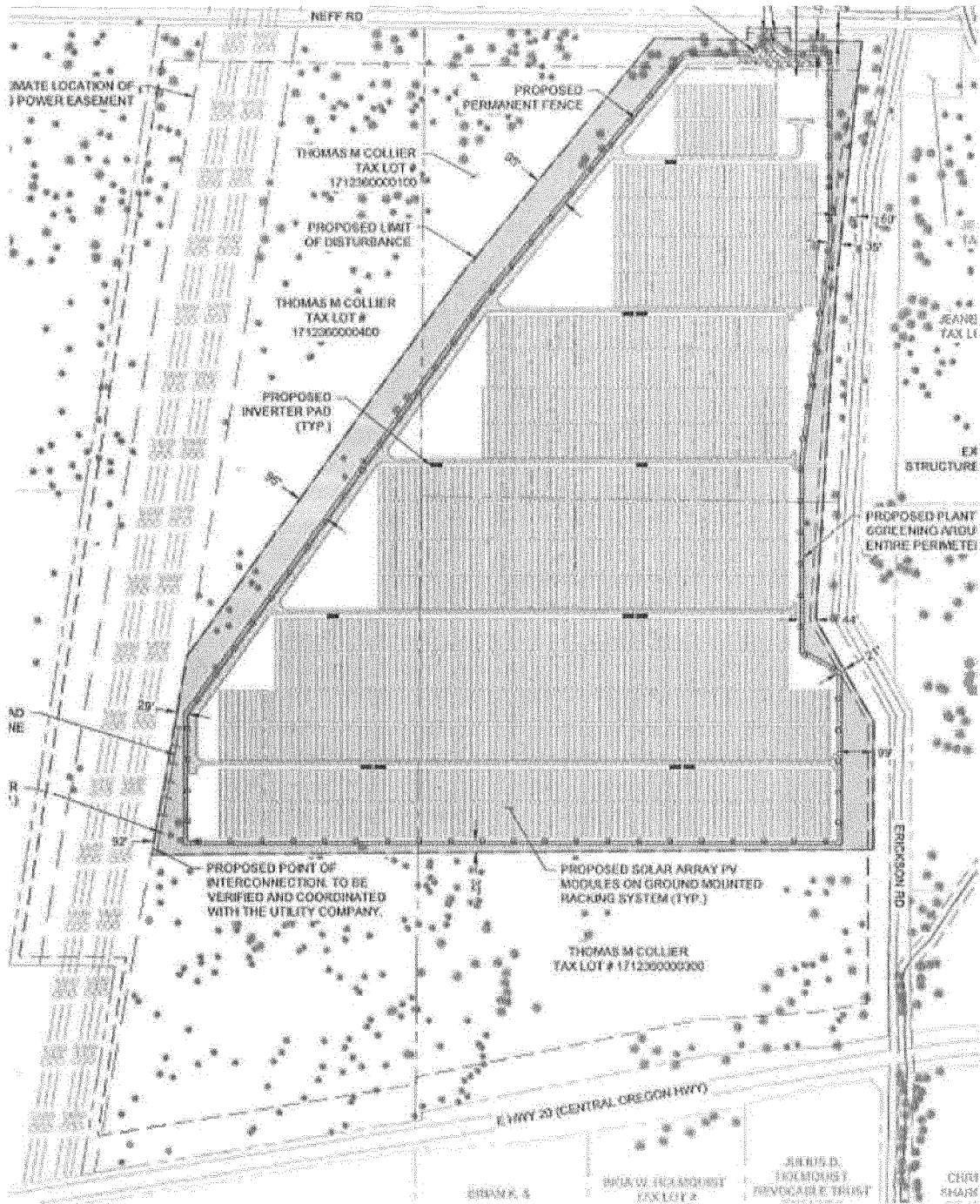
**FINDING:** Access to Highway 20 is not proposed.

- G. New residential exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.***

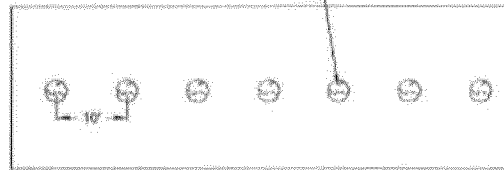
**FINDING:** The applicant indicates that new exterior lighting is not proposed.

- H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points of views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged.***

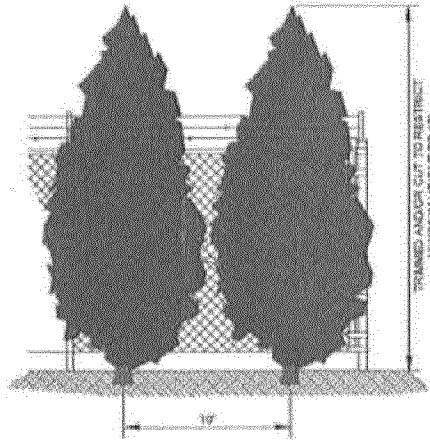
**Hearings Officer:** The applicant is proposing juniper trees, which are native to this area, and more likely to blend into the existing landscape. The proposed location, which will be a perimeter ring of trees no more than ten (10) feet apart, is shown on the attached, revised site plan. Sheet 5 of the May 13<sup>th</sup> submittal is the Landscape Plan. Below are excerpts of Sheet 5 identifying proposed shrubs and their locations:



MOON GLOW JUMPER (OR APPROVED  
EQUAL) TO BE A MINIMUM OF 4' HIGH AT  
TIME OF PLANTING. TREES MAY BE  
TRIMMED AND/OR CUT TO RESTRICT  
MAXIMUM HEIGHT TO 12'



PLANTED SCREENING DETAIL  
NOT TO SCALE



PLANTED SCREENING DETAIL SECTION VIEW  
NOT TO SCALE

#### LANDSCAPING NOTES

1. MOON GLOW JUMPER (OR APPROVED EQUAL) MAY BE TRIMMED AND/OR CUT TO RESTRICT MAXIMUM HEIGHT TO 12'.

Staff indicates, and the site visit confirmed that there is a topographic difference between HWY 20 and the portion of the site in the LMCZ. The conditions imposed above will help address this situation. Staff suggests that additional landscape material in this area be considered.

There is a fair amount of existing vegetation shown on the landscape plan in the western and most easterly areas interfacing HWY 20. Between those areas, however, is a void from approximately the 32' point marked on the landscape plan to approximately 400' from the Erickson Rd. The scale of the landscape plan suggests that there are approximately 30 identified "existing vegetation" spots in the approximately 200,000 square foot vegetated area on the east. The void area appears to be something more than twice that size. I am not a landscape architect but staff has invited me to consider additional landscaping. Accordingly, I think it appropriate to require the applicant to plant 75 juniper or comparable native trees in this "void" area. This shall be done not in row(s); rather the landscape professional shall employ his or her professional judgment on placement so as to reasonably blend in with the existing vegetation to the east and west. Similarly heights shall be varied but no less than 2' and at least 25 shall be 6' when planted. The trees shall be maintained until established. Dead, dying or diseased trees in the entire area south of the perimeter shall be replaced within 90 days. See Condition No. 6.

- I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (no trespassing, no hunting, etc.) are permitted.**

**FINDING:** The applicant is not proposing signs with this landscape management application. This criterion is met.

- J. A conservation easement as defined in Section 18.04.280 "Conservation Easement" and specified in Section 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Squaw Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access."**

**FINDING:** The subject property is not adjacent to any of the waterways listed above. Therefore, this criterion does not apply to the subject property.

**5. Section 18.84.090. Setbacks.**

- A. Except as provided in DCC 18.84.090, minimum setbacks shall be those established in the underlying zone with which the LM Zone is combined.**

**FINDING:** The underlying zone for this site is Exclusive Farm Use (EFU), which has been addressed in foregoing findings.

- B. Road Setbacks. All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road right-of-way unless the Planning Director or Hearings Body finds that:**

**FINDING:** The submitted site plan shows the solar array and associated fencing to be set back 550 feet or farther from the right-of-way associated with Highway 20 in compliance with this setback standard.

## **DESCHUTES COUNTY COMPREHENSIVE PLAN**

Although not typically addressed in a quasi-judicial land use permit, in addition to addressing the applicable criteria of the Deschutes County Zoning Ordinance, in the supplemental burden of proof statement, the applicant provides the following regarding the Deschutes County Comprehensive Plan:

### ***Deschutes County Policies***

*The applicant notes that some of the opponents to the proposal claim to be in favor of renewable energy and favoring proposals such as the proposed array, but they believe that the project should be sited somewhere else. The problem with "somewhere else" is that somewhere else will not work as well operationally and will risk greater impacts on*



surrounding properties or wildlife. It is not feasible to place a large solar farm within a city's limits because of the high cost of land and the limits on expanding urban growth boundaries in Oregon. It is not feasible to place a large solar farm in a more rural area because in those areas, there would be significant impacts on wildlife. Locating the solar farm in this proposed location is the best way to balance impacts with our collective, societal need – and desire – for renewable energy.

The County's (relatively; adopted in 2011) new comprehensive plan embraces renewable energy as an important goal/priority for the County. Under Section 3.4, Rural Economy Policies, Goal 1 seeks a "stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment." Policy 3.4.5 under that Goal specifically states that the County seeks to "[s]upport renewable energy generation as an important economic development initiative."

Under Section 2.8, Energy Policies, Goal 3 seeks to "[p]romote affordable, efficient, reliable and environmentally sound commercial energy facilities." Policy 2.8.9

**Hearings Officer:** The Comprehensive Plan provisions cited inform application of the Code criteria but I have not been cited to any provision of the Comprehensive Plan or Code expressly making any of the acknowledged Comprehensive Plan policies directly applicable to the proposal.

## **OREGON ADMINISTRATIVE RULES:**

### **OAR 660-033-0120**

#### ***Uses Authorized on Agricultural Lands***

*The uses listed in the table adopted and referenced by this rule may be allowed on agricultural land in areas that meet the applicable requirements of this division, statewide goals and applicable laws. All uses are subject to the requirements, special conditions, additional restrictions and exceptions set forth in ORS Chapter 215, Goal 3 and this division. The abbreviations used within the table shall have the following meanings:*

(1) "A" — *The use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.*

(2) "R" — *The use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to address local concerns.*

(3) "\*" — *The use is not allowed.*

(4) "#" — *Numerical references for specific uses shown in the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use in the table, this rule does not establish criteria for the use.*

<b><u>HV</u></b>	<b><u>All</u></b>	
<b><u>Farmland</u></b>	<b><u>Other</u></b>	<b><u>USES</u></b>

\*\*\*

### **Utility/Solid Waste Disposal Facilities**

...

R5,38	R5,38	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
-------	-------	---

...

*(The numbers in the table above refer to the section numbers in OAR 660-033-0130)*

### **OAR 660-033-0130**

***(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:***

***(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and***

***(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.***

**Hearings Officer:** As staff notes, subsections (a) and (b) above, are incorporated in Title 18 of the Deschutes County Code in Section 18.16.040 and are addressed in this staff report above.

### **Hearings Officer:**

OAR chapter 660 regulates Agricultural Land, with specific provisions governing a "photo-voltaic solar power generation facility" as defined at OAR 660-030-0130(e). The proposal falls squarely within this definition. As staff notes, "Photovoltaic solar power generation facility" 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 and all necessary grid integration equipment.

These facilities are further subject to "review" in accordance with OAR 660-0330 (38). Beyond that, however, the OAR is ambiguous as to exactly what standards apply to the facts present in this proposal. Although the rule has been cited in case law, including in the context of solar power facilities, I found and have been cited to no particularly helpful interpretive authority.

The critical initial issue is the applicability and meaning of OAR 660-033-0130 "Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses" (38) (f), (g) or (h).

*(f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.*

*(g) For arable lands, a photovoltaic solar power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.*

*(h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 320 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. (Emphasis added)*

Obviously, the proposal exceeds these limits for high value and arable lands. In a nutshell, the applicant's position is that the size of facility that may be permitted is a function of whether it is "located on high value farmland soils" and whether it is located on arable soils. If it is not on "high-value soils" and not on arable soils, the proposal is well within the 320 acre limit. The applicant contends that the proposal is neither on high value soils or arable land, accordingly, the 320 acre limit controls. (Applicants rebuttal dated Aug. 4, 2015)

In a nutshell, counsel for Cathy Jensen argues that the soil classification is irrelevant. ORS 195.300(10) (c) (B) does not define high value farmland in terms of soil classifications, rather it simply states that high value farmland is land that is zoned EFU and is (B) "within the boundaries of a district, as defined in ORS 540.505", i.e. an irrigation district. Since the subject property is within the Central Oregon Irrigation District, the 12 acre limit controls.<sup>1</sup>

The courts have held that administrative rules are to be interpreted essentially in the same manner as statutes, i.e. courts look first to the plain meaning of the text and context with the aid of whatever legislative history the court may deem relevant.

The applicant argues that the context and legislative history support its position. First, it notes that OAR 660-033-0200 expressly states that "for purposes of this division", the definitions in ORS 197.015, the Goals and OAR 660 itself apply. It goes on to specifically define "high value farmland" as "land in a tract composed predominately of soils that are "not irrigated and classified prime, unique, Class I or II" or irrigated and classified prime Class I or II. This argument is consistent with the general rule that a more specific definition controls over a more general one. In making this argument, however, the applicant misreads the cross-reference in (f) to include a reference to "soils" described at ORS 195.300 (10). But soils are not, in fact, mentioned in either the (f) cross-reference or ORS 195.300 (10) (c) (B).

It is difficult to understand why (f) does not cite to the division's own definition of high-value farmland. It is even more confusing when one notes that the standards for siting a solar facility on "arable" or "nonarable" land do state that "No more than 12 acres of the project will be sited on high-value *soils* described at ORS 195.300(10)." (Emphasis added). Further, most of the focus of (38) is on whether the land/soils are arable or nonarable, based primarily on existing or historic irrigation. Reading the rule on its face suggests the rather incongruous conclusion that there are actually three mutually exclusive classifications:

High value farmland without regard to soils, arability or irrigation but in an irrigation district – 12 acre limit.

Arable land/soils (i.e. irrigated) – 20 acre limit (no more than 12 on high value soils) only if outside an irrigation district, which may be rare.

Nonarable land/soils – 320 acre limit (no more than 12 on high value soils) unless in irrigation district in which case the limit is 12 without regard to the soils, or evidence that the land has never been irrigated, has no water rights or the district has no water available.

Modern court decisions make it clear that they are not to insert what has been omitted or omit what has been inserted and, if possible, must give effect to all. See *e.g.* ORS 174.010. This is particularly true where, as here, other portions of the rule expressly refer to "soils". Courts generally will apply the doctrine that express mention of a term in one place but not another implies an intent to draw a distinction, rather than assume it is an oversight. The applicant

---

<sup>1</sup> Counsel's letter is addressed specifically to the Oregon Solar project (Collier Property), but I note that Jensen property primarily abuts the NW Energy 2 site. The hearing was consolidated and her comments are relevant to both proposals so are addressed accordingly.

essentially would insert into OAR 660-033-0130 (38) (f) the word "soils". This I cannot do. It does not make the specific arable/nonarable distinctions in the Rule inapplicable, although it significantly impacts their effect. The critical inside/outside irrigation district classification described above may not appear to make much policy sense but is not so contradictory as to be impossible to apply and give effect.

The applicant also cites to a basis for an exception to these rules of construction. That is, if there is relevant legislative history, as the overriding task of a court is to apply the intent of the legislature (and in this case administrative agency). The applicant demonstrates that ORS 195.300(10) was adopted as part of the 2007 Measure 37 "fix" and, presumably, there was no thought given to solar facilities. But that does not establish a legislative intent that they should be permitted on "high-value" farmland as that term is used in ORS 195.300(10). Further, and more important, is that the administrative rule at issue has been amended numerous times since 2007, so LCDRC has had many chances to remove or modify the cross-reference if it wanted.

(38)(f) remains ambiguous, however, as it does not simply state that a facility cannot be sited on more than 12 acres of "high-value farmland", it says that, if on high-value farmland (i.e. in this case in an irrigation district), it "shall not preclude more than 12 acres from use as a commercial agricultural enterprise". This language mirrors the language in (h) for "non-arable" soils, on which a facility cannot preclude more than 320 acres from use as a commercial agricultural enterprise." Both sections then list a series of criteria for approval. These approval criteria speak to avoiding "high-value farmland *soils*, including for non-arable lands that no more than 12 acres of the project will be on high-value *soils* as described at ORS 195.300(10).

OAR 660-033-0020 (2) (a) defines Commercial Agricultural Enterprise as: "farm operations that will: (A) Contribute in a substantial way to the area's existing agricultural economy; and (B) Help maintain agricultural processors and established farm markets. (b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

It is undisputed that the property is not now used for a commercial agricultural enterprise. Thus, the project would not preclude an "existing" such enterprise. Nor has it been so used for many years, and even then apparently not particularly successfully. 'Preclude' is defined in the online Merriam-Webster as: to make (something) impossible: to prevent (something) from happening; to prevent (someone) from doing something; to make impossible by necessary consequence: rule out in advance. Certainly, one cannot both have a solar facility covering much of the site and a commercial agricultural enterprise at the same time. But I read the term "preclude" in this context as meaning that the proposed development is what prevents a commercial agricultural enterprise from occurring or plausibly occurring. In this case, the solar facility does not preclude a commercial agricultural enterprise because the poor soils, lack of water and other factors already preclude any realistic chance that commercial agricultural otherwise would occur. The definition of "commercial agricultural enterprise" read as a whole is written in the present tense, suggesting that there must be an existing enterprise or at least ready potential. Relatedly, there is no evidence, even from opponents who contend that there may be some potential viable agricultural use that the property would contribute in a substantial way to the existing agricultural economy or be so significant as to meaningfully contribute to maintaining established processors and markets. The applicant's Feasibility Report concludes the opposite. Approval of the solar farm makes development of a commercial agricultural enterprise on this site no less likely than would a denial.

This is a close call and a court certainly may reasonably conclude otherwise, but on balance I think the better reading is that, in this context, "preclude" should be read as discussed above. The standards set forth in (f) (g) and (h) arguably relate to whether it is the solar facility, or something preexisting, that precludes commercial agriculture. Otherwise, the OAR purporting to allow and govern siting of solar facilities effectively precludes them on vast areas and without regard to impacts on agriculture. The distinctions between arable and nonarable soils, and the detailed approval criteria would only apply outside an irrigation district making the factors in those definitions, viability of commercial agriculture and soil class irrelevant in a district. Accordingly, I find that the proposal does not preclude use of more than 12 acres of high value farm land from use as a commercial agricultural enterprise.

OAR 660-033-0020 (38) (f) further states that, assuming the project is on high-value farmland because it is in an irrigation district, the following must be addressed. It is worth noting that these can be read as guidance on how a solar facility would, if it did not meet the criteria, preclude commercial agriculture. Conversely, if the standards are met, the solar facility does not preclude commercial agriculture especially in the absence of any likelihood that commercial agriculture would be feasible on the site.

**(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.**

As discussed herein, there are no agricultural operations conducted on the site.

**(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;**

**Hearings Officer:** The applicant has stated that there will be virtually no grading necessary for installation and the topography will be virtually unchanged, with grading only around the 12 inverter pads. The applicant submitted a Grading, Drainage and Erosion Control Plan on May 13. Botanical Developments supplemented this on July 21, noting soil compaction will be mitigated by filling and soil amending. Similarly, the July 28 submittal from the applicant details

soil compaction mitigation measures. There is substantial evidence in support of concluding that there will be no unnecessary or significant soil compaction or erosion. See Condition No. 12

**(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;**

**Hearings Officer:** The testimony and evidence establish that the property is significantly impacted by non-native, introduced weeds and other vegetation. The applicant has proposed to substantially clear the site of such vegetation and replant portions with native species. Provided the site is adequately maintained, the proposal likely will enhance rather than degrade the site in this regard. See Condition No. 13.

**(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;**

**Hearings Officer:** As discussed above, the project is not located on high-value farmland soils. The entire site is non-high value soils. Further, it would appear that even if the 36 A and B had been or could be irrigated, limiting the project to those soils would significantly reduce the project's ability to operate successfully by significantly limiting the power that could be generated to justify the investment.

**(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and: (i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.**

**Hearings Officer:** At the applicant's request, Staff did a review and determined that there are no existing or approved solar farm uses exceeding 48 acres within one mile. (Email dated July 21, 2015).

As discussed above, the relationship of the classifications of arable land/soils and nonarable land/soils to a site located in an irrigation district is unclear, particularly when, as here, I have found that the proposal is not what precludes commercial agriculture. But if they were arable, that analysis might change, so it is prudent to address those classifications:

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

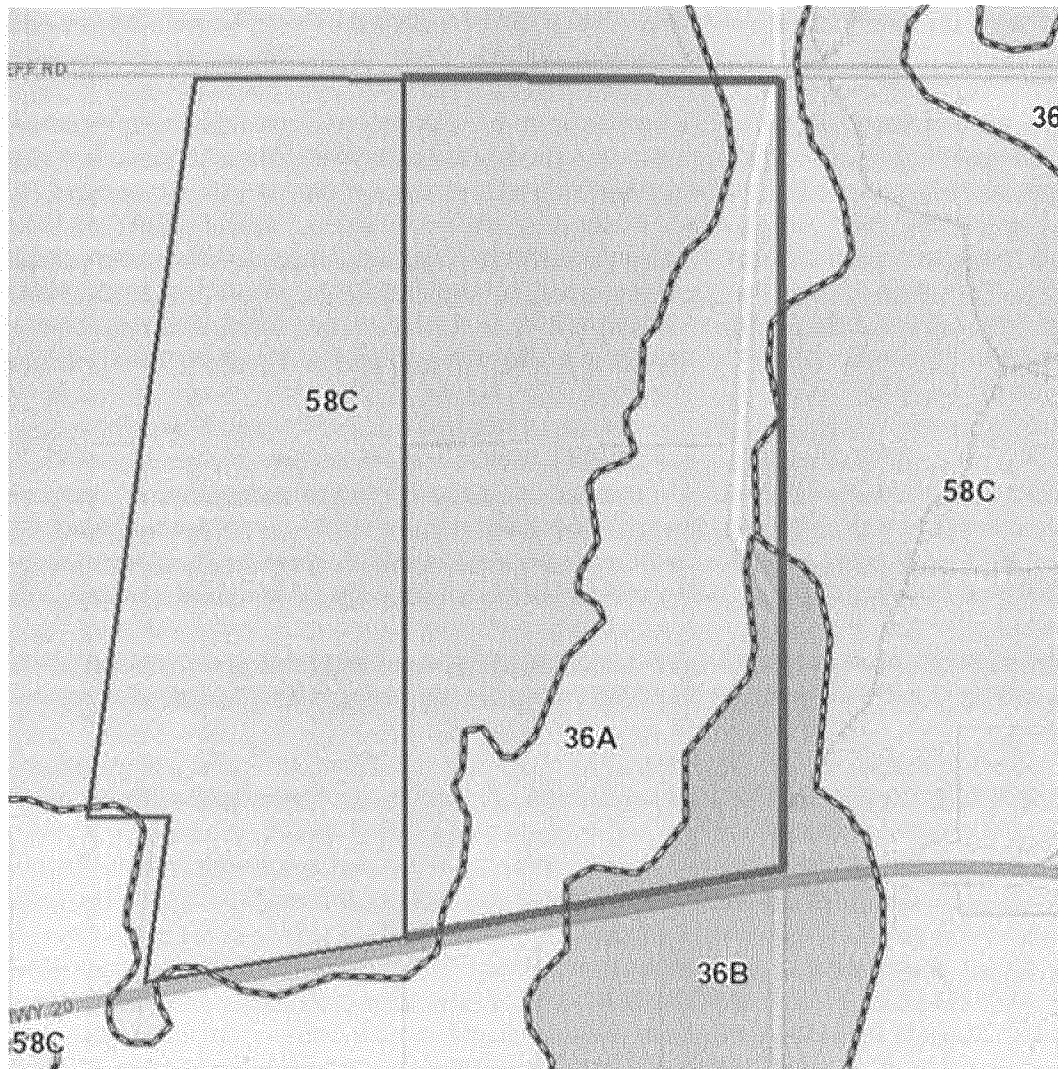
**(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described at ORS 195.300(10) unless otherwise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

*(h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 320 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that: (see below)*



Source: Deschutes County GIS based on NRCS data

The soil composition of the property consists of the following soils:

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes. This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. Major use for this soil type is livestock grazing. The Gosney soils have a rating of 7E, with or without irrigation. The rock outcrop has a rating of 8S, with or without irrigation. The Deskamp soils have ratings of 6E when unirrigated, and 4E when irrigated. Approximately 114 acres or 73% of the property is comprised of this soil type.

36A, Deskamp loamy sand, 0 to 3 percent slopes. This soil complex is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with a rapid over moderate permeability, and about 5 inches of available water capacity. Major uses of this soil type are irrigated cropland and livestock grazing. The agricultural capability ratings for 36A soils are 3S when irrigated, and 6S when not irrigated. This soil is high-value when irrigated. Unit 36A is located on eastern portion of the site. Approximately 35.84 acres or 23% of the property is comprised of this soil type.

36B, Deskamp loamy sand, 3 to 8 percent slopes: This soil is composed of 85 percent Deskamp soil and similar inclusions, and 15 percent contrasting inclusions. This soil is somewhat excessively drained, with rapid permeability and an available water capacity of approximately 3 inches. The major uses of this soil are irrigated cropland and livestock grazing. This Deskamp soils have a capability rating of 6E when unirrigated, and 3E when irrigated. This soil type is considered high-value when irrigated. The 36B soils are limited to the southeast corner of the property at the intersection of Highway 20 and Erickson Road. Approximately seven (7) acres or 4% of the property is comprised of this soil type.

Approximately 73 percent of the property consists of soil unit 58C, which has a soil rating between class 6 and 8 and is not considered high value farmland. Soil units 36A and 36B are considered high value farmland where irrigated. However, due to the absence of water rights for irrigation, Units 36A and 36B have an NRCS agricultural classification rating of class 6, thus are not considered high value farmland.

As evident in Exhibit A of the applicant's supplemental Burden of Proof Statement, received May 13, 2015, the subject parcel has no water rights and no history of irrigation. Thus, the property is not currently cultivated and is not predominantly comprised of arable soils.

**Hearings Officer:** I agree with staff's conclusion that based on Natural Resource Conservation Service (NRCS) data, water rights data, absence of current and historical farm use or irrigation, the property is considered nonarable land and with staff's size calculation. Pursuant to OAR 330-030-130(38) (h) the following additional standards apply:

***(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);***

**FINDING:** The project is not located on high-value farmland soils or arable soils.

***(C) No more than 20 acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;***



**FINDING:** The project is not located on high-value farmland soils or arable soils.

***(D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;***

**Hearings Officer:** See findings above.

***(E) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and***

**FINDING:** No Goal 5 resource protected under the county's comprehensive plan is located on the subject property.

***(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.***

***(G) The provisions of paragraph (F) are repealed on January 1, 2022.***

**FINDING:** Based on comments from Nancy Breuner, Deschutes District Wildlife Habitat Biologist with ODFW, and an email, dated January 09, 2015, from Jerry Cordova, Fish and Wildlife Biologist with U.S. Fish and Wildlife Services, both quoted above, the requirements of this rule have been met.

***(i) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).***

**Hearings Officer:** See Condition No. 11.

***(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 for retiring the photovoltaic solar power generation facility.***

**Hearings Officer:** Staff did not make a finding on this issue, suggesting only that I consider requiring a bond or other security. I have been cited to no provision expressly requiring a bond. Nevertheless, there were several concerns raised about the impact on the adjoining properties if the facility is abandoned more or less in place. The applicant has effectively rebutted arguments that this land should be reserved as more suitable for future urban development, including correspondence from the City of Bend indicating that the subject property is not within an area of interest even over relative the long term. But that cuts both ways, land developable at urban densities might be able to support decommissioning costs in the event the project is abandoned, but an urban designation is very unlikely to occur in the foreseeable future. Rural residential or agricultural value is much less likely to support that cost. Ensuring that facility is, in fact, removed is important in addressing the impact of the facility on nearby properties. It is one thing to have a well maintained functioning facility, quite another to have an abandoned site. This issue also goes to whether the facility might preclude commercial agriculture in the future.

The applicant submitted documents suggesting that the cost of decommissioning a 25 MWp Solar PV Farm is \$2,313,000 (which I understand and recall to be both facilities together) and that the salvage value for both this facility and the adjacent Oregon Solar facility at the end of 30 years will be \$3,957,911 (all 2015 dollars). Although there is no specific evidence to the contrary, I find that this is simply too speculative to rely on. The applicant also relies on the lease term requiring restoration, but the lessor has only the right to sue for performance or damages which is of little use if there are no assets to go after. Solar technology is promising, but new and untested over the long term. There simply is no assurance that the equipment will have significant residual value. Landfills, quarries and other such uses in rural areas commonly must post reclamation bonds. On the other hand, although speculative, the only evidence in the record is that there will be *some* residual value.

Accordingly, this approval is conditioned on providing a performance bond in favor of Deschutes County for removal and restoration, or cash, in an initial amount of \$1,000,000. This represents approximately one-half the estimated removal cost, especially in future dollars. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety and restore the site as conditioned no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs or fails to restore the site. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be

deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed. See Condition No. 14.

#### **IV. CONCLUSION AND CONDITIONS OF APPROVAL:**

Applications 247-15-000170-CU / 171-SP/172-LM are APPROVED subject to the applicant/owner complying with the following conditions of approval:

1. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
2. Prior to initiation of the use, the applicant shall obtain a final approval consolidating the parcels or reconfiguring the boundary lines, or obtain a variance, so as to conform the site plan to the applicable side and rear setbacks.
3. The applicant shall meet all requirements of the Deschutes County Building Safety and Environmental Soils Divisions.
4. Prior to initiation of the use, the applicant shall provide evidence of DEQ National Pollutant Discharge Elimination (NPDES) Permit approval for the proposed use to the Planning Division.
5. Prior to initiation of the use, the applicant shall obtain all necessary state and federal permits for the project.
6. Prior to initiation of the use, the applicant shall complete the following:
  - a) Install the 6 foot cyclone fence with tan/sand or green colored mesh screening. No barbed wire is permitted. At all times, the fence and mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.
  - b) Plant 75 juniper or comparable native trees in the "void" area shown on the site plan as the area east of the 32' mark and approximately 400' from the west property line. This shall be done not in row(s); rather the landscape professional shall employ his or her professional judgment on placement so as to reasonably blend in with the existing vegetation to the east and west. Similarly heights shall be varied but no less than 2' and at least 25 shall be 6' in height when planted. The trees shall be maintained until established. Dead, dying or diseased trees in

the entire area south of the perimeter shall be replaced within 90 days of being discovered with comparable trees.

- c) Plant the perimeter trees/shrubs in the locations shown on the approved Landscape Plan. The shrubs shall be a minimum of 6 feet at the time of planting.
  - d) No solar panel shall exceed 8' in height from existing ground level at its maximum extension, within the area that is 100' more or less from any exterior property line (not internal parcel line, see discussion above re side setbacks). More or less is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In addition, no panel shall exceed 8' from existing ground level at its maximum extension in the area between the southern fence line (i.e. facing Hwy 20) to the most southerly compacted proposed compacted soil access road shown on the site plan.
7. All inverters, racking and similar structures, other than the panels, located in the LMCZ be flat earth tones.
8. No solar panel shall exceed 8' in height from existing ground level at its maximum extension, within the area that is 100' more or less from any exterior property line (not internal parcel line, see discussion above re side setbacks). More or less is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In addition, no panel shall exceed 8' from existing ground level at its maximum extension in the area between the southern fence line (i.e. facing Hwy 20) to the most southerly compacted proposed compacted soil access road shown on the site plan.
- In no event shall anything other than the power poles exceed 12 from existing ground level.
9. Existing landscape and topography shall be preserved to the greatest extent feasible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected. All new plantings shall be regularly watered and otherwise cared for until certified by a landscape professional to be fully established. Dead, dying or diseased vegetation in the landscape area shall be replaced within 90 days of being discovered. Any existing trees preserved on the site over 6' tall that become diseased or die shall be replaced with a minimum 6' comparable tree within 90 days of being discovered and properly tended until established.
10. Prior to initiation of the use the applicant shall establish a hotline available 7 days a week during daylight hours through which a supervisory employee may be contacted to receive and promptly address reports of glare or other conditions causing interference or potential dangerous circumstances for aircraft. This number shall be provided to the appropriate personnel at the Bend and Redmond airports, Deschutes County planning, and Deschutes County Sheriff. It also shall be made available to any aviation company, pilot organization or similar group that may reasonably be considered to be in a position to responsibly report dangerous conditions. The applicant shall modify its operations or take such other steps as are necessary to promptly eliminate glare or other bonafide aviation risks.

11. Prior to initiation of the use, the project owner shall sign and record in the deed records of the County a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices as defined in ORS 30.939(2) and (4).
12. The applicant shall adhere to the soil compaction avoidance and remediation plans submitted into the record.
13. The applicant shall adhere to the plans submitted for removal of noxious/invasive vegetation and minimizing spread or reintroduction.
14. Prior to commencement of commercial electricity sales, the applicant shall obtain approval for an Improvement Agreement from the Planning Division for a performance bond in favor of Deschutes County for removal and restoration, or cash, in the amount of \$1,500,000. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety, including above-ground and buried facilities, no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed.

15. Prior to initiation of the use, the applicant shall sign and record a County Conditions of Approval Agreement to ensure compliance with all conditions of approval.

Based on the foregoing, the applications are Approved With Conditions

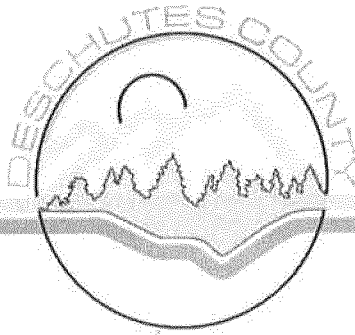
Dated this 18th day of September, 2015

Mailed this 18<sup>th</sup> day of September, 2015



Dan R Olsen, Hearings Officer

**THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS TIMELY APPROVED BY A PARTY OF INTEREST.**



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005

(541)388-6575 FAX (541)385-1764

<http://www.co.deschutes.or.us/cdd/>

### CERTIFICATE OF MAILING

**FILE NUMBERS:** 247-15-000170-CU, 247-15-000171-SP and  
247-15-000172-LM (Oregon Solar Land Holdings)

**DOCUMENTS MAILED:** Hearings Officer Decision

I certify that on the 18th day of September, 2015, the attached Hearings Officer Decision, dated September 18th, 2015, was mailed by first class mail, postage prepaid, to the persons and addresses set forth below.

Dated this 18th day of September, 2015.

### COMMUNITY DEVELOPMENT DEPARTMENT

By: Moonlight BPO

Parties to Application (list attached)	Mike Riley The Environmental Center 16 NW Kansas Avenue Bend, OR 97701
Jeff Caines Oregon Dept. of Aviation 3040 25th Street SE Salem, OR 97302	Michelle Healy Bend Park & Recreation District Office, 799 SW Columbia St. Bend, OR 97702
Steve Jorgensen Bend Park & Recreation District Office 799 SW Columbia St. Bend, OR 97702	Gary Judd, Airport Manager Bend Airport 63136 Powell Butte Rd Bend, OR 97701

<b>Oregon Solar Land Holdings, LLC</b>	Name	Mailing Address	City	State	Zip
	Aina Aliperti	62957 Dickey Rd.	Bend	OR	97701
	Al Ulrich	2115 NW Deschutes Place	Bend	OR	97701
	Al Zenke	1980 Zachary Ct.	Bend	OR	97701
	Alan Vandehey	19366 Seaton Loop	Bend	OR	97702
	Alice Elshoff	1454 NW 4th St	Bend	OR	97701
	Anne & Dave Wolf	24185 Dodds Road	Bend	OR	97701
	Bob & Fran Greenlee	63215 O.B.Riley Road	Bend	OR	97701
	Bob & Kim Atrops	21810 Eastmont Dr.	Bend	OR	97701
	Brenda Pace & Steve Kimple	60738 Golf Village Loop	Bend	OR	97702
	Bridget Murdock	22220 Quebec Drive	Bend	OR	97702
	Carol Falleur	20123 Elder Lane	Bend	OR	97701
	Catherine Jensen	21700 Neff Rd.	Bend	OR	97701
	Chris & Kathy Jensen	61382 Orion Drive	Bend	OR	97702
	Christian K. Schuster	61100 Rustic Lane	Bend	OR	97702
	Christian Life Center c/o Daniel N. LeLaCheur	PO Box 5549	Bend	OR	97708
	Chuck McGill	12320 Fairway Pointe Row	San Diego	CA	92128-3231
	City of Bend c/o Eric King	PO Box 431	Bend	OR	97701
	Craig & Megan Langer	62645 Erickson Road	Bend	OR	97701
	Daniel Sheridan	837 NE 9th Street	Bend	OR	97701
	David & Shelly Mortensen	20058 SE Millbrook Lane	Bend	OR	97702
	David & Shelly Mortensen	20058 Millbrook Lane	Bend	OR	97702
	Dawn Stuart	23075 Bear Creek Road	Bend	OR	97701
	Diana Levey	62841 Loma Vista Drive	Bend	OR	97701-9547
	Donald & Marlene Crandall	22111 Neff Rd.	Bend	OR	97701
	Dr. Matt Shinderman, OSU Cascades	2600 NW College Way			
	Eric Strid	PO Box 2028	White Salmon	WA	98762

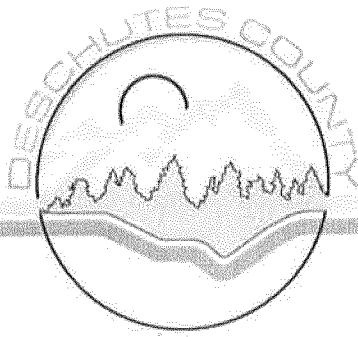


Ernest Ochoa	1094 NE Locksley Dr.	Bend	OR	97701
Frank & Marta Izo	21936 Bear Creek Road	Bend	OR	97701
Frank R. & Anne L. Weis	21780 Eastmont Dr.	Bend	OR	97701
Gary E. Miller	109 NW Wilmington Ave., Suite E,	Bend	OR	97702
George Riemer	18890 Baker Road	Bend	OR	97702
George Wuerthner	PO Box 8359	Bend	OR	97708
Gina Chylak	1559 NW Fresno Ave.	Bend	OR	97701
Greg Jensen	21700 Neff Rd.	Bend	OR	97701
Jan Jensen	60196 Vancouver Ln	Bend	OR	97701
Jan Plants	2755 NW Crossing Drive, Ste 201	Bend	OR	97701
Jeanette Van Kessel	22025 Neff Road	Bend	OR	97701
Jeri Boe	21699 Eastmont Dr.	Bend	OR	97701
Jo Ussery	19588 Manzanita Lane	Bend	OR	97702
Jo Ussery, Broker	550 SW Industrial Way, Ste. 100	Bend	OR	97702
Jodi Hafter	62435 Erickson Rd	Bend	OR	97701
John & Maria Britton	62545 Erickson Road	Bend	OR	97701
John Jackson	21695 Neff Rd.	Bend	OR	97701
Joyce Smith	588 Rivershore Drive	Roseburg	OR	97470
Julie Gilbert	61490 Ward Rd.	Bend	OR	97702-9626
Karyn Anderson	62516 Quail Ridge Road	Bend	OR	97701
Kathy Farr	61670 Somerset Drive	Bend	OR	97702
Kim Tynes	PO Box 1976	Bend	OR	97709
Klara Smith	249 SW Summer Lake Dr.	Bend	OR	97702
Larry & Sandra Beebe	21696 Neff Rd.	Bend	OR	97701
Laurie Lakin	1016 NW Ogden Ave.	Bend	OR	97701
Linda & Tom Denall	18380 Couch Market Rd.	Bend	OR	97703
Linda Gillard	62211 Deer Trail Road	Bend	OR	97701
Linda M. Hoffman	62823 Loma Vista Drive	Bend	OR	97701
Lindsey Hardy	16 NW Kansas Ave.	Bend	OR	97702
Lisa Thoms	1170 Holly Avenue	Cottage Grove	OR	97424
Maribel Darzen	222 NW Irving	Bend	OR	97701
Mary Fay	1090 NE Hobbs Ct.	Bend	OR	97701



	Mathieu Federspiel	13506 SW Sojo Lily		Powell Butte	OR	97753
	Melody Morrow Solar Light &	19855 4th Street, #106		Bend	OR	97701
	Michael L. McLandress	148 NW Congress St		Bend	OR	97701
	representing Cathy Jensen	222 NW Irving Avenue		Bend	OR	97701
	Mike & Diane Reif	22050 Stormy Lane		Bend	OR	97701
	Miriam Deeth	62450 Quail Ridge Road		Bend	OR	97701
	Miriam Deeth	62450 Quail Ridge Rd.		Bend	OR	97701
	Nancy Coleman	PO Box 8561		Bend	OR	97708
	Nancy Tyler	1151 NE Ross		Bend	OR	97701
	Nunzie Gould	19845 JW Brown Rd.		Bend	OR	97701
	Patricia Heatherman	250 NW Franklin Ave., Ste. 402		Bend	OR	97701
	Paul N. Isreal	50 SE Scott #13		Bend	OR	97703
	Peter R Caine	62260 Erickson Rd		Bend	OR	97701
	Peterkin & Associates c/o Marial Darzen	222 NW Irving Avenue		Bend	OR	97701
	Quent Gillard	62211 Deer Trail Road		Bend	OR	97701
	R.K. Schrock	110 Vicksburg Ave.		Bend	OR	97701
	Rachel Baker	628 NW Harmon Blvd.		Bend	OR	97701-3024
	Rachel G. Baker	628 NW Harmon Blvd.		Bend	OR	97703
	Renata Thommen	61382 Ward Rd		Bend	OR	97702
	Richard LaFollette	290 SE Fifth Street		Bend	OR	97702
	Royne Patokoski	20636 Pine Vista Drive		Bend	OR	97702
	Sam Newman	1455 NW 8th Str.		Bend	OR	97701
	Sandy & Jim Schneider	64682 Cook Ave. #14		Bend	OR	97701
	Sheree MacRitchie	431 NW Franklin Ave.		Bend	OR	97701
	Stephanie Morris	24035 Dodds Rd.		Bend	OR	97701
	Steve & Sandra Miller	61535 SW Longview St		Bend	OR	97702
	Sue Bastian	20362 Rock Canyon		Bend	OR	97701
	Susan Marshall	Greg Ct.		Bend	OR	97701

	Toby & Michel Bayard	20555 Bowery Lane	Bend	OR	97701-8850
	Tom & Linda Denall	18380 Couch Market Rd.	Bend	OR	97701
	Tom Collier	PO Box 5609	Bend	OR	97708
	Tommy & Carol Cobos	22060 Neff Rd.	Bend	OR	97701
	William & Karen McClure	62419 Quail Ridge Road	Bend	OR	97701
	William S. Herz	PO Box 718	Bend	OR	97709



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### CERTIFICATE OF MAILING

**FILE NUMBERS:** 247-15-000170-CU, 247-15-000171-SP and  
247-15-000172-LM (Oregon Solar Land Holdings)

#### DOCUMENTS MAILED:

- 1) Hearings Officer Decision
- 2) Farm & Forest Easement to Owners, Applicant and Applicant's Attorneys
- 3) Conditions of Approval Agreement to Owners, Applicant and Applicant's Attorneys

I certify that on the 18th day of September, 2015, the attached Hearings Officer Decision, dated September 18<sup>th</sup>, 2015, and items 2 and 3 above, were mailed by first class mail, postage prepaid, to the persons and addresses set forth below.

Dated this 18th day of September, 2015.

#### COMMUNITY DEVELOPMENT DEPARTMENT

By: Kathleen Stockton

<b>Applicant:</b>  Oregon Solar Land Holdings 3519 NE 15 <sup>th</sup> Ave., Ste 325 Portland, OR 97212	<b>Property Owner:</b>  M. Thomas Collier PO Box 5609 Bend, OR 97708
<b>Applicant's Attorney:</b>  Laura Craska Cooper 15 SW Colorado Avenue, Suite 3 Bend, OR 97702	<b>Applicant's Attorney:</b>  Damien R Hall Ball Janik LLP 101 SW Main St Ste 1100 Portland OR 97204

Return To: Chris Schmoyer  
Community Development Dept.  
117 NW Lafayette Ave., P.O. Box 6005  
Bend, OR 97708-6005

## **FARM AND FOREST MANAGEMENT EASEMENT – CONDITIONAL USE**

M. Thomas Collier herein called the Grantor, is the owner of real property described on Exhibit "A" attached hereto and by this reference incorporated herein, and identified or depicted on Deschutes County Assessor's Map 17-12-36 as Tax Lots 100, 300, 400 and 1100. In accordance with the conditions set forth in the decision of the Deschutes County Hearings Officer, dated September 19, 2015, approving land use permit Nos. 247-15-000170-CU/171-SP/172-LM, Grantor hereby grants to the owner(s) of all property adjacent to the above described property (Grantor), a perpetual non-exclusive farm and forest practices management easement as follows:

1. The Grantor, his heirs, successors, and assigns, hereby acknowledge/s by the granting of this easement that the above-described property is situated in a designated farm zone in Deschutes County, Oregon, and may be subjected to conditions resulting from farming or forest practices on adjacent lands. Such operations include management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof, and other accepted and customary farm and forest management activities conducted in accordance with Federal and State Laws. Such farm or forest management activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantor's use of Grantor's property for residential purposes. Except as allowed by ORS 30.930 through 30.947, Grantor hereby waive/s all common law rights to object to normal, non-negligent farm and forest management activities legally conducted on adjacent lands that may conflict with Grantor's use of Grantor's property for residential purposes, and Grantor hereby gives an easement to the adjacent property owners for the resultant impact on Grantor's property caused by the farm and forest management activities on adjacent lands.
2. Grantor shall comply with all restrictions and conditions for maintaining the development in farm and forest zones that may be required by State, Federal, and local land use laws and regulations. Grantor shall comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property adjacent to the above-described property, and shall bind the heirs, successors, and assigns of Grantor, and shall endure for the benefit of the adjacent landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third-party enforcement of this easement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015      GRANTOR

---

M. Thomas Collier

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public in and for said County and State, personally appeared M. Thomas Collier who is known to me to be the identical individual described in the above document, and who acknowledged to me that he executed the same freely and voluntarily.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Exhibit A

Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon: the Northeast one-quarter of the Northeast one-quarter.

Tax Lot 100

Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon: the Southeast one-quarter of the Northeast one-quarter and that portion of the Northwest one-quarter of the Southeast one-quarter lying north of Highway 20.

Tax Lot 300

Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon: that portion of the West one-half of the Northeast one-quarter lying east of the west boundary of Pacific Power and Light easement, together with that land in the Southeast one-quarter of Section 36 lying north of Highway 20 and east of the west boundary of the Bonneville Power transmission easement.

Tax Lots 400 and 1100.

Return to: Chris Schmoyer, Associate Planner  
Community Development Dept.  
117 NW Lafayette, P.O. Box 6005  
Bend, OR 97708-6005

## CONDITIONS OF APPROVAL AGREEMENT

THIS AGREEMENT, made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, ("County"), and M. Thomas Collier ("Developer"), owner of certain real property described as 62435 Erickson Road, Bend, Deschutes County, Oregon, and described on Exhibit "A" attached hereto and by this reference incorporated herein.

### WITNESSETH:

WHEREAS County has granted approval of a land use permit 247-15-000170-CU/247-15-000171-SP/247-15-000172-LM ("Permit") for the Real Property upon the condition that Developer construct and maintain certain requirements as specified therein; now, therefore,

IT IS HEREBY AGREED, by and between the parties, for and in consideration of the mutual covenants and agreements herein, as a condition precedent to the granting of final approval or occupancy, as follows:

**Scope of Agreement.** This Agreement affects the Real Property described above. This Agreement shall cover those improvements and requirements described in the section of this Agreement entitled "Conditions of Final Approval." Nothing in this Agreement shall require Developer to construct any improvements under the Permit, but if Developer undertakes the construction of buildings or structures, the division of real property or otherwise exercises the Permit, Developer shall be required to complete and maintain all improvements, as defined herein, in accordance with applicable County Ordinances and the Permit.

**Definition of Improvement.** As used herein, "improvement" means any private or public facility or service such as roadways, bike paths, access ways, pedestrian walkways, landscape areas, sewage collection and disposal systems, water systems, lighting systems, parking lots, cable utilities, circulation areas, outdoor storage areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut-and-fill areas, buffering and screening measures, street furniture, drainage facilities, or other similar improvements as approved and required in the Permit.

**Definition of Permanent Maintenance.** As used herein, "permanent maintenance" generally means maintenance of the structures, improvements, and landscaping that are the subject of this Agreement in a manner that will keep such structures, improvements, and landscaping in good repair or good condition and in a condition that is not a hazard to public safety. With respect to landscaping, Developer's obligations shall include, without limitation, continued irrigation of landscaping and, where applicable, pruning of landscaping to guarantee required sight distances and to otherwise protect against hazardous conditions. With respect to drainage facilities, Developer's obligations shall include, without limitation, periodic cleaning of drainage ponds, drywells, or other drainage facilities of obstructions or silt that would limit the performance or effectiveness of drainage facilities. With respect to improvements, such as pavement and sidewalks, Developer's obligations shall include, without limitation, maintenance of the impervious nature of impervious surfaces, maintenance of evenness of surfaces so that such surfaces are not hazardous to the operation of vehicles or use by pedestrians.

**Construction and Permanent Maintenance.** If Developer is required under the Permit to construct improvements of any kind or to install landscaping or plantings and Developer

elects to proceed with development under the permit, Developer agrees: (1) to undertake the construction and landscaping required under the land use permit, as more specifically set forth in the conditions set out herein and in the land use permit; and, (2) in the event that this Agreement and the Permit do not expire as set forth herein, to the permanent maintenance of required landscaping and improvements.

**Enforcement.** This Agreement shall be enforceable against any person bound by this Agreement in possession of or having fee title to the property. If any party bound by this Agreement defaults on the obligations set forth herein, the County shall be entitled to enforce this Agreement in equity. The prevailing party at trial or on appeal in any enforcement action shall be entitled to reasonable attorney fees and costs. This provision shall not limit County's rights to use other means provided by law, including but not limited to issuing a civil citation, to enforce the conditions of the Permit.

**Authority of Signatories.** By their signatures, all signatories to this Agreement signing in a representative capacity certify that they are authorized to sign on behalf of and bind their respective principals.

**Expiration.** This Agreement and the Permit shall expire on its expiration date or by the revocation of the Permit or by the explicit release by the County from this Agreement granted as part of an approval for a change of use of the Real Property. Additionally, this Agreement and the Permit shall automatically expire upon the foreclosure of any prior encumbrance upon the Real Property which results in the extinguishment of this Agreement.

**No Partnership.** County is not, by virtue of this Agreement, a partner or joint venture of Developer in connection with activities carried on under this Agreement, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature, and is not a guarantor of the Developer, the project, or the work to be performed.

**Limitations.** Should this Agreement violate any constitutional or statutory provision, it shall be void.

**Persons Bound by Agreement.** The original of this Agreement shall be recorded with the Deschutes County Clerk and shall run with the land. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties, the parties' successors, heirs, executors, administrators, and assigns, or any other parties deriving any right, title or interest or use in or to the Real Property, including any person who holds such interests as security for the payment on any obligation, including the Mortgagee or other secured party in actual possession of the Real Property by foreclosure or otherwise or any person taking title from such security holder.

**Conditions of Final Approval.** The following are the required conditions of final approval for the Permit:

1. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
2. Prior to initiation of the use, the applicant shall obtain a final approval consolidating the parcels or reconfiguring the boundary lines, or obtain a variance, so as to conform the site plan to the applicable side and rear setbacks.
3. The applicant shall meet all requirements of the Deschutes County Building Safety and



Environmental Soils Divisions.

4. Prior to initiation of the use, the applicant shall provide evidence of DEQ National Pollutant Discharge Elimination (NPDES) Permit approval for the proposed use to the Planning Division.
5. Prior to initiation of the use, the applicant shall obtain all necessary state and federal permits for the project.
6. Prior to initiation of the use, the applicant shall complete the following:
  - a) Install the 6 foot cyclone fence with tan/sand or green colored mesh screening. No barbed wire is permitted. At all times, the fence and mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.
  - b) Plant 75 juniper or comparable native trees in the "void" area shown on the site plan as the area east of the 32' mark and approximately 400' from the west property line. This shall be done not in row(s); rather the landscape professional shall employ his or her professional judgment on placement so as to reasonably blend in with the existing vegetation to the east and west. Similarly heights shall be varied but no less than 2' and at least 25 shall be 6' in height when planted. The trees shall be maintained until established. Dead, dying or diseased trees in the entire area south of the perimeter shall be replaced within 90 days of being discovered with comparable trees.
  - c) Plant the perimeter trees/shrubs in the locations shown on the approved Landscape Plan. The shrubs shall be a minimum of 6 feet at the time of planting.
  - d) No solar panel shall exceed 8' in height from existing ground level at its maximum extension, within the area that is 100' more or less from any exterior property line (not internal parcel line, see discussion above re side setbacks). More or less is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In addition, no panel shall exceed 8' from existing ground level at its maximum extension in the area between the southern fence line (i.e. facing Hwy 20) to the most southerly compacted proposed compacted soil access road shown on the site plan.
7. All inverters, racking and similar structures, other than the panels, located in the LMCZ be flat earth tones.
8. No solar panel shall exceed 8' in height from existing ground level at its maximum extension, within the area that is 100' more or less from any exterior property line (not internal parcel line, see discussion above re side setbacks). More or less is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In addition, no panel shall exceed 8' from existing ground level at its maximum extension in the area between the southern fence line (i.e. facing Hwy 20) to the most southerly

compacted proposed compacted soil access road shown on the site plan.

In no event shall anything other than the power poles exceed 12 from existing ground level.

9. Existing landscape and topography shall be preserved to the greatest extent feasible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected. All new plantings shall be regularly watered and otherwise cared for until certified by a landscape professional to be fully established. Dead, dying or diseased vegetation in the landscape area shall be replaced within 90 days of being discovered. Any existing trees preserved on the site over 6' tall that become diseased or die shall be replaced with a minimum 6' comparable tree within 90 days of being discovered and properly tended until established.
10. Prior to initiation of the use the applicant shall establish a hotline available 7 days a week during daylight hours through which a supervisory employee may be contacted to receive and promptly address reports of glare or other conditions causing interference or potential dangerous circumstances for aircraft. This number shall be provided to the appropriate personnel at the Bend and Redmond airports, Deschutes County planning, and Deschutes County Sheriff. It also shall be made available to any aviation company, pilot organization or similar group that may reasonably be considered to be in a position to responsibly report dangerous conditions. The applicant shall modify its operations or take such other steps as are necessary to promptly eliminate glare or other bonafide aviation risks.
11. Prior to initiation of the use, the project owner shall sign and record in the deed records of the County a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices as defined in ORS 30.939(2) and (4).
12. The applicant shall adhere to the soil compaction avoidance and remediation plans submitted into the record.
13. The applicant shall adhere to the plans submitted for removal of noxious/invasive vegetation and minimizing spread or reintroduction.
14. Prior to commencement of commercial electricity sales, the applicant shall obtain approval for an Improvement Agreement from the Planning Division for a performance bond in favor of Deschutes County for removal and restoration, or cash, in the amount of \$1,500,000. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety, including above-ground and buried facilities, no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed.

15. Prior to initiation of the use, the applicant shall sign and record a County Conditions of Approval Agreement to ensure compliance with all conditions of approval.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

DESCHUTES COUNTY COMMUNITY  
DEVELOPMENT DEPARTMENT

\_\_\_\_\_  
Nick Lelack, Planning Director

STATE OF OREGON            )  
  ) ss.  
COUNTY OF DESCHUTES )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, personally appeared Nick Lelack, Planning Director of the Deschutes County Community Development Department, who executed the foregoing document on behalf of Deschutes County, Oregon.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

DEVELOPER

\_\_\_\_\_  
M. Thomas Collier

STATE OF OREGON            )  
  ) ss.  
COUNTY OF DESCHUTES )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, personally appeared M. Thomas Collier, known to me to be the person described in the above document, who acknowledged to me that she/he/they executed the same freely and voluntarily.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

Exhibit A

Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon: the Northeast one-quarter of the Northeast one-quarter.

Tax Lot 100

Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon: the Southeast one-quarter of the Northeast one-quarter and that portion of the Northwest one-quarter of the Southeast one-quarter lying north of Highway 20.

Tax Lot 300

Section 36, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon: that portion of the West one-half of the Northeast one-quarter lying east of the west boundary of Pacific Power and Light easement, together with that land in the Southeast one-quarter of Section 36 lying north of Highway 20 and east of the west boundary of the Bonneville Power transmission easement.

Tax Lots 400 and 1100.



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### APPEAL APPLICATION

FEE: \_\_\_\_\_

#### EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Peter R. Caine Phone: (541) 389-6117

Mailing Address: 62260 Erickson Rd. City/State/Zip: Bend, OR

Land Use Application Being Appealed: 247-15-000170-CU/171-SP/172-LM

Property Description: Township 17 Range 12 Section 36 Tax Lot 100, 300, 400, and 1100

Appellant's Signature: *Peter R. Caine*

**EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE *DE NOVO* HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.**

(over)

**NOTICE OF APPEAL**

(see attached)

**Notice of Appeal:**  
**247-15-000170-CU/171-SP/172-LM.**

**1. Standing.**

I have standing to appeal because I am an adversely affected adjoining property owner and submitted comment on the application to the Planning Division in advance of the public hearing.

**2. Statement of Issue.**

The decision dated September 18, 2015 is in error for each and all of the following grounds:

- a. The proposal does not comply with DCC 181.6.040(3). This provision requires that the project be located in the portion of the property least suitable for farming. The project is not entirely located on the worst soils on the subject property.
- b. As a utility, DCC 18.124.060(H) requires that the project be located to minimize adverse visual impacts on the site and neighboring properties. The proximity to Erickson and Neff Roads creates substantial impacts on neighboring properties. The conditions proposed are insufficient to achieve compliance with this criterion.
- c. The hearings officer failed to address that trees to be removed to allow installation of the arrays currently provide screening for the existing power lines that cross the subject property. Such impacts must be accounted for in evaluating compliance with DCC 18.124.060(H).
- d. The hearings officer improperly dismissed countervailing evidence demonstrating negative impacts to property values.
- e. The hearings officer failed to address the purpose statement in DCC 18.84.010 and interpret the landscape management provisions in the context of DCC 18.84.010.
- f. The hearings officer failed to adequately address issues of topography in considering visual impacts. Highway 20 and several neighboring properties are elevated from the subject property. 6 foot planted trees and 12 foot limits on trees are insufficient when the highway and adjoining properties are looking down onto the site.
- g. It takes years for trees to gain any substantial height in the high desert. The proposed tree heights will not provide much if any screening, particularly where the panels exceed the height of the screening fence.
- h. The amount of the bond, by the hearings officer's own math, is insufficient to remediate the property after its useful life.

- i. The hearings officer made no findings as to why it is appropriate to limit the height of screening trees to 12 feet and failed to identify whether scattered trees in the "void" are subject to this management scheme.
- j. Condition of approval #10 should be extended to adjacent property owners.
- k. To satisfy DCC 18.124.060(B), Condition of Approval #9 should expressly limit grading to the locations of inverters and roadways.
- l. As proposed, the project is not compatible with the area. It is proposing a lot coverage comparable to that permitted in the rural industrial zone. Furthermore, the applicant will reconfigure the properties in a manner that will dramatically increase the lot coverage of the property on which the arrays are located. A condition of approval limiting maximum to a reasonable amount, and including the area occupied by power lines, is necessary to ensure compatibility.
- m. The hearings officer misconstrued OAR 660-033-0130(38)(f) and other OARs in determining the maximum area and how to evaluate preclusion of commercial agriculture.
- n. The hearings officer relied on an improper characterization that the area the southeast corner of the site failed as an agricultural operation.

3. **Request for Review.**

Because of the errors identified above, and from the hearings officer's own admissions in the decision that review is advisable, I request review by the Board of County Commissioners. This is a precedent setting application that requires interpretation of County Code and policy setting.

4. **Request for De Novo Hearing.**

I request de novo review by the Board because the matter requires the interpretation of significant policy issues and the Deschutes County Comprehensive Plan and Zoning ordinance. Furthermore, the hearing officer's resulting interpretation of critical approval criteria did not provide the parties below sufficient notice of the evidence necessary to adequately address that criteria. Finally, the record should be re-opened to allow evidence of how adjoining properties will be impacted by the project as conditioned by the hearings officer to demonstrate how those conditions are insufficient.

Dated this 29<sup>th</sup> day of September, 2015.



Peter R. Caine





247-15-000540-A

## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### APPEAL APPLICATION

FEE: 3073.<sup>00</sup>

#### EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal. SEE ATTACHED.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Cathy Jensen Phone: (541) 788-3591  
Mailing Address: 21700 Neff Rd City/State/Zip: Bend, OR 97701  
Land Use Application Being Appealed: 247-15-000170-CU/171-SP/172-LM (COLLIER)  
Property Description: Township 17 Range 12 Section 36 Tax Lot 100,300,400  
Appellant's Signature: Cathy Jensen

EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE *DE NOVO* HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.

SCANNED  
OCT 14, 2015

(over)

Notice of Appeal – 247-15-000170-CU/171-SP/172-LM

Appellant: Cathy Jensen

Appellant Attorney: Meriel L. Darzen, Peterkin and Associates, 222 NW Irving Ave, Bend, Oregon 97703

Specific Reasons for Appeal:

The Hearings Officer erred in his application of the following criteria:

- 1) OAR 660-033-0130(38)
- 2) Interpretation and application of high value farmland and high value farmland soils definitions and applicable criteria under OAR 660-033-130(38) and ORS 1295.300(10).
- 3) The application and construction of the term “commercial agricultural enterprise.”
- 4) The application of the policies set forth in ORS 197.012 and specifically the policy implications of permitting 160 contiguous acres for the first utility-scale industrial solar farm in the County.
- 5) The application of the criteria in Deschutes County Code 18.16.040 (A) and (C).
- 6) The suitability of the site for the proposed uses under DCC 18.128.015, including impacts on property values.
- 7) The adequacy of the conditions of approval related to screening, fencing, and maintenance of the vegetative buffers.

The appellant requests de novo review only of appeal issues 4 and 6 above. This application and the other solar farm application together represent the first of their kind in Deschutes County. Additional information has become available related to plans for future solar farm development in the vicinity of the two applications currently at issue. Therefore the County should consider this additional information in its review of these applications.



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

---

## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of 10/19/15**

---

*Please see directions for completing this document on the next page.*

**DATE:** October 14, 2015

**FROM:** Chris Schmoyer                      Community Development Department                      317-3164

**TITLE OF AGENDA ITEM:**

A de novo public hearing on a conditional use permit and site plan review for the development of a solar voltaic array (solar farm) on a portion of the subject property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB) subzone. Appellant, Cathy Jensen, has appealed the Hearings Officer's decision of approval for Files 247-15-000168-CU/169-SP.

**PUBLIC HEARING ON THIS DATE?** Yes

**BACKGROUND AND POLICY IMPLICATIONS:**

On September 18, 2015 a County Hearings Officer issued a decision approving a conditional use permit and site plan review (247-15-000168-CU/169-SP) for the development of a solar voltaic array (solar farm) on a portion of the subject property.

By Order 2015-048, dated October 5, 2015, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing.

**FISCAL IMPLICATIONS:**

None

**RECOMMENDATION & ACTION REQUESTED:**

Staff recommends that the Board open the public hearing and receive testimony. Because the 150-Day review clock expires on November 7, 2015, Staff requests the Board close the record at the end of the October 19, 2015 hearing. The applicant is afforded under Statute, seven days for final legal argument (October 26, 2015).

**ATTENDANCE:** Chris Schmoyer and Peter Gutowsky

**DISTRIBUTION OF DOCUMENTS:**

CDD, Legal

## **INSTRUCTIONS FOR COMPLETING THE AGENDA REQUEST FORM**

Use “tab” to move between fields. You can use as much space as necessary within each field.

Do not leave any fields incomplete. Don’t forget the “preferred meeting date” section. Incomplete documents will be returned to the Department Director. This could cause your agenda item to miss the deadline for submission.

Monday Board business meetings typically address land use issues, and Wednesday business meetings are for other County business. (If there is only one meeting scheduled for the week, all agenda items are addressed at that time.) Agenda requests & backup for land use items are to be submitted by noon on Tuesday prior to the meeting date. Agenda requests & backup for the Wednesday meeting must be submitted to the Board Secretary no later than noon of the Wednesday prior to the meeting.

If you are submitting a contract or other document where more than one original is needed (for instance, one original for the County and one for the contractor), please submit the correct number of original documents. In addition to submitting the agenda request form with your documents, submit this form electronically to the Board Secretary.

Please e-mail the agenda request form and the document summary form to the Board Secretary and to David Inbody, Assistant to the Administrator, so that minor changes can be done if needed.

Unless your agenda item is an Order, Ordinance, Resolution or letter, a Document Summary Form is required as well.

Please see the “Board Agenda Procedures and Document Checklist” document for further directions, or contact Board staff at 388-6572.



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**TO:** Deschutes Board of County Commissioners

**FROM:** Chris Schmoyer, Associate Planner

**DATE:** October 14, 2015

**RE:** A *de novo* public hearing on appeal of a County Hearings Officers' decision approving a conditional use permit and site plan review for the development of a solar voltaic array (solar farm) on a portion of the subject property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB) subzone. File Nos. 247-15-000168-CU/169-SP

---

The hearing is scheduled for the Board of County Commission's (Board) morning meeting on October 19, 2015.

### Summary

The applicant, Norwest Energy 2, LLC (applicant), requested conditional use and site plan approval to allow the development of a solar farm on a portion of the subject property zoned EFU-TRB. The property is also within the Airport Safety (AS) Combining Zone associated with the Bend Municipal Airport. The applicant indicates that the proposal would use approximately 80 acres of the 118.71-acre site for the solar farm. The property is located approximately three-fourths of a mile east of the Bend City Limits Boundary and Urban Growth Boundary (UGB). The property is bounded by Neff Road to the south and Erickson Road to the east and is adjacent and to the east of Big Sky Park.

The Hearings Officer issued a decision on September 18, 2015 approving the proposal subject to the applicant/owner complying with 13 conditions of approval (Attachment 1). On September 30, 2015, Cathy Jensen (appellant) appealed the decision to the Board (File No. 247-15-000539-A; Attachment 2).

By Order 2015-048, dated October 5, 2015, the Board initiated review of this application under DCC 22.28.050 through a *de novo* hearing. Notification of the Board's October 19, 2015 hearing was mailed to all parties of interest on October 8, 2015.

### **150-day Issuance of a Final Local Decision**

The 150-day period for issuance of a final local decision for both applications under Oregon Revised Statute 215 expires on November 7, 2015. The applicant has not offered to toll the 150-day clock. Due to this, the Board is on an extremely compressed schedule as shown below:

October 5	Work session was held and Board decided to hear the appeal <i>de novo</i> on October 19, 2015 at 10:00 am.
October 8	Notice mailed to parties of interest (everyone who has standing).
October 14	Appellant required to submit a transcript of hearing (5 days before hearing)
October 19	<i>De novo</i> public hearing to be held. Staff suggests that this hearing be opened and then closed on this date. Under Statute applicant afforded seven days for final legal argument (October 26) <sup>1</sup>
November 2	BOCC deliberations
November 4	BOCC decisions
November 7	150 day deadline

## **Appeal**

The notice of appeal describes several assignment of error (see Attachment 2)

The notice of appeal from appellant describes several assignment of error alleging that the Hearings Officer's Decision erred in applying OAR 660-033-130 (38), his interpretation of high value farmland and high value farmland soils definitions in OAR 660-033-130 (38) and ORS 195.300 (10), misinterpreting the term "commercial agricultural enterprise", suitability of the site for the proposed use DCC 18.128.015, imposition of inadequate conditions of approval pertaining to screening, fencing and maintenance of vegetative buffer, etc...

Appellant requests *de novo* review for two issues:

1. The application of the policies set forth in ORS 197.012 and specifically the policy implications of permitting 160 contiguous acres for the first utility-scale industrial solar farm in the County.
2. The suitability of the site for the proposed uses under DCC 18.128.015, including impacts on property values.

## **Attachments:**

1. Hearings Officer's decision of approval of 247-15-000168-CU and 169-SP
2. Jensen appeal: File No. 247-15-000539-A

---

<sup>1</sup> Staff recommends at the hearing that the two Solar Farm appeals be conducted jointly for testimony purposes. Staff can alert the public at the hearing that if someone's testimony exclusively applies to just one of the applications to make it known to the Board (and staff) for record keeping.



## Community Development Department

Planning Division Building Safety Division Environmental Solls Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### HEARINGS OFFICER DECISION

**FILE NUMBERS:** 247-15-000168-CU / 169-SP

**HEARING DATE:** June 30, 2015, 6:30 p.m.  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97701

**APPLICANT:** Norwest Energy 2, LLC  
3250 Ocean Park Boulevard, Suite 355  
Santa Monica, CA 90405

**OWNERS:** Harland Hafter and Jolene Hafter  
62435 Erickson Road  
Bend, OR 97701

**ATTORNEY FOR APPLICANT:** Laura Craska Cooper  
15 SW Colorado Avenue, Suite 3  
Bend, OR 97702

Damien R Hall  
Ball Janik LLP  
101 SW Main St Ste 1100  
Portland OR 97204

**PROPOSAL:** The applicant requests approval of a conditional use permit and site plan review to allow the development of a solar voltaic array (solar farm) on a portion of the subject property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB) subzone. The subject property is approximately 118.71 acres in size.

**STAFF REVIEWER:** Chris Schmoyer, Associate Planner

**HEARINGS OFFICER:** Dan R. Olsen

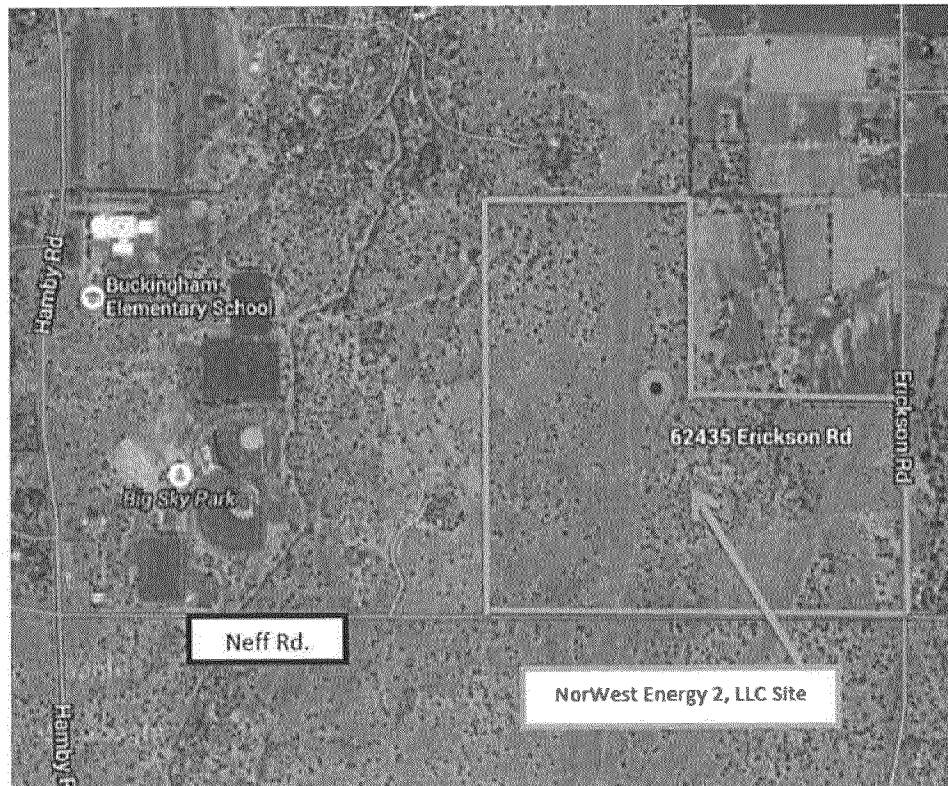
**SUMMARY OF DECISION:** Application Nos. 247-15-000168-CU / 169-SP are APPROVED subject to conditions of approval imposed herein and based on the findings and conclusions below.





subzone. The subject property is approximately 118.71 acres in size. No development is proposed for the portion designated MUA. The facilities proposed include a solar array, racking, inverters, overhead poles and lines and related fencing.

- D. SITE DESCRIPTION:** The subject property is approximately 118.71 acres in size and has a fairly level topography. The property is bounded by Erickson Road to the east and Neff Road to the south. The property is located approximately three-fourths of a mile east of the Bend City Limits Boundary and Urban Growth Boundary (UGB). There is an existing dwelling and accessory structures, accessed from a driveway extending west from Erickson Road, that are situated within the MUA-10 zoned portion of the property. The property supports a native vegetative cover consisting primarily of juniper trees, sage brush, bunch grass and other native shrubs and grasses. An electric power transmission line traverses the property in a roughly north-south fashion near the center of the property. A Central Oregon Irrigation District (COID) canal traverses the northwest corner of the property. The proposed use will be located on the western portion of the property, on both sides of the power line easement.



**Source:** Google Maps 2015

- E. SURROUNDING ZONING AND USES:** Zoning surrounding the property consists of Exclusive Farm Use, Tumalo-Redmond-Bend subzone with MUA-10 zoning to the east and south of the property, across Erickson Road and Neff Road. Properties zoned MUA-10 abut the property at its northwest, northeast and southeast corners.

Uses surrounding the subject site consist of a mixture of small-scale or hobby farms with residences, developed rural residential lots and some public uses. To the northwest are MUA-10 zoned lots within Eastmont Estates subdivision. To the west is an approximately 95 acre parcel, owned by Bend Metro Park & Recreation that supports Big Sky Park. Also to the west, approximately one-quarter mile or farther is Buckingham Elementary School. To the east are MUA-10 zoned parcels developed with dwellings. To the north and northeast are smaller to moderate sized EFU-zoned properties most of which are developed with dwellings. Approximately one-half mile southwest of the site is the Christian Life Center. The subject property is located approximately one-half mile north of a Pacific Power Substation. To the south, across Neff Road, is a vacant parcel also being proposed for a solar farm by Oregon Solar Land Holdings, LLC, as well as a vacant 51 acre tax lot, shown below.



**Source:** Deschutes County Geographic Information System

**F. HEARING:**

**Hearings Officer:** A four hour public hearing was held on June 30, 2015. The Hearings Officer opened the hearing by reciting the provisions and warnings required by law. The Hearings Officer noted that he has no conflicts of interest and, except for a site visit, no ex parte contacts.

I explained that I conducted a site visit guided by Chris Schmoyer, Associate Planner on June 30, 2015. We traveled the primary roads in the area including Hwy 20, Neff Rd.

and Erickson Rd. We drove through Big Sky Park, past the Christian Life Center and the substation. I noted residences in the area, the topography, visibility, vegetation and other attributes of the site. We did not walk the subject property. At the hearing, I asked if there were any questions or rebuttal to the site visit and there were none.

I asked for, but received no objections to jurisdiction or raising any alleged procedural error. I also asked if there was any objection to consolidating the hearing with the application for an adjacent facility by Oregon Solar Land Holdings, 247-15-000170-CU / 171-SP / 172-LM with the understanding that there may be factual distinctions or variations in the applicable criteria. No objection was raised.

Staff orally outlined the applicable criteria. The hearing lasted approximately 4 hours during which all persons who sought to testify were heard. Persons were encouraged to submit written comments or to sign the sign in sheet to obtain notice of the decision.

At the conclusion of the testimony, the applicant and counsel for Cathy Jensen requested that the record be kept open. The applicant proposed an initial period of 14 days, with the statutory 7 additional days for rebuttal evidence and 7 days for final applicant rebuttal but no new evidence. The application was granted and applicant's counsel confirmed for the record that this period tolls the 150 day period for a final decision.

Subsequently, the applicant requested that the initial period be extended to 21 days. Counsel for the Jensen's proposed a shorter extension. The Hearings Officer issued an Order extending the record as follows:

July 21, 2015 at 5:00 p.m. for new evidence

July 28, 2015 at 5:00 for rebuttal to new evidence

August 4, 2015 at 5:00 for applicant's rebuttal but no new evidence

Numerous written submittals were provided. With one exception, all are received. Applicant's counsel submitted a document titled Interior Vegetation Restoration Plan to staff at 5:01 p.m. on July 21 via email. That document was submitted beyond the deadline and has not been read or considered.

The application was deemed complete on May 13, 2015 which established a 150th day date of October 10, 2015. With the inclusion of the 28 days the record was left open following the June 30th hearing, the 150th day is now November 7, 2015.

- G. NOTICE REQUIREMENT:** The applicant complied with the posted notice requirements of Section 22.23.030(B) of Deschutes County Code (DCC) Title 22. The applicant submitted a Land Use Action Sign Affidavit, dated April 14, 2015, indicating the applicant posted notice of the land use action on the property on April 13, 2015. Notice of the public hearing was sent to all property owners within 750 of the subject property on May 28, 2015. And the notice of public hearing was published in the Bend Bulletin on Sunday, May 31, 2015.

**Hearings Officer:** Several persons objected that the notice was not adequate for this scale of development. I found no evidence that any person entitled by code or statute failed to receive notice of the hearing.

- H. **LOT OF RECORD:** The subject property is a legal lot of record pursuant to Land use File LR-08-23.
- I. **PREVIOUS LAND USE HISTORY:** The property has multiple land use applications tied to it, which includes the following Land Use Files: LL-88-9; TU-98-44; TU-01-17 and LR-08-23.
- J. **Hearings Officer:** As with most Development Codes, many of the standards discussed below overlap. For the most part, I have not repeated findings that address what effectively are the same or very similar standards. Accordingly, the findings below should be applied in their entirety and cross-related to all similar standards.

III. **APPLICABLE STANDARDS:**

**Title 18, Deschutes County Zoning Ordinance**

A. **CHAPTER 18.16. EXCLUSIVE FARM USE ZONE**

1. Section 18.16.030. Conditional Uses Permitted.

***18.16.030. Conditional Uses Permitted -High Value and Non-high Value Farmland. The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of DCC Title 18.***

***DD. Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130.***

**FINDING:** The portion of the subject property proposed for solar array usage and related facilities are located within the exclusive farm use zone. The proposed use is a conditional use, and therefore is subject to a conditional use permit. Compliance with the applicable conditional use criteria is addressed below. Subsection (DD) above, references Oregon Administrative Rule (OAR) 660-033-0130. Relevant provisions of the OAR are reviewed in detail below.

***18.16.040. Limitations on Conditional Uses. A. Conditional uses permitted by DCC 18.16.030 may be established subject to ORS 215.296 and applicable provisions in DCC 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use:***

***1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and***

***2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and***

***3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.***

**Hearings Officer:** There are several hobby or small scale farms/grazing operations in the vicinity of the subject. There appear to be no forest operations. As confirmed by the County transportation engineer, the proposed use will generate less traffic than most typical uses such as farm or rural residential as, after construction, the only vehicles to the site will be occasional maintenance vehicles. No odors will be generated. The applicant submitted expert testimony that the noise generated will be minimal.

In response to an inquiry from the Hearings Officer, Evan Riley for the applicant testified that dust from farm or forest operations is not a hindrance to its operation and that the panels periodically are cleaned (typically once per year). Staff correctly concluded that the proposed use is one that would not create impacts causing surrounding farm uses or any future forest uses to alter their resource practices or increase the cost of carrying out such activities. Criterion 1 and 2 above are met. The applicant will be required to record a waiver of objection to customary farm/forest practices.

18.16.040(3) is more complex. The proposal would use approximately 80 acres of the 118.71 acre site. All of the area to be used for solar panels and related facilities is located within the exclusive farm use zone. Staff found that approximately 8.8 acres of the approximate 108.71 acre EFU-zoned portion, or 7.4 percent, of the property contains NRCS Soil Unit 36A, Deskamp Loamy Sand, 0-3 percent slopes. Unit 36 is considered high value farmland where irrigated, making it the more suitable portion for agricultural use relative to the remainder which is 58C. The applicant submitted an Agricultural Feasibility Study that appears to show the 36 A soils to be located in the eastern portion of the site adjacent to Erickson Road, much of which is zoned MUA-10 consistent with the NRCS mapping referenced in the Staff Report.

The site plan indicates that substantially all of the portion of the site designated 36A is not proposed for solar panels and will be left undisturbed. This is in the approximate 800' setback area from Erickson Road. There was no specific evidence submitted to the contrary. Even the 36A soil is high value only if irrigated and there is substantial evidence that significant water is not available. Therefore, this standard is met.

2. Section 18.16.060, Dimensional Standards.

***D. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet, except as allowed in DCC 18.120.040.***

**FINDING:** The submitted plans identify the height of the solar panels to be 12 feet and the supplemental burden of proof indicates the no structure other than the proposed power poles would exceed 12 feet in height.

**Hearings Officer:** At the hearing, confirmed in its 8-14 final rebuttal, the applicant testified that no power pole or other structure would be greater than 30 feet. With that assurance, this standard is met.

3. Section 18.16.070, Yards.

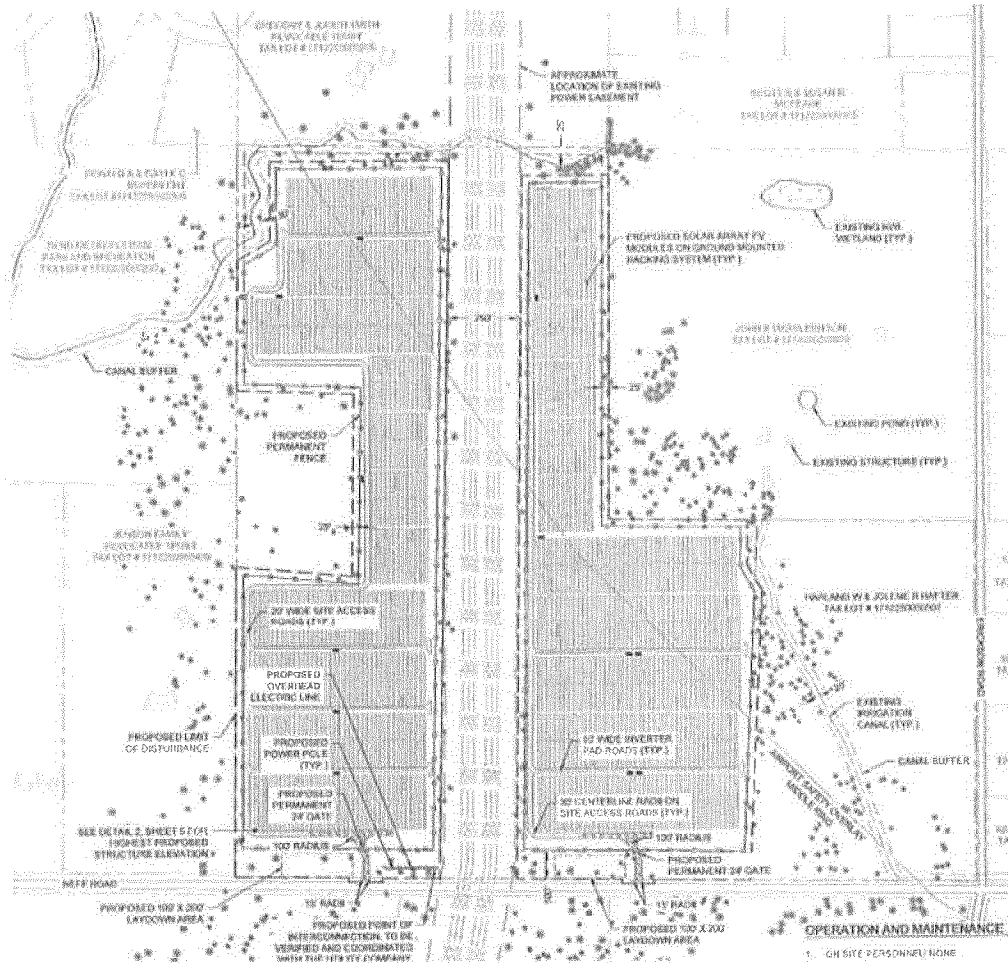
***A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.***

**FINDING:** The property has two front yards as it abuts Erickson Road to the east and Neff Road to the south. Erickson Road is classified as a Rural Collector street on the County's Transportation System Plan (TSP), thus, requires a setback of 60 feet. Neff Road is classified as a rural Arterial street on the County's Transportation System Plan (TSP), therefore, a front yard setback of 100 feet is required. Based on the revised site plans, received May 13, 2015, the proposal complies with the front yard requirements of this subsection as the solar panels are shown to be setback approximately 200 feet from Neff Road and 830 feet or farther from Erickson Road, satisfying the requirements of this section.

- B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.***
- C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet. Chapter 18.16 32 ( 04/2014)***
- D. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.***

**FINDING:** The proposal complies with (B) and (C) above, as the proposed solar panels are shown on the revised plans to be set back at least 120 feet or farther from the north property line and 50 feet or farther from the west property line. Near the northwest corner of the property, the proposed fence and landscaping follows a COID canal that traverses the property. Due to this, the setback distance from the west property line increases to approximately 170 feet in width for the panels and 140 feet for the fence. The submitted plan shows an area along the west property line, a distance of approximately 600 feet where the fence and array is set back approximately 400 feet from the west property line as depicted below:





Staff is unaware of any other setbacks imposed by building or structural codes adopted by the State of Oregon or the County, but those requirements would be reviewed by the County Building Division upon submittal of required permits. Based on the submitted revised site plan, received May 13, 2015, the yard requirements of this section, including solar setbacks, are met.

#### Chapter 18.116. SUPPLEMENTARY PROVISIONS

##### 1. 18.116.030. Off Street Parking and Loading.

- A. Compliance.** *No building or other permit shall be issued until plans and evidence are presented to show how the off street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.*

**FINDING:** Staff finds that the unmanned facility will not require a developed parking area and is not subject to the requirements of this section. This proposal does not include buildings for employees and only involves occasional traffic from maintenance and service technicians that

will park in the internal road as driving throughout the site while conducting and providing service and maintenance.

#### **Chapter 18.124, Site Plan Review**

1. Section 18.124.010. Purpose

***DCC 18.124.010 provides for administrative review of the design of certain developments and improvements in order to facilitate safe, innovative and attractive site development compatible with the natural and man-made environment.***

2. Section 18.124.020. Elements of Site Plan

***The elements of a site plan are: The layout and design of all existing and proposed improvements, including, but not limited to, buildings, structures, parking, circulation areas, outdoor storage areas, bicycle parking, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill sections, accessways, pedestrian walkways, buffering and screening measures and street furniture.***

**FINDING:** The May 13<sup>th</sup> submittal of additional application materials by the applicant provided the required and relevant elements of site plan review.

3. Section 18.124.030. Approval Required

**A. *No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.***

**B. *The provisions of DCC 18.124.030 shall apply to the following:***

- 1. *All conditional use permits where a site plan is a condition of approval;***
- 2. *Multiple-family dwellings with more than three units;***
- 3. *All commercial uses that require parking facilities;***
- 4. *All industrial uses;***
- 5. *All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and***
- 6. *As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).***

**D. *Noncompliance with a final approved site plan shall be a zoning ordinance violation.***



- E. As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to issuance of any permits.***

**FINDING:** The proposed use is a photovoltaic solar power generation facility, as a commercial utility facility, for the purpose of generating power for public use and as such requires a land use permit. Therefore, site plan review is required under B(5) above.

4. Section 18.124.060, Approval Criteria

***Approval of a site plan shall be based on the following criteria:***

- A. The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.***

**FINDING:** The property supports a native vegetative cover consisting primarily of juniper trees, sage brush, bunch grass and other native shrubs and grasses and has a fairly level topography. The property is bounded by Erickson Road to the east and Neff Road to the south. There is an existing dwelling and accessory structures that are situated within the MUA-10 zoned portion of the property. Uses surrounding the subject site consist of a mixture of small-scale or hobby farms with residences, developed rural residential lots and some public uses. To the northwest are MUA-10 zoned lots within Eastmont Estates subdivision. To the west is an approximately 95 acre parcel, owned by Bend Metro Park & Recreation that supports Big Sky Park. Also to the west is an approximate 20 acre parcel containing a dwelling and accessory structures. To the east are MUA-10 zoned parcels developed with dwellings. To the north and northeast are smaller to moderate sized EFU-zoned properties most of which are developed with dwellings. To the south, across Neff Road, is a large vacant parcel also being proposed for a solar farm by Oregon Solar Land Holdings, LLC. Views of the Cascade Mountains to the west can be seen in various locations in the area.

The applicant has proposed measures to reduce visual impacts through the proposed tan colored mesh screens on fencing, removal of the previously proposed 3-strand barbed wire at the top of the fence, and proposed glow tree hedging. Staff understands neighbors to argue that these measures are insufficient to minimize visual impacts or cause the facility to relate harmoniously to nearby residences. Staff requests that the Hearings Officer evaluate and determine if this proposal minimizes visual impacts and relates harmoniously to the natural environment and existing development.

Staff believes that the only views protected under this criterion would be limited views of the Cascades to the west. Due to the low height of the solar panels and inverters (not to exceed 12 feet in height), Staff does not believe the proposed facility would hinder views of the Cascade Mountain range and other natural features as seen from properties east of the site. Sheet 6 of the revised plans identifies solar panels that would reach a maximum height of 12 feet. The supplemental burden of proof statement, quoted above, indicates the height of the solar panels will vary between 4 and 7 feet and the inverters would be a maximum of ten (10) feet above grade. The applicant should clarify this for the Hearings Officer.

**Hearings Officer:** This issue generated more concerns or objections than any other. Most of the testimony expressed generalized concerns relating to aesthetic impacts of the proposal. These included for example, that the scope of the proposal would insert what essentially is an

industrial appearing facility into a rural and rural residential environment. Comments also argued that the proposed fencing and landscaping is inadequate, particularly in those areas where the topography either on-site or adjacent would make the facility visible over the fencing and landscaping (such as along part of Hwy 20). Others suggested increased setbacks of as much as 100'.

The applicant states that the solar panels are "non-reflective" and on average will be between 5 and 7 feet in height from the ground (depending upon the time of day, as the panels tilt with the position of the sun to capture the maximum amount of light possible). Design Sheet of the Site Plan, however, shows that, at least part of the time, the panels could reach to 12'. In its final rebuttal the applicant states that the Applicant anticipates that the actual height of the solar panels will vary between 4 and 7 feet, but could be 12' depending on the "height of framing and racking equipment made available by suppliers". The panels constitute over 99% of the facility. The inverters will be a maximum of ten feet from grade and will constitute 0.1% of the array. At the hearing, Evan Riley testified for the applicant that the inverters are 8' tall, but sometimes are placed on a concrete foundation. One inverter is near the edge of the proposed array. The applicant testified that the others are interior to the site, essentially mixed in with the panels. Nothing, except the power poles, will exceed twelve (12) feet in height from grade.

The panels are designed to absorb light rather than to reflect it. See the attached "Figure 16: Reflectivity Produced by Different Surfaces" from the "Technical Guidance for Evaluating Selected Solar Technologies on Airports" prepared by the Federal Aviation Administration and dated November 2010, attached as Exhibit D. That figure appears to indicate that the solar panels reflect less sunlight than many natural features in this area, including bare soil and vegetation. See also, discussion of glare under 18.80.044(C). The polycrystalline cells are a dark blue and the frame is matte silver. All materials are recyclable and non-toxic (basically refined sand, glass and aluminum). The racking is constructed primarily of galvanized steel and is also a matte silver/grey color. The racking consists primarily of galvanized piles that are driven into the ground as the foundation for the system. There is also a motor on each sub-array that rotates the panels.

The landscaping plan submitted by the applicant proposes to retain significant existing vegetation around the entire periphery of the proposed installation. Many of the trees to remain are well over ten (10) feet in height. In addition, the applicant is proposing a perimeter ring of new trees to be spaced not further than ten (10) feet apart. They will be permitted to grow to a height of twelve (12) feet. In addition, the six (6) foot (7' if the barbed wire is retained) perimeter fence will be covered with a mesh screen that is tan colored (a photograph sample is enclosed with the application), which will blend in with the surrounding high desert landscape, thereby further buffering views from surrounding properties and roads.

The site is adversely visually impacted by fairly extensive major power lines. On the site visit the Hearings Officer noted that the substation is not screened and does not appear to have been well maintained aesthetically. Staff was unable to reach a firm conclusion regarding aesthetic impacts.

I find that the applicant's proposed aesthetic mitigation measures, while a start, are not adequate given the scale of the facility proposed. The statement in rebuttal regarding height of the panels suggests that lower structures are available and feasible, albeit perhaps more expensive or harder to obtain. The steps necessary to adequately lessen the impact do not appear to be particularly onerous and this standard can be met by modifying the measures as follows:

- a) Install the 6 foot cyclone fence with tan/sand or green colored mesh screening. At all times, the fence and mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. At all times, the fence and mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.
- b) Plant the perimeter shrubs/trees in the locations shown on the approved Landscape Plan, except as modified above. They shall be a minimum of 6 feet at the time of planting. All plantings shall be kept alive and attractive.
- c) No panel shall exceed 8' in height at its maximum extension in the area that is 100' more or less from the property lines. This condition is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In no event shall anything other than the power poles exceed 12' from existing grade.

See Conditions of Approval Nos. 5-7.

***B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.***

**FINDING:** The applicant indicates that the installation of the solar array would prevent maintenance of existing landscaping where the array is placed, but that strips of land, of varying width, around the proposed array would remain untouched. The applicant also indicates that the topography of the property would remain virtually unchanged as only minor grading around the twelve (12) inverter areas/pads would require grading.

The applicant states that the solar array should pose no risk to the trees and shrubs that are to remain undisturbed. The Hearings Officer agrees with staff's understanding that criterion to require preservation of existing landscaping and topography to the greatest extent possible and still allow certain permitted and conditional uses to occur. That is, trees and vegetation that do not need to be removed to accommodate the proposed use are to be retained. Likewise, topography of the property that does not need to be graded to accommodate the use must remain as such.

Staff suggests that, if the applicant's request is approved, a condition of approval be imposed to comply with this criterion.

**Hearings Officer:** The applicant took issue with this condition, suggesting that it is ambiguous and unnecessary. I find, however, that preservation of existing vegetation to the extent feasible is important to meeting the compatibility criteria and the applicant has said as much. I understand that any such condition is somewhat ambiguous but anticipate that the applicant and County staff can work in good faith to comply with the intent. Accordingly, the following condition of approval is appropriate:

Existing landscape and topography shall be preserved to the greatest extent feasible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected. All new plantings shall be regularly watered and otherwise

cared for until certified by a landscape professional to be fully established. Dead, dying or diseased vegetation in the landscape area shall be replaced within 90 days of being discovered and properly tended until established. Any existing trees preserved on the site over 6' tall that become diseased or die shall be replaced with a minimum 6' comparable tree within 90 days of being discovered and properly tended until established. See condition No. 6.

- C. *The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.***

**FINDING:** The design of the proposed facility appears to provide a safe environment. The applicant proposes a permanent 6-foot high cyclone fence with mesh screening and a shrub hedge around the perimeter of the array to limit access and provide a safe and secure environment. The applicant proposes to retain natural landscaping surrounding the fenced areas, as well as in areas of the site between the facility and abutting roads. The project site is not staffed and it is not open to the public. Access to the site is limited to periodic visits by employees for monitoring and maintenance of the facility. Staff believes this criterion is met.

**Hearings Officer:** In addition to the above finding, is the issue of the barbed wire. On one hand, this would assist in maintaining a safe site, but there were objections based on aesthetics. The applicant expressed no strong position either way, so I find that the barbed wire shall not be installed. The applicant also indicates its intent is that the color of the screening blend in with the environment. I find that tan/sand or green color is appropriate.

The Bend Park and Recreation District expressed safety concerns about public access to the cave portion of the site. The landscape plan has a "notch" in the perimeter fencing. Perhaps this reflects earlier discussions regarding the District taking over that portion of the site. The District now has declined to do so. It is clear that youth and others have trespassed on the site to the cave in the past. This is both a safety issue and potentially an aesthetic one as vegetation may be impacted and trash left behind. Accordingly, I concur with the District recommendation that the perimeter fence follow the property line so as to provide somewhat of a barrier to casual access to the cave area. A condition of approval, including the tree plantings, shall be imposed to that effect. I was cited to and cannot find an approval standard or other basis for requiring the trail connection, however. See Condition 5.

- D. *When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.***

**FINDING:** There is no need for people, other than an occasional maintenance person, to access the site. The proposed use is one that is not open to the general public, thus staff does not believe that this criterion is applicable to the proposed use. However, the Building Division will review all plans for conformance with ADA standards when building permits are submitted. For these reasons, staff believes that if applicable, this criterion can be satisfied.

- E. *The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.***

**FINDING:** In response to this criterion, the applicant's revised burden of proof provided the following;

*Applicant Response: The revised site plan does identify proposed vehicular circulation roads and maneuvering areas. The proposed drive aisles will provide easy access to the maintenance technician during quarterly inspections. As no public access to the site or interaction/connectivity with adjacent property is planned, no road connections need to be made. The appearance of the roads will be screened from view via native vegetation, the perimeter ring of trees proposed and the tan-colored mesh over the perimeter fence. Access aisles will be compacted prior to construction to reduce rutting. Gravel will be used in high traffic or poorly drained areas during construction. Soil access aisles will be scarified, aerated and re-seeded after construction. Only one entryway is proposed.*

With infrequent usage of the internal roads, during occasional maintenance, one point of access to the facility on each side of the power line easement, coupled with screened fencing, a hedge, and perimeter trees, this criterion is met.

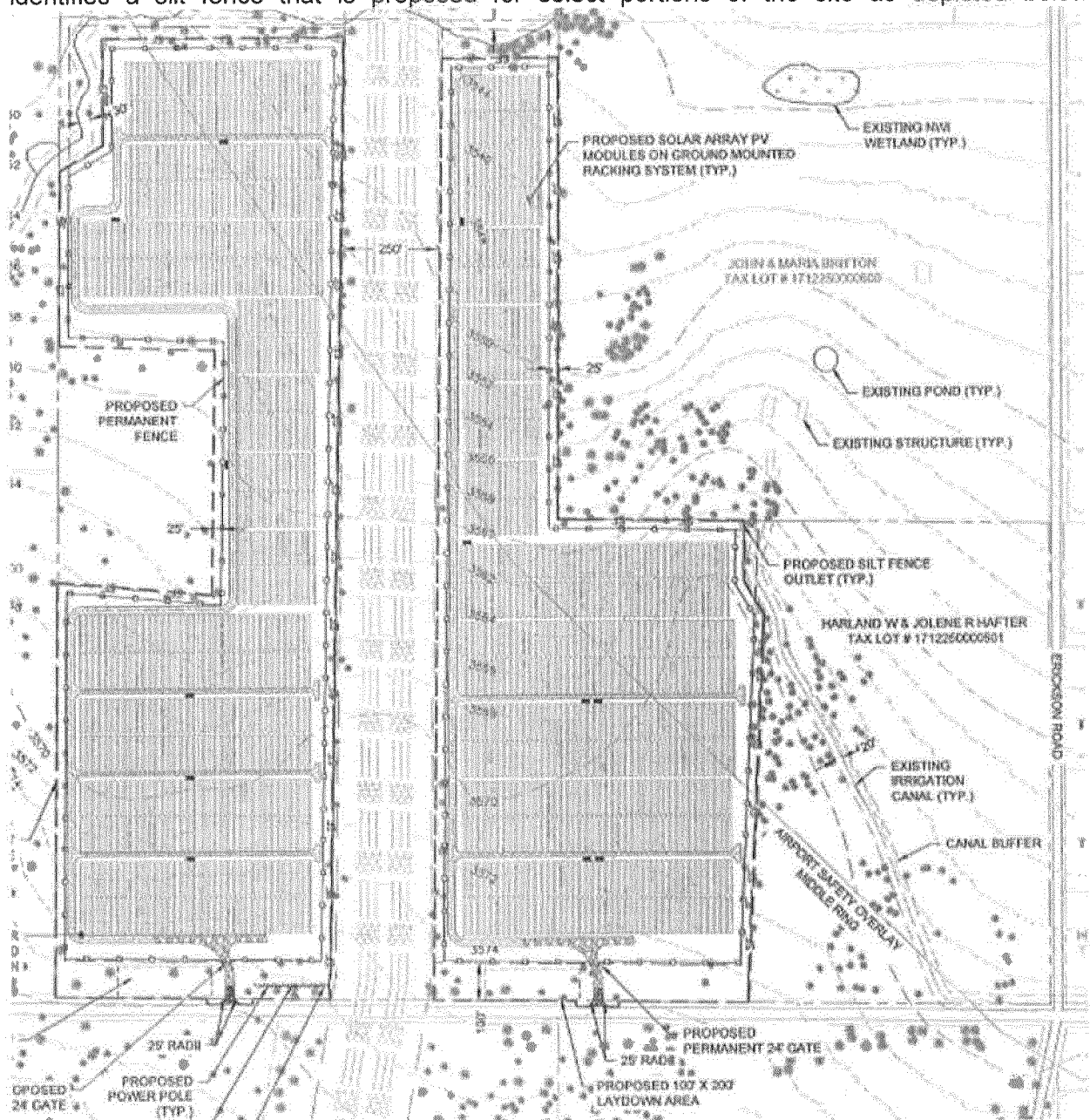
**F. Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.**

**FINDING:** No existing drainage problems have been identified for the site. Drainage problems typically result from significant changes in the grade of the site or increase in impervious areas on the site. In response to the incomplete application letter, mailed April 22, 2015, the applicant submitted a drainage plan and stated in the supplemental burden of proof statement:

*"The panels will be cleaned by the maintenance technician as needed, but no more often than once a year, using only water. No chemicals are used. The drainage plan will assure that water stays on site. No automatic cleaning mechanisms are proposed. It also includes a grading, drainage and erosion control plan. The site plan also shows proposed site contouring and an explanation of how drainage and soil erosion will be handled during and after construction."*

Submitted as Sheet 4 of the revised plans, received on May 13, 2015, is a Grading, Drainage and Erosion Control Plan. In addition to depicting elevation contours, at 2 foot intervals, Sheet 4

identifies a silt fence that is proposed for select portions of the site as depicted below:



As previously described above, the facility is proposed for a portion of the property that contains NRCS Unit 58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes. This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. Additionally, the internal access roads will remain a dirt surface to allow for effective drainage. Further, the proposed perimeter shrub hedge and existing native trees and vegetation should assist in absorbing any excessive drainage. Since no significant changes in grade or increases in impervious surface area are proposed. Staff believes that this criterion will be met.

No comments were received from Oregon Department of Environmental Quality (DEQ) in response to this proposal, however, the applicant's grading, drainage and erosion control plan, received on May 13, 2015, indicates that the applicant will be required to obtain an Oregon DEQ National Pollutant Discharge Elimination (NPDES) Permit from DEQ for the use.

**Hearings Officer:** I concur with staff's finding that this permitting process will ensure that surface and subsurface water quality will not be adversely impacted. As recommended by staff, the following condition of approval is imposed:

Prior to initiation of the use, the applicant shall provide evidence of DEQ National Pollutant Discharge Elimination (NPDES) Permit approval for the proposed use to the Planning Division. (See condition 3)

- G. *Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.***

**Hearings Officer:** I agree with staff that the majority of the facility falls under the categories described in this criterion [Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures] and that the facility must be designed, located and buffered or screened to minimize adverse impacts on neighboring properties. The applicant has proposed to screen the facility with tan colored mesh for fencing and a shrub hedge at a ten foot spacing surrounding the perimeter of the facility. Staff notes that Exhibit B of the Applicant's supplemental burden of proof indicates the mesh screening only has a one year warranty, therefore, staff recommends a condition of approval should require maintenance of the screen.

The applicant indicates that the Moonglow Juniper shrubs would be a minimum of four (4) feet at the time of planting, however, staff suggests this height be increased to a minimum of six (6) feet to help mitigate visual impacts more immediately. Staff suggested a condition of approval to address these concerns. This standard relates to the findings above regarding aesthetics. I concur but find that the aesthetic mitigation does not go far enough to address the compatibility of the use and aesthetics and, therefore, the conditions discussed above are appropriate. Compatibility with this criterion will be met under this proposal as conditioned above.

- H. *All above-ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.***

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:

*As shown on the attached site plan drawings, the applicant is proposing two relatively short above-ground power lines, which is necessary for transporting the electricity generated on-site from the facility to the nearby Pacific Power substation. The applicant has kept such lines as short as possible and the longer line is actually located between the property and the adjacent property on which the applicant is concurrently herewith proposing a related solar array. The lines are adjacent to Neff Road and very close to*



*the existing, much taller and larger existing power transmission lines. The added visual impact from these lines along a busy road in such proximity to a large transmission facility should be quite minimal.*

The property currently supports multiple power poles and transmission lines that traverse the approximate center of the tax lot extending from the Pacific Power substation to the south. Power poles/lines run along both sides of Neff and Erickson roads as well. The submitted site plan identifies the proposed poles for a location on the south side of the facility, abutting Neff Road, and adjacent and to the west of the existing transmission line. The proposed power poles are a necessary element of the proposed facility and to be placed in a location that is not only practical, but approximately 950 feet or farther from the nearest residence. As proposed by the applicant, this criterion appears to be met.

**Hearings Officer:** I concur with staff but note that this standard relates to the discussion above and is conditioned accordingly.

- I.      *Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).***

**FINDING:** The applicable criteria in the EFU zone have been addressed above.

- J.      *All exterior lighting shall be shielded so that direct light does not project off-site.***

**FINDING:** The applicant indicates that exterior lighting is not proposed.

- K.      *Transportation access to the site shall be adequate for the use.***
- 1.      *Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.***
  - 2.      *Mitigation for transportation-related impacts shall be required.***
  - 3.      *Mitigation shall meet applicable County standards in DCC 17.16 and DCC 17.48, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.***

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:

*No improvements or new roads are proposed. The only trips to the site will be an occasional maintenance person. Accordingly, no new traffic will be generated to or on the site, and there will be no real impact on existing transportation systems and no need for any additional improvements. As noted on the site plan drawings, the site will generally be monitored remotely. A maintenance person will inspect the site quarterly and as needed. During the growing season for any installed landscaping, a contractor will be on site once a month to care for the trees and related landscaping. In short, except for the installation and decommissioning of the site, there will be very little traffic generated by the propose use.*



**Hearings Officer:** The applicant's revised site plan depicts two (2) proposed gravel access roads onto the site; one on each side of the transmission line that traverses the property. Access to the site is proposed from Neff Road, a county paved Major Arterial Road. The County Road Department provided a response of "no comment" in regards to notification of the proposal. The County Transportation Planner provided comments that the use will result in less than 50 new weekday trips and, thus, no traffic analysis is required and that no SDC's are required for the use. Accordingly, the proposed access is adequate.

5. Section 18.124.070, Required Minimum Standards

**B. Required Landscaped Areas**

**1. The following landscape requirements are established for multi-family, commercial and industrial developments, subject to site plan approval:**

- a. A minimum of 15 percent of the lot area shall be landscaped.**
- b. All areas subject to the final site plan and not otherwise improved shall be landscaped.**

**FINDING:** These criteria do not apply because the proposed use is not a multi-family, commercial or industrial development.

**2. In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking or loading areas:**

- a. A parking or loading area shall be required to be improved with defined landscape areas totaling no less than 25 square feet per parking space.**
- b. In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscape strip at least five feet in width.**
- c. A landscaped strip separating a parking or loading area from a street shall contain:**
  - 1) Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.**
  - 2) Low shrubs not to reach a height greater than three feet zero inches spaced no more than eight feet apart on the average.**
  - 3) Vegetative ground cover.**
- d. Landscaping in a parking or loading area shall be located in defined landscape areas which are uniformly distributed throughout the parking or loading area.**
- e. The landscaping in a parking area shall have a width of not less than five feet.**
- f. Provision shall be made for watering planting areas where such care is required.**

- g. Required landscaping shall be continuously maintained and kept alive and attractive.*
- h. Maximum height of tree species shall be considered when planting under overhead utility lines.*

**FINDING:** These criteria do not apply because parking and loading areas, as well as landscape requirement of (B) (1) above, are not required. Additionally, the parking requirements of Section 18.116.030 of the Deschutes County Zoning Ordinance apply to the proposal as the use is not open to the general public, does not include buildings for employees and only involves occasional traffic from maintenance and service technicians that will park in the internal road as driving throughout the site while conducting and providing service and maintenance.

**C. Nonmotorized Access.**

- 1. Bicycle Parking. The development shall provide the number and type of bicycle parking facilities as required in DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities shall be indicated on the site plan.*

**FINDING:** Bicycle parking is only required under DCC 18.116.031 and 18.116.035 where vehicular parking is required. Since no vehicular parking spaces are required, no bicycle parking spaces are required.

- 2. Pedestrian Access and Circulation*
  - a. Internal pedestrian circulation shall be provided in new commercial, office and multi-family residential developments through the clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.*
  - b. Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On-site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi-family, public or park use.*
  - c. Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.*
  - d. Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.*
  - e. To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent are*

***permitted, but are treated as ramps with special standards for railings and landings.***

**FINDING:** This section does not apply because the project is not a commercial, office or multi-family residential use and there are no buildings to connect with walkways.

## **CHAPTER 18.128, CONDITIONAL USES**

### **1. Section 18.128.015, General Standards Governing Conditional Uses**

***Except for those conditional uses permitting individual single-family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:***

***A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:***

***1. Site, design and operating characteristics of the use;***

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:

*The site is well-suited for its intended purpose – generation of solar power. The site has convenient access to a Pacific Power substation, which will allow the generated power to be transmitted where needed. The relatively flat topography of the site is ideally suited to a solar array. The lack of large buildings or other structures that could shade the array makes this a desirable location for a solar array.*

The operating characteristics include the initial construction activity, and after completion, periodic inspection of the site, with maintenance and possible repair, if it becomes necessary. The applicant indicates that a technician will visit the site quarterly or as needed and a landscape contractor will visit the site monthly during the growing season to provide care and maintenance to the landscaping. The site will be monitored remotely. Staff concurs that site is suitable for a solar power generation facility, given the site, design and operating characteristics of the use.

**Hearings Officer:** Nearly all of the testimony stressed the importance of solar power to the community both locally and at large. There was much testimony, however, contending that the site is inappropriate, primarily due to its location, and that more remote sites, or co-location with other structures in the urban area are preferable. I find that this site, subject to compliance with all other standards, is appropriate. Proximity to power infrastructure is important for reasons of economy and power conservation. The testimony establishes that large scale solar installations are an important part of the "mix" to meet energy needs, address environmental concerns and promote the economic viability of solar power. Moving the area "farther out" is more likely to impact agricultural or forestry operations. There was testimony that the use should not be permitted because this area is close to Bend and therefore, should be preserved for eventual urban development. The area is outside the UGB and the applicant presented information from the City of Bend indicating that the current estimate shows an eventual need for 2000 acres, but the city is focusing on non-resource lands and the maps submitted do not appear to include this area as areas under consideration. Moreover, given this, it is doubtful that, absent some provision in the County Code, potential urbanization in the distant future is a factor. This criterion is met.

**2. Adequacy of transportation access to the site; and**

**FINDING:** The applicant's burden of proof statement provides the following in response to this criterion:

*There is little need of transportation access or facilities because after the array is installed, the only access will be an occasional maintenance person and an infrequent landscaping contractor until decommissioning.*

Regarding factor (A)(2) above, the site is also suitable for the proposed use as transportation to the site is adequate. Access to the site is proposed from Neff Road, a county paved Major Arterial Road. The applicant's site plan depicts two (2) proposed gravel access roads onto the site; one on each side of the transmission line. With infrequent usage of the internal roads, during occasional maintenance, one point of access to the facility on each side of the power line easement is proposed. Based on responses provided by the Deschutes County Road Department and Transportation Planner, the transportation is adequate to the site for the use.

**3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

**FINDING:** The applicant's supplemental burden of proof statement provides the following in response to this criterion:

*The applicant notes that some neighbors have raised concerns about impacts on wildlife. The applicant conducted a Level 1 Environmental Assessment and as part of that consulted with the U.S. Fish and Wildlife Services. Based upon that Assessment and the correspondence from U.S. Fish and Wildlife, the proposed use will "not likely affect listed or existing protected species or critical habitats." See attached **Exhibit F**. (to Staff Report)*

Staff believes that the subject site is suitable for the use based on factor (A)(3) above as the natural and physical features of the site and topography appear to be conducive for the proposed use. The topography of the portion of the property proposed for the facility is generally level with a vegetative cover of juniper trees and natural shrubs and grasses. Staff was unable to locate any information identifying the history of natural hazards occurring on the subject property. The property is not likely to be subject to an increased chance of occurrence of a natural hazard due to the presence of the proposed use.

Regarding factor (A)(3), Staff notes that the property is not identified as being located within a Wildlife Area Combining Zone and is not within a Sensitive Bird and Mammal Habitat Combining Zone. The applicant's supplemental burden of proof acknowledges that some neighbors have raised concerns about the impacts the proposed use may have on wildlife.

As quoted above, the applicant indicates that they have conducted a Level 1 Environmental Assessment and as part of that consulted with the U.S. Fish and Wildlife Services. The "Revised Phase 1 Environmental Site Assessment", prepared by Terracon Consultants, Inc. of Portland, Oregon, has been included as Exhibit "F" of the applicant's supplemental burden of proof statement received May 13, 2015. The applicant establishes that ...based on the

*Assessment and the correspondence from U.S. Fish and Wildlife, the proposed use will "not likely affect listed or existing protected species or critical habitats."*

Although the applicant provided quotes from the Environmental Assessment, submitted as Exhibit "F", a specific page reference is not provided for these quotes contained within this technical 147 page environmental assessment document. The Conclusions subsection of the Executive Summary section of the Environmental Site Assessment in Exhibit "F" of the applicant's supplemental burden of proof statement states:

### **Conclusions**

We have performed a Phase I ESA consistent with the procedures included in ASTM Practice E 1527-13 at the corner of Neff Road and Erickson Road, Bend, Deschutes County, Oregon, the site. Terracon did not identify any recognized environmental conditions (RECs) in connection with the site.

Following the Environmental Assessment, Exhibit "F" of the applicant's supplemental burden of proof, also includes an email, dated January 09, 2015, from Jerry Cordova, Fish and Wildlife Biologist with U.S. Fish and Wildlife Services to Todd Baker and Cally Podd, applicant's consultants. This email is titled: "Proposed Solar Installation Sites in Central Oregon".

Mr. Cordova's email, as with the Environmental Assessment of Exhibit "F", addresses five (5) sites within central Oregon, one of which is the subject property. Below is an excerpt of Mr. Cordova's email:

(This area blank)

the applicant's Consultant

EXHIBIT F

Podd, Cally M

**From:** Cordova, Jerry <jerry\_cordova@fws.gov>  
**Sent:** Friday, January 09, 2015 4:26 PM  
**To:** Baker, Todd; Podd, Cally M  
**Subject:** Proposed Solar Installation Sites in Central Oregon  
**Attachments:** GEarthMap of H and E sites.pdf

Todd/Calanetta

Terracon Consultants, Inc. on behalf of Cyress Creek Renewables, LLC. requested comment from the U.S. Fish and Wildlife Service (Service) on December 12, 2014, regarding five proposed solar installation sites within central Oregon. The Service has determined that the proposed activities at the following five sites - Terracon Project No. 82147828 (B), (C), (E), (H) and (I) "will not affect ESA listed or proposed species". The Service has no information that would counter your determination of No Effect/no adverse modification to ESA listed species resulting from the construction and use of these proposed solar sites.

The Service also evaluated the sites with respect to the Bald and Golden Eagle Protection Act. Two of the proposed sites - Terracon Project No. 82147828 (E) [aka Culver] and (H) [aka Kirkwood] have the potential, during construction, to impact the golden eagle during the nesting period. Seasonal restrictions or mitigation may be required to protect eagles at these two locations. Both of these proposed solar sites are within 1 mile of a golden eagle territory.

Nancy Breuner, Deschutes District Wildlife Habitat Biologist with ODFW, submitted the following comment received via email on 6/11/15:

*ODFW's Deschutes Watershed District office has reviewed Norwest Energy 2, LLC's conditional use permit and site plan application (247-15-000168-CU and 247-15-000169-SP) for property located at 62435 Erickson Road, Bend, OR. The proposed solar voltaic array (solar farm) development is not located in a Wildlife Area Combining Zone.*

*Per Division of Land Conservation and Development's Oregon Administrative Rule (OAR) 660-033-0130 (38) paragraph (E), regarding Goal 5 resource protection in Deschutes County's Comprehensive Plan, ODFW finds no information in this application to suggest that special status species or wildlife habitats will be impacted. OAR 660-033-0130(38) paragraph (F) stipulates that ODFW determine if there is potential for solar power generation facility proposals to adversely affect state or federal status species or habitats or big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs. ODFW Wildlife staff has reviewed the application and our preliminary findings are that there would be no potential for adverse effects to the species or habitats listed above.*

*Therefore, ODFW Deschutes Watershed District has no further comments. This is based on the understanding that Deschutes County will implement the relevant provisions in the Comprehensive Plan such that impacts to natural resources will be minimized.*

*Please provide detailed information to ODFW if this project is anticipated to adversely impact wetlands, riparian habitats, big game habitat, sensitive bird and mammal species or involves large acreages.*

*If Deschutes County requires habitat mitigation for permit approval, ODFW will work with the County and the project developer, using ODFW's Fish and Wildlife Habitat Mitigation policy as guidance to develop and implement a mitigation plan.*

Based on the conclusions of the applicant's Environmental Site Assessment Report, comments from ODFW and the comments provided from Jerry Cordova of U.S. Department of Fish & Wildlife provided in Exhibit "F" of the applicant's supplemental burden of proof statement, it appears to Staff that the site is suitable for the proposed use considering natural resource values as stipulated in factor (A)(3) above. It is Staff's opinion that compliance with the criteria of this section has been demonstrated by the applicant.

**Hearings Officer:** There were several generalized comments expressing concern about impacts on wildlife. Nothing was submitted that has either the level of specificity or expertise necessary to override Staff's finding.

***B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).***

**FINDING:** Uses surrounding the subject site consist of a mixture of small-scale or hobby farms with residences and developed rural residential lots. To the northwest are MUA-10 zoned lots within Eastmont Estates subdivision. To the west is an approximate 95 acre parcel, owned by Bend Metro Park & Recreation that supports Big Sky Park. Also to the west, approximately one-quarter mile or farther is Buckingham Elementary School. Approximately one-half mile southwest of the site is the Christian Life Center. The subject property is located approximately one-half mile north of a Pacific Power Substation. To the south, across Neff Road, is a vacant parcel also being proposed for a solar farm by Oregon Solar Land Holdings, LLC, as well as a vacant 51 acre tax lot. The only projected use Staff is aware of in the immediate area is the proposed solar farm by Oregon Solar Land Holdings, LLC on property to the south of the subject property, across Neff Road and perhaps the potential for future residential development such as single family dwellings and related accessory uses.

The nearest residence to the west is on Tax Lot 400, 17-12-25 (21700 Neff Road, Bend) and is sited approximately 200 feet west of the west property line of the subject property. Based on the submitted site plan, the solar panels would be setback 50 feet from the west property line in this location and the inverter 350 feet. Based on this, the proposed solar panels and closest inverter would be located approximately 250 and 550 feet, respectively, from the dwelling on Tax Lot 400.

To the northwest is Tax Lot 3300, 17-12-25B (21795 Eastmont Drive, Bend), which contains a residence that is setback approximately 25 feet from the northwest corner of the subject property. Based on the submitted site plan, the solar panels would be setback 250 feet from the northwest corner of the subject property and the closest inverter approximately 550 feet. Based on this, the proposed solar panels and closest inverter would be located approximately 275 feet and 575 feet, respectively, from the dwelling on Tax Lot 3300. Existing dwellings on other properties abutting the subject site are set back a greater distance from the proposed facility than the dwellings on the above referenced tax lots.

This section requires the proposed Solar Farm to be compatible with existing and projected uses on surrounding properties based on the factors of 18.128.015 (A), which are as follows:

**1. Site, design and operating characteristics of the use;**

**FINDING:** Staff finds that there is no evidence in the record that proposed facility will adversely impact surrounding agricultural activities. Staff is uncertain if public concerns regarding potential impacts to aviation use can be considered under this criterion, as the airport may not be regarded as a surrounding property, as it is over 1.5 miles away. Staff requests that the Hearings Officer evaluate if potential aviation use impacts can be considered under this criterion.

Public comments have identified potential adverse impacts to residential and recreational use.

Identified potential impacts to surrounding residential use include noise, visual, and decreases in property value. Regarding noise, the applicant's burden of proof statement, quoted above, states:

*The site will produce little, if any, noise that is audible off-site (see the enclosed report from the Massachusetts Department of Energy Resources noting that the noise from a solar array is generated by the inverters and it is inaudible at between 50 and 150 feet. No inverter is proposed to be located within less than 150 feet of the boundary of the property.)*

Based on this, it appears that noise generated from the use (inverters) will not impact residences on surrounding properties. Regarding visual impacts, the applicant has proposed fenced screening, plantings, and retention of existing vegetation where possible. Staff incorporates herein by reference the detailed description of these screening, plantings, and retention of existing vegetation provided above. The Hearings Officer will need to determine if the proposed screening measures are sufficient to prevent significant adverse impacts to the residential use of surrounding properties.

Some comments received from neighbors, express concern for potential decrease in property values resulting from the solar facility. Although the affect a use has upon property values in the area does not appear to be a specifically stated criterion of review, staff notes this as a legitimate concern to neighbors in regards to the proposed project. Regarding potential decreases in property values, staff notes that prior decisions by Hearings Officers have found that potential property value impacts must be substantiated with evidence in the record in order to be considered. Additionally, staff is uncertain if potential property value impacts would adversely impact the site, design or operating characteristics or nearby residential uses under this criterion. Staff requests the Hearings Officer make specific findings on this issue and whether there could be any negative impacts with recreational uses associated with Big Sky Park to the west.

If the Hearings Officer believes that the potential for decreased property values should be considered in evaluating compliance with this criterion, perhaps the submittal of expert testimony from a licensed real estate appraiser can be provided by the applicant and/or interested parties for consideration and review.

**Hearings Officer:** The aesthetic component of this standard is addressed above. As regards, property values, I am not convinced that this standard is intended to address



property values, at least in the absence of strong evidence of significant or unusual impacts. My experience is that few codes address property values and, if that is intended, the language should be clear. Nearly all conditional uses may have some negative impact on property values, particularly with a site that has for a long time been essentially vacant and, to some extent, serves as open space for the area.

Nevertheless, there was some evidence of adverse impacts on property values beyond generalized concerns. For example, some area brokers submitted comments (and others described conversations with brokers) stating that area property values would be adversely impacted and some potential sales may have been lost, or interest waned, when the proposal became known. The applicant submitted a detailed market analysis of impacts on property values by a qualified expert on July 21, 2015, Gregory W. Moore MAI. It evaluates the impact of other large solar facilities and the proposal at issue. It concludes that, as proposed, the facility is unlikely to have a significant impact on marketability, particularly as the nearest solar panels are more than 150' from any residence. My experience reflects the expert's conclusion that the uncertainties in advance of almost any project can have short term impacts, but after completion and assuming appropriate landscaping, screening and other conditions, the impacts are negligible. I find, that assuming that impact on property values is placed at issue under this criteria, the proposal meets the compatibility test with compliance with the conditions imposed herein.

As regards the Park, the Park District has indicated that, other than the concern about fencing the cave area, addressed above, and a desire for trail connections, it has no concerns regarding the proposal. See e.g. June 18, 2015 letter. I find this convincing.

As regards the airport, I do not read this Code as intending it to be included as a "surrounding property". In any event, the impact on the airport and aviation is discussed under 18.80, below.

## **2. Adequacy of transportation access to the site; and**

**FINDING:** Regarding factor (A)(2) above, as referenced through 18.128.015 (B), for the reasons discussed in the finding for (A)(1) regarding factor (A) (2), staff believes that transportation to the site as proposed is adequate and will not adversely impact transportation to existing and projected uses on surrounding properties.

## **3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

**FINDING:** There is no evidence in the record that the facility will impact off-site topography or increase the risk of natural hazards on surrounding properties. Based on the comments provided by the US Fish and Wildlife Service and Oregon Department of Fish and Wildlife, the facility will not adversely impact the natural resource values (farm, forestry, or wildlife habitat) of surrounding properties.

**Hearings Officer:** As noted above, there were several generalized comments expressing concern about impacts on wildlife. Nothing was submitted that has either the level of specificity or expertise necessary to override staff's finding.

2. Section 18.128.040, Specific Use Standards

***A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through 18.128.370.***

**FINDING:** The proposed photovoltaic array is subject to the standards addressed in this staff report. Deschutes County Code (DCC) 18.128.045 through DCC 18.128.370 are not relevant, as those sections deal with uses unrelated to the proposed use.

3. Section 18.128.380, Procedure for Taking Action on Conditional Use Application

***The procedure for taking action on a conditional use application shall be as follows:***

- A. A property owner may initiate a request for a conditional use by filing an application on forms provided by the Planning Department.***
- B. Review of the application shall be conducted according to the terms of DCC Title 22, the Uniform Development Procedures Ordinance.***

**FINDING:** The applicant has submitted the required application form for a conditional use permit. The conditional use permit application is being processed in accordance with DCC Title 22.

**CHAPTER 18.80, AIRPORT SAFETY COMBINING ZONE**

1. Section 18.80.028, Height Limitations

***All uses permitted by the underlying zone shall comply with the height limitation in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control.***

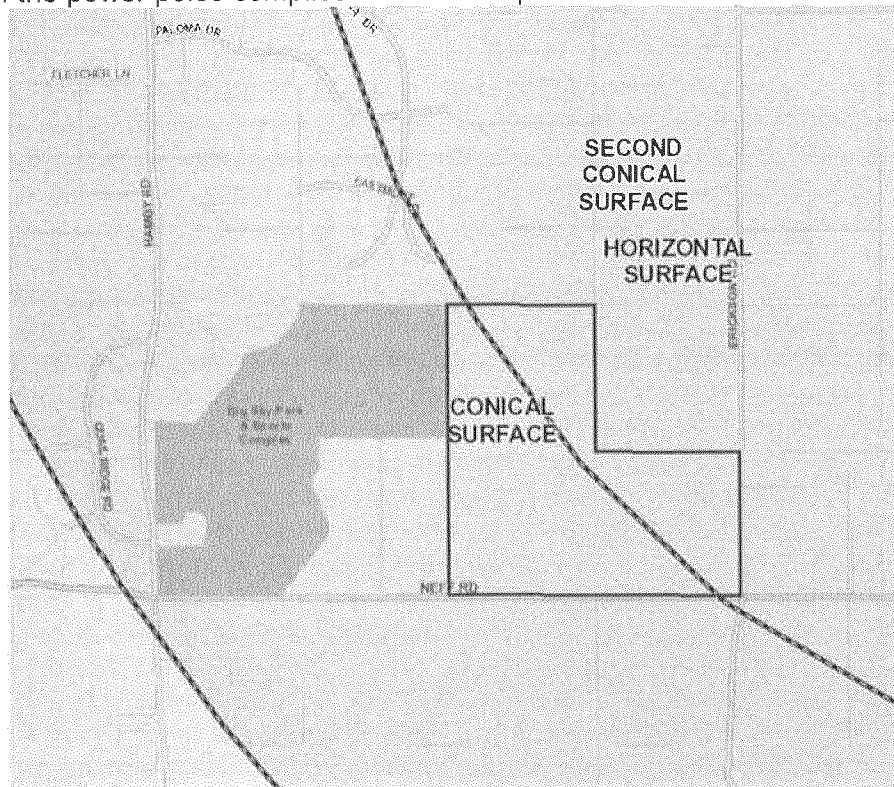
- A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plan or other object of natural growth shall penetrate an airport imaginary surface.***
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structure and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures of up to 35 feet in height.***

\*\*\*\*

**FINDING:** The property is within the Airport Safety (AS) Combining Zone of the Bend Municipal Airport and is sited approximately 9,000 feet from the airport runway. The property is outside the approach and transition surfaces, but within the horizontal surface of the Bend Municipal Airport. The site is partially within the conical and secondary conical surfaces. The applicant indicates that except for the proposed power poles, the proposed array and related facilities will be a maximum of twelve (12) feet in height, well under 35 feet.

Staff was unable to locate a reference to the height of the proposed power poles in the submitted plans and application materials. However, it is staff's opinion, that the proposed power poles are accessory to the proposed solar panels and inverters, thus included in the conditional use permit review. As long as these poles are below a height of 200 feet, they are

exempt from the height requirements of the EFU zone. However, at a possible height of over 35 feet, FAA regulations may impose design standards and other requirements. Staff recommends that the applicant provide the Hearings Officer with information and drawings for the proposed power poles to verify the height and also provide written evidence that the height and design of the power poles complies with FAA requirements.



Source: Deschutes County GIS

**Hearings Officer:** The applicant has confirmed that no pole or other structure will be higher than 30 feet, well within the height limitation.

2. 18.80.044, Land Use Compatibility.

**Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body.**

**A. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit**

*affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]*

**FINDING:** The proposed use is not one that is noise-sensitive and is not located within the noise impact boundary associated with the Bend Airport.

- B. Outdoor lighting.** *No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.*

**FINDING:** The applicant indicates that exterior lighting is not proposed.

- C. Glare.** *No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.*

**FINDING:** In the incomplete application letter, dated April 22, 2015, staff provided the following comment:

**STAFF COMMENT:** The submitted burden of proof statement states: "*The subject property is not within the approach surface for the airport. Additionally, no reflective materials shall be used.*" The site is outside of an approach surface, however, it could be interpreted that the site is "...on nearby lands where glare could impede a pilots vision". Please provide a detailed response, and any supporting evidence, as to how the design and materials of the proposed solar array complies with this criterion. What materials and finishes would be used for the panels, frame and inverters? What are their reflective qualities? Can you provide samples, color photographs and cut-sheets for the solar array to clarify this?

The applicant provided the following response to Staff's comment above in their supplemental burden of proof statement:

Applicant Response: As described above, the proposed materials are non-reflective. Photographs are enclosed as **Exhibit C**. As noted in the FAA Technical Guidance for Evaluating Selected Solar Technologies on Airports referenced above and attached as **Exhibit D**, the panels are designed to absorb rather than reflect light. The reflectivity of the panels is significantly lower than that of bare soil or vegetation. See also the "Study of the Hazardous Glare Potential to Aviators from Utility-Scale Flat-Plate Photovoltaic Systems" published by the International Scholarly Research Network, which concluded that "the potential for hazardous glare from flat-plate PV systems is similar to that of smooth water and not expected to be a hazard to air navigation. A copy of this paper is also attached as **Exhibit D**. As noted by the FAA letters the applicant submitted, the FAA has no concerns about the proposed array posing any risk to aircraft.

Submitted with the application is an FAA letter, issued March 26, 2015, concluding that aeronautical study no. 2015-ANM-169-OE, associated with the site, is determined to have no aeronautical hazard to air aviation. Additionally, comments from Gary Judd, Manager for Bend Municipal Airport, indicate he does not see any issues with the proposal.

The applicant contends that the solar panels used for the project will not produce significant reflection or glare as it will utilize photovoltaic (PV) modules using "non-reflective" glass. The applicant refers to the photos in Exhibit C of the supplemental burden of proof as visual evidence to verify that the surface material of the solar panels is not reflective. Additionally, the applicant also refers to the FAA Technical Guidance for Evaluating Selected Solar Technologies on Airports for evidence that the proposed panels are designed to absorb rather than reflect light and that the reflectivity of the panels is significantly lower than that of bare soil or vegetation.

The applicant also references the Study of the Hazardous Glare Potential to Aviators from Utility-Scale Flat-Plate Photovoltaic Systems, published by the International Scholarly Research Network (ISRN) and included as Exhibit D to the applicant's supplemental burden of proof statement. The applicant provides a quote from this ISRN paper concluding that "*the potential for hazardous glare from flat-plate PV systems is similar to that of smooth water and not expected to be a hazard to air navigation*".

Staff does not possess the expertise to effectively evaluate and assess the reflective qualities or glare potential of solar panels as described in the above referenced publications. Unless the Hearings Officer is comfortable reviewing and interpreting the submitted materials, Staff suggests that the Hearings Officer request the applicant to provide written expert testimony to effectively evaluate the effect of glare and reflectivity of the specific solar panels on aircraft and pilots.

Such an expert, retained by the applicant, should provide a written summary with specific references to pages, tables, figures, etc... regarding the glare and reflective qualities of the proposed panels, to the Hearings Officer for consideration.

As discussed above, it is unclear to staff that the proposed panels would consist of a material that would not produce glare "...on nearby lands where glare could impede a pilot's vision". As such, staff finds this criterion is not satisfied.

**Hearings Officer:** At the hearing there was much debate about the potential for glare or similar impacts on aviation. Much of this was generalized. The most compelling evidence came from Gary E. Miller, President of the Central Oregon Chapter of the Oregon Pilot's Association

and a member of other pilot associations and clubs. He indicated significant initial skepticism and concerns on his part and that of other pilots. He supplemented his testimony with a July 1, 2015 email, concluding that, "if the projects are built as currently specified, with a requirement to mitigate unforeseen glare with programming, the CO-OPA and the OPA have no objection..." In particular, his analysis concluded that any noticeable "uplift" will be outside the normal airport traffic area. As regards glare, he reran the SGHAT with "more accurate data" that any potential glare would be south of the FAA recommended air traffic pattern and of a lesser intensity" than anticipated and, therefore, not a significant concern. To a certain extent this contradicts the applicant's assertion that there effectively is no glare, but the convincing evidence is that any glare is minimal and not a hazard.

Note, however, that this is dependent on proper programming of the panels and unforeseen glare issues could arise. The applicant committed to working with aviation interests to resolve any issues. I find that a condition of approval to that effect is necessary to ensure on-going compliance. See condition No. 10.

- D. *Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.***

**FINDING:** The proposed use will not generate any emissions of smoke, dust or steam.

- E. *Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.***

**FINDING:** The propose use should not cause or create any electrical interference with navigational signals or radio communications between the Bend airport and aircraft.

**Hearings Officer:** There was no evidence suggesting any interference.

- F. *Limitations and Restrictions on Allowed Uses in the RPZ, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table I, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein***

***described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.***

**FINDING:** The proposed use is listed as "Utility" DCC 18.80 Table I. The subject property is located in a secondary impact area where note L(5) specifies, "the proposed height of utilities shall be coordinated with the airport sponsor and the Department of Aviation." Comments received from the Bend Municipal Airport Manager express no concerns for the proposed use.

3. Section 18.80.054, Conditional Uses.

***Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.***

**FINDING:** The proposed use is permitted conditionally in the underlying zone, which is Exclusive Farm Use.

4. Section 18.80.064, Procedures

***An applicant seeking a land use or limited land use approval in an area within this overlay zone shall provide the following information in addition to any other information required in the permit application:***

***A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The Community Development Department shall provide the applicant with appropriate base maps upon which to locate the property.***

***Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level.***

**FINDING:** The submitted site plan drawings comply with these criteria.

5. Section 18.80.078, FAA Notification (Form 7460-1).

**A Federal and State Notice.**

***Federal Aviation Regulation (FAR) Part 77 requires that anyone proposing to construct anything which may obstruct the use of airspace by aircraft to provide a notice to that effect to the FAA. In addition, OAR 738.070.0060 requires notice also be sent to the Oregon Department of Aviation. Generally, construction proposals in the vicinity of airports may obstruct airspace. Notice to the FAA and Oregon Department of Aviation is required for anything which may affect landing areas, either existing or planned, which are open to the public, or are operated by one of the armed forces.***

**FINDING:** The applicant submitted form 7460-1 with the application.



## DESCHUTES COUNTY COMPREHENSIVE PLAN

Although not typically addressed in a quasi-judicial land use permit, in addition to addressing the applicable criteria of the Deschutes County Zoning Ordinance, in the supplemental burden of proof statement, the applicant provides the following regarding the Deschutes County Comprehensive Plan:

### ***Deschutes County Policies***

*The applicant notes that some of the opponents to the proposal claim to be in favor of renewable energy and favoring proposals such as the proposed array, but they believe that the project should be sited somewhere else. The problem with "somewhere else" is that somewhere else will not work as well operationally and will risk greater impacts on surrounding properties or wildlife. It is not feasible to place a large solar farm within a city's limits because of the high cost of land and the limits on expanding urban growth boundaries in Oregon. It is not feasible to place a large solar farm in a more rural area because in those areas, there would be significant impacts on wildlife. Locating the solar farm in this proposed location is the best way to balance impacts with our collective, societal need – and desire – for renewable energy.*

*The County's (relatively; adopted in 2011) new comprehensive plan embraces renewable energy as an important goal/priority for the County. Under Section 3.4, Rural Economy Policies, Goal 1 seeks a "stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment." Policy 3.4.5 under that Goal specifically states that the County seeks to "[s]upport renewable energy generation as an important economic development initiative."*

*Under Section 2.8, Energy Policies, Goal 3 seeks to "[p]romote affordable, efficient, reliable and environmentally sound commercial energy facilities." Policy 2.8.9*

**Hearings Officer:** The Comprehensive Plan provisions cited inform application of the Code criteria but I have not been cited to any provision of the Comprehensive Plan or Code expressly making any of the acknowledged Comprehensive Plan policies directly applicable to the proposal.

## OREGON ADMINISTRATIVE RULES:

### OAR 660-033-0120

#### Uses Authorized on Agricultural Lands

The uses listed in the table adopted and referenced by this rule may be allowed on agricultural land in areas that meet the applicable requirements of this division, statewide goals and applicable laws. All uses are subject to the requirements, special conditions, additional restrictions and exceptions set forth in ORS Chapter 215, Goal 3 and this division. The abbreviations used within the table shall have the following meanings:

(1) "A" — The use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.



(2) "R" — The use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to address local concerns.

(3) "\*" — The use is not allowed.

(4) "#" — Numerical references for specific uses shown in the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use in the table, this rule does not establish criteria for the use.

HV	All	
Farmland	Other	USES

...

#### Utility/Solid Waste Disposal Facilities

...

R5,38	R5,38	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
-------	-------	---

...

(The numbers in the table above refer to the section numbers in OAR 660-033-0130)

#### OAR 660-033-0130

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

**Hearings Officer:** As staff notes Subsections (a) and (b) above, are incorporated in Title 18 of the Deschutes County Code in Section 18.16.040 and are addressed above.

**Hearings Officer:** OAR chapter 660 regulates Agricultural Land, with specific provisions governing a "photo-voltaic solar power generation facility" as defined at OAR 660-030-0130(e). The proposal falls squarely within this definition. As staff notes, "Photovoltaic solar power generation facility" 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 and all necessary grid integration equipment.

These facilities are further subject to review in accordance with OAR 660-033-0130 (38). Beyond that, however, the OAR is ambiguous as to exactly what standards apply to the facts present in this proposal. Although the Rule has been cited in case law, including in the context of solar power facilities, I found and have been cited to no particularly helpful interpretive authority.

The critical initial issue is the applicability and meaning of OAR 660-033-0130 "Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses" (38) (f), (g) or (h).

(f) *For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.*

(g) *For arable lands, a photovoltaic solar power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.*

(h) *For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 320 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. (Emphasis added)*

Obviously, the proposal exceeds these limits for high value and arable lands. In a nutshell, the applicant's position is that the size of facility that may be permitted is a function of whether it is "located on high value farmland soils" and whether it is located on arable land/soils. If it is not on "high-value soils" and not on arable land/soils, the proposal is well within the 320 acre limit. The applicant contends that the proposal is neither on high value soils nor arable land/soils, accordingly, the 320 acre limit controls. (Applicants rebuttal dated Aug. 4, 2015)

In a nutshell, counsel for Cathy Jensen, argues that the soil classification is irrelevant. ORS 195.300(10) (c) (B) does not define high value farmland in terms of soil classifications, rather it simply states that high value farmland is land that is zoned EFU and is (B) "within the boundaries of a district, as defined in ORS 540.505", i.e. an irrigation district. Since the subject property is within (except for a small portion) the Central Oregon Irrigation District, the 12 acre limit controls.<sup>1</sup>

The courts have held that administrative rules are to be interpreted essentially in the same manner as statutes, i.e. courts look first to the plain meaning of the text and context with the aid of whatever legislative history the court may deem relevant.

The applicant argues that the context and legislative history support its position. First, it notes that OAR 660-033-02020 expressly states that "for purposes of this division", the definitions in ORS 197.015, the Goals and OAR 660 itself apply. It goes on to specifically define "high value farmland" as "land in a tract composed predominately of soils that are...not irrigated and classified prime, unique, Class I or II" or "irrigated and classified prime Class I or II". This argument is consistent with the general rule that a more specific definition controls over a more general one. In making this argument, however, the applicant misreads the cross-reference in (f) to include a reference to "soils" described at ORS 195.300 (10). But soils are not, in fact, mentioned in either the (f) cross-reference or ORS 195.300 (10) (c) (B).

It is difficult to understand why (f) does not cite to the division's own definition of high-value farmland. It is even more confusing when one notes that the standards for siting a solar facility on "arable" or "nonarable" land do state that "No more than 12 acres of the project will be sited on high-value *soils* described at ORS 195.300(10)." (Emphasis added). Further, most of the focus of (38) is on whether the land/soils are arable or nonarable, based primarily on existing or

---

<sup>1</sup> Counsel's letter is addressed specifically to the Oregon Solar project (Collier Property), but I note that Jensen property primarily abuts the NW Energy 2 site. The hearing was consolidated and her comments are relevant to both proposals so are addressed accordingly.

historic irrigation. Reading the rule on its face suggests the rather incongruous conclusion that there are actually three mutually exclusive classifications:

High value farmland without regard to soils, arability or irrigation but in an irrigation district – 12 acre limit.

Arable land/soils (i.e. irrigated) – 20 acre limit (no more than 12 on high value soils) only if outside an irrigation district, which may be rare.

Nonarable land/soils – 320 acre limit (no more than 12 on high value soils) unless in irrigation district in which case the limit is 12 without regard to the soils, or evidence that the land has never been irrigated, has no water rights or the district has no water available.

Modern court decisions make it clear that they are not to insert what has been omitted or omit what has been inserted and, if possible, must give effect to all. See e.g. ORS 174.010. This is particularly true where, as here, other portions of the rule expressly refer to “soils”. Courts generally will apply the doctrine that express mention of a term in one place but not another implies an intent to draw a distinction, rather than assume it is an oversight. The applicant essentially would insert into OAR 660-033-0120 (38)(f) the word “soils”. This I cannot do. It does not make the arable/nonarable distinctions in the Rule inapplicable, although it significantly impacts their effect. The critical inside/outside irrigation district classification described above may not appear to make much policy sense but is not so contradictory as to be impossible to apply and give effect.

The applicant also cites to a basis for an exception to these rules of construction. That is, if there is relevant legislative history, as the overriding task of a court is to apply the intent of the legislature (and in this case administrative agency). The applicant demonstrates that ORS 195.300(10) was adopted as part of the 2007 Measure 37 “fix” and, presumably, there was no thought given to solar facilities. But that does not establish a legislative intent that they should be permitted on “high-value” farmland as that term is used in ORS 195.300(10) (c)(B). Further, and more important is that the administrative rule at issue has been amended numerous times since 2007, so LCDC has had many chances to remove or modify the cross-reference if it wanted.

(38)(f) remains ambiguous, however, as it does not simply state that a facility cannot be sited on more than 12 acres of “high-value farmland”, it says that, if on high-value farmland (i.e. in this case in an irrigation district), it “shall not preclude more than 12 acres from use as a commercial agricultural enterprise”. This language mirrors the language in (h) for “non-arable” soils, on which a facility cannot preclude more than 320 acres from use as a commercial agricultural enterprise.” Both sections then list a series of criteria for approval. These approval criteria speak to avoiding “high-value farmland soils”, including for non-arable lands that no more than 12 acres of the project will be on high-value soils as described at ORS 195.300(10).

OAR 660-033-0020 (2)(a) defines Commercial Agricultural Enterprise as: “farm operations that will: (A) Contribute in a substantial way to the area's existing agricultural economy; and (B) Help maintain agricultural processors and established farm markets. (b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

It is undisputed that the property is not now used for a commercial agricultural enterprise. Nor has it been so used for many years and even then apparently not particularly successfully. Thus, the project would not preclude an “existing” such enterprise. Preclude is defined in the

online Merriam-Webster as: to make (something) impossible; to prevent (something) from happening; to prevent (someone) from doing something; to make impossible by necessary consequence : rule out in advance. Certainly, one cannot both have a solar facility covering much of the site and a commercial agricultural enterprise at the same time. But I read the term 'preclude' in this context as meaning that the proposed development is what prevents a commercial agricultural enterprise from occurring or plausibly occurring. In this case, the solar facility does not preclude a commercial agricultural enterprise because the poor soils, lack of water and other factors already preclude any no realistic chance that commercial agricultural otherwise would occur. The definition of "commercial agricultural enterprise" read as a whole is written in the present tense, suggesting that there must be an existing enterprise or at least ready potential. Relatedly, there is no evidence, even from opponents who contend that there may be some potential viable agricultural use, that the agricultural uses they suggest may occur on the site would contribute in a substantial way to the existing agricultural economy or be so significant as to meaningfully contribute to maintaining established processors and markets. The applicant's Feasibility Report concludes the opposite. Approval of the solar farm makes development of a commercial agricultural enterprise on this site no less likely than would a denial.

This is a close call and a court certainly may reasonably conclude otherwise, but on balance I think the better reading is that, in this context, preclude should be read as discussed above. The standards set forth in (f) (g) and (h) appear to relate to whether it is the solar facility, or some other conditions, that preclude commercial agriculture. Otherwise, the OAR purporting to allow and govern siting of solar facilities effectively precludes them on vast areas and without regard to impacts on agriculture. The distinctions between arable and nonarable soils, and the detailed approval criteria would only apply outside an irrigation district making the factors in those definitions, the viability of commercial agriculture and soil types of irrelevant in a district. Accordingly, I find that the proposal does not preclude use of more than 12 acres of high value farm land from use as a commercial agricultural enterprise.

OAR 660-033-0130 (38) (f) further states that, assuming the project is on high-value farmland because it is in an irrigation district, the following standards must be addressed. It is worth noting that these can be read as guidance on how a solar facility would, if it did not meet the criteria, preclude commercial agriculture. Conversely, if the standards are met, the solar facility does not preclude commercial agriculture especially in the absence of any likelihood that commercial agriculture would be feasible on the site.

**(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.**

As discussed herein, there are no agricultural operations conducted on the site.

**(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;**

**Hearings Officer:** The applicant has stated that there will be virtually no grading necessary for installation and the topography will be virtually unchanged, with grading only around the 12 inverter pads. The applicant submitted a Grading, Drainage and Erosion Control Plan on May 13. Botanical Developments supplemented this on July 21, noting soil compaction will be mitigated by filling and soil amending. Similarly, the July 28 submittal from the applicant details soil compaction mitigation measures. There is substantial evidence in support of concluding that there will be no unnecessary or significant soil compaction or erosion. See condition No. 8.

**(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 testimony and evidence establish that the property is significantly impacted by non-native, introduced weeds and other vegetation. The applicant has proposed to substantially clear the site of such vegetation and replant portions with native species. Provided the site is adequately maintained, the proposal likely will enhance rather than degrade the site in this regard. A condition of approval will require the applicant to adhere to the plans submitted for removal of noxious/invasive vegetation and minimizing spread or reintroduction. See condition No. 9.

**(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;**

**Hearings Officer:** As discussed above, the project is not located on high-value farmland soils. The entire site is non-high value soils. Further, it would appear that even if the 36 A and B had been or could be irrigated, limiting the project to those soils would significantly reduce the project's ability to operate successfully by significantly limiting the power that could be generated to justify the investment.

**(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:**

**(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.**

**Hearings Officer:** At the applicant's request, Staff did a review and determined that there are no existing or approved solar farm uses exceeding 48 acres within one mile. (Email dated July 21, 2015).

As discussed above, the relationship of the definitions of arable land/soils and nonarable land/soils to a site located in an irrigation district is unclear, particularly when, as here, I have found that the proposal is not what precludes commercial agriculture. But if they were arable, that analysis might change, so it is prudent to address those definitions.

**(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.**

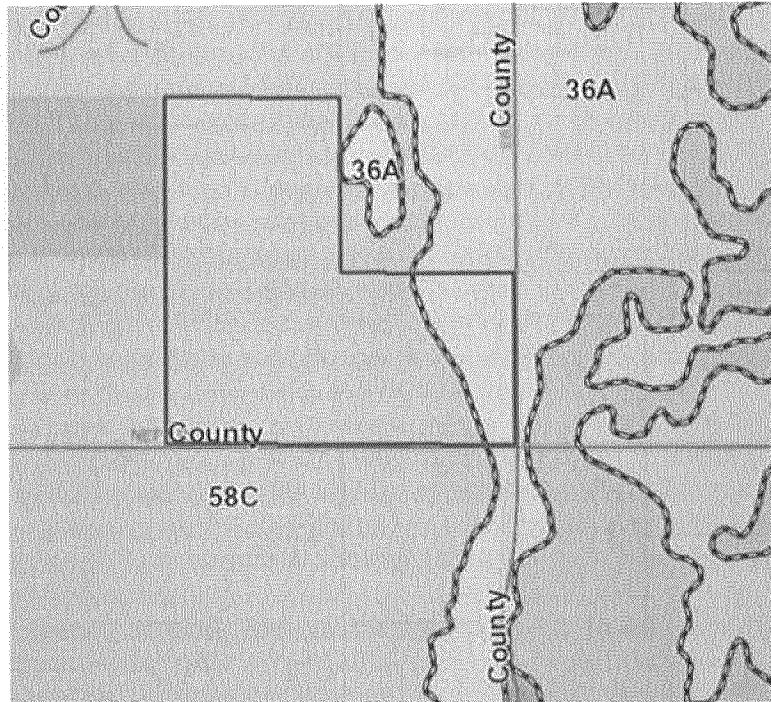
**(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history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

***(h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 320 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that: (see below)***

Approximately 10 acres of the property is zoned MUA-10, thus is taken out of consideration for the predominance calculation. Approximately 8.8 acres of the approximate 108.71 acre EFU-zoned portion, or 7.4 percent, of the property contains NRCS Soil Unit 36A, Deskamp Loamy Sand, 0-3 percent slopes. Unit 36 is considered high value farmland where irrigated. Although a portion of the property contains NRCS Soil Unit 36A, the EFU-zoned portion of the property is predominantly, 92.6 percent in this case, comprised of Soil Unit 58C, Gosney Rock Outcrop-Deskamp Complex and is described below:

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes. This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with

rapid permeability. Available water capacity is about 3 inches. Major use for this soil type is livestock grazing. The Gosney soils have a rating of 7E, with or without irrigation. The rock outcrop has a rating of 8S, with or without irrigation. The Deskamp soils have ratings of 6E when unirrigated, and 4E when irrigated. The map below depicts the soil units that are on the property:



**Source:** Deschutes County GIS based on NRCS data

NRCS Unit 58C has a soils classification rating ranging between VI and VIII where not irrigated and is not classified as high value farmland. As evident in Exhibit A of the applicant's supplemental Burden of Proof Statement, received May 13, 2015, the subject parcel has no water rights and no history of irrigation. Thus, the property is not currently cultivated and is not predominantly comprised of arable soils.

The applicant's Range Inventory and Agricultural Feasibility Report (Jul 17, 2015), although apparently concluding that small portions of the site may be potentially be irrigable, supports the conclusion that the site never has been meaningfully irrigated, is comprised of VI-VIII soils and cannot support agriculture rising to the level of a commercial agricultural enterprise. Opponents submitted evidence suggesting that in the past the property may have had water rights, but that such rights were released to COID. The July 17, Central Oregon Irrigation District letter, however, states that "no water rights for COID irrigation have ever been issued" for the property.

The subject proposal is a request to establish a Photovoltaic solar power generation facility, or solar farm, on the subject property that would not exceed 80 acres in size. The property to the south, owned by Thomas Collier, has a pending proposal for a solar farm that would not exceed 80 acres in size. These two proposed solar farm projects, under ownership by the same parent company Cypress Creek Renewables, would establish a combined acreage of no more than 160 acres toward a Photovoltaic solar power generation facility or solar farm. Based on the requirements of this definition, the combined acreage for the two solar farm projects, as



opposed to the 80 acres proposed by this application, shall be considered when applying the acreage standards of this section as addressed below.

**Hearings Officer:** I agree with staff's conclusion that based on Natural Resource Conservation Service (NRCS) data, water rights data, absence of current and historical farm use or irrigation, the property is considered nonarable land and with staff's calculation. Pursuant to OAR 330-030-130(38) (h) the following additional standards apply:

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

**FINDING:** The project is not located on high-value farmland soils or arable soils as discussed above..

***(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);***

**Hearings Officer:** The project is not located on high-value farmland soils or arable soils as discussed above. The area marginally most suitable for irrigation appears largely to be the area not being proposed for solar facilities.

***(C) No more than 20 acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;***

**FINDING:** The project is not located on high-value farmland soils or arable soils as defined and discussed above.

***(D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;***

**Hearings Officer:** See finding above.

***(E) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and***

**FINDING:** No Goal resource protected under the county's comprehensive plan is located on the subject property.

***(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to***



***state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.***

**FINDING:** Based on comments from Nancy Breuner, Deschutes District Wildlife Habitat Biologist with ODFW, and an email, dated January 09, 2015, from Jerry Cordova, Fish and Wildlife Biologist with U.S. Fish and Wildlife Services, both quoted above, staff believes the requirements of this rule have been met.

***(i) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).***

**Hearings Officer:** See Condition No. 11

***(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 for retiring the photovoltaic solar power generation facility.***

**Hearings Officer:** Staff did not make a finding on this issue, suggesting only that I consider requiring a bond or other security. I have been cited to no provision expressly requiring a bond. Nevertheless, there were several concerns raised about the impact on the adjoining properties if the facility is abandoned more or less in place. The applicant has effectively rebutted arguments that this land should be reserved as more suitable for future urban development, including correspondence from the City of Bend indicating that the subject property is not within an area of interest even over relative the long term. But that cuts both ways, land developable at urban densities might be able to support decommissioning costs in the event the project is abandoned, but an urban designation is very unlikely to occur in the foreseeable future. Rural residential or agricultural value is much less likely to support that cost. Ensuring that facility is, in fact, removed is important in addressing the impact of the facility on nearby properties. It is one thing to have a well maintained functioning facility, quite another to have an abandoned site. This issue also goes to whether the facility might preclude commercial agriculture in the future.

The applicant submitted documents suggesting that the cost of decommissioning a 25 MWp Solar PV Farm is \$2,313,000 (which I understand and recall to be both facilities together) and that the salvage value for both this facility and the adjacent Oregon Solar facility at the end of 30 years will be \$3,957,911 (all 2015 dollars). Although there is no specific evidence to the contrary, I find that this is simply too speculative to rely on. The applicant also relies on the lease term requiring restoration, but the lessor has only the right to sue for performance or damages which is of little use if there are no assets to go after. Solar technology is promising, but new and untested over the long term. There simply is no assurance that the equipment will have significant residual value. Landfills, quarries and other such uses in rural areas commonly must post reclamation bonds. On the other hand, although speculative, the only evidence in the record is that there will be some residual value

Accordingly, this approval is conditioned on providing a performance bond in favor of Deschutes County for removal and restoration, or cash, in an initial amount of \$1,000,000. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety and restore the site as conditioned no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed. See Condition No. 12.

#### **IV. CONCLUSION AND CONDITIONS OF APPROVAL:**

Applications 247-15-000168-CU / 169-SP are APPROVED subject to the applicant/owner complying with the following conditions of approval:

1. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. The applicant shall conform to all such documents except as authorized or directed in this decision. Any substantial change in this approved use will require review through a new land use application.
2. The applicant shall meet all requirements of the Deschutes County Building Safety and Environmental Soils Divisions.
3. Prior to initiation of the use, the applicant shall provide evidence of DEQ National Pollutant Discharge Elimination (NPDES) Permit approval for the proposed use to the Planning Division.

4. Prior to initiation of the use, the applicant shall obtain all necessary state and federal permits for the project.
5. Prior to initiation of the use, the applicant shall complete the following:
  - a) Install the 6 foot cyclone fence with tan/sand colored mesh screening. No barbed wire is permitted. The fencing, screening and landscaping perimeter shall be modified such that it follows the property line of the area marked 'OLA' on the July 9, 2015 Bend Park and Recreation Letter, and extending south to close off the "notch". The intent is to have the collapsed ceiling area and cave entrance on the project side of the perimeter. The shrubs/trees shall be planted along the perimeter and modified perimeter consistent with the landscape plan.
  - b) Plant the shrubs in the locations shown on the approved Landscape Plan except as modified in condition 5(a). The shrubs/trees shall be a minimum of 6 feet at the time of planting.

At all times the mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.

6. Existing Landscape and topography shall be preserved to the greatest extent feasible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected. All new plantings shall be regularly watered and otherwise cared for until certified by a landscape professional to be fully established. Dead, dying or diseased vegetation in the landscape area shall be replaced within 90 days of being discovered. Existing trees preserved on the site over 6' tall that become diseased or die shall be replaced with a minimum 6' comparable tree within 90 days of being discovered and properly tended until established.
7. No solar panel shall exceed 8' in height from existing ground level, including at full extension, within an area that is 100' (more or less) from the property line. "More or less" is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In no event shall anything other than the power poles exceed 12' from existing ground level.
8. The applicant shall adhere to the soil compaction avoidance and remediation plans submitted into the record.
9. The applicant shall adhere to the plans submitted for removal of noxious/invasive vegetation and minimizing spread or reintroduction.
10. Prior to initiation of the use the applicant shall establish a hotline available 7 days a week during daylight hours through which a supervisory employee may be contacted to receive and promptly address reports of glare or other conditions causing interference or potential dangerous circumstances for aircraft. This number shall be provided to the appropriate personnel at the Bend and Redmond airports, Deschutes County planning, and Deschutes County Sheriff. It also shall be made available to any aviation company, pilot organization or similar group that may reasonably be considered to be in a position

to responsibly report dangerous conditions. The applicant shall modify its operations or take such other steps as are necessary to promptly eliminate glare or other bonafide aviation risks.

11. Prior to initiation of the use, the project owner shall sign and record in the deed records of the County a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices as defined in ORS 30.939(2) and (4).
12. Prior to commencement of commercial electricity sales, a performance bond in favor of Deschutes County for removal and restoration, or cash, in the amount of \$1,000,000. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety, including above-ground and buried facilities, no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed.

13. Prior to initiation of the use, the applicant shall execute and record a County Condition of Approval Agreement to ensure compliance with all conditions of approval.

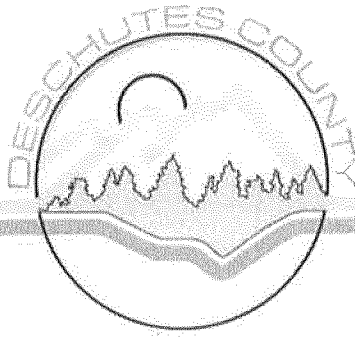
Dated this 18th day of September, 2015

Mailed this 18<sup>th</sup> day of September, 2015



Dan R Olsen, Hearings Officer

**THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS TIMELY APPROVED BY A PARTY OF INTEREST.**



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### CERTIFICATE OF MAILING

**FILE NUMBERS:** 247-15-000168-CU and 247-15-000169-SP (NorWest Energy 2, LLC)

**DOCUMENT MAILED:** Hearings Officer Decision

I certify that on the 18th day of September, 2015, the attached Hearings Officer Decision, dated September 18th, 2015, were mailed by first class mail, postage prepaid, to the persons and addresses set forth below.

Dated this 18th day of September, 2015.

### COMMUNITY DEVELOPMENT DEPARTMENT

By: Moonlight BPO

Parties to Application (list attached)	Mike Riley The Environmental Center 16 NW Kansas Avenue Bend, OR 97701
Jeff Caines Oregon Dept. of Aviation 3040 25th Street SE Salem, OR 97302	Michelle Healy Bend Park & Recreation District Office, 799 SW Columbia St. Bend, OR 97702
Steve Jorgensen Bend Park & Recreation District Office 799 SW Columbia St. Bend, OR 97702	Gary Judd, Airport Manager Bend Airport 63136 Powell Butte Rd Bend, OR 97701

Return To: Chris Schmoyer  
Community Development Dept.  
117 NW Lafayette Ave., P.O. Box 6005  
Bend, OR 97708-6005

## FARM AND FOREST MANAGEMENT EASEMENT – CONDITIONAL USE

Harland W. Hafter and Jolene R. Hafter herein called the Grantors, are the owners of real property described on Exhibit "A" attached hereto and by this reference incorporated herein, and identified or depicted on Deschutes County Assessor's Map 17-12-25 as Tax Lot 501. In accordance with the conditions set forth in the decision of the Deschutes County Hearings Officer, dated September 18<sup>th</sup>, 2015, approving land use permit Nos. 247-15-000168-CU/169-SP, Grantors hereby grant to the owners of all property adjacent to the above described property (Grantees), a perpetual non-exclusive farm and forest practices management easement as follows:

1. The Grantors, their heirs, successors, and assigns, hereby acknowledge by the granting of this easement that the above-described property is situated in a designated farm zone in Deschutes County, Oregon, and may be subjected to conditions resulting from farming or forest practices on adjacent lands. Such operations include management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof, and other accepted and customary farm and forest management activities conducted in accordance with Federal and State Laws. Such farm or forest management activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes. Except as allowed by ORS 30.930 through 30.947, Grantor hereby waive/s all common law rights to object to normal, non-negligent farm and forest management activities legally conducted on adjacent lands that may conflict with Grantors' use of Grantors' property for residential purposes, and Grantors hereby give an easement to the adjacent property owners for the resultant impact on Grantors' property caused by the farm and forest management activities on adjacent lands.
2. Grantors shall comply with all restrictions and conditions for maintaining the development in farm and forest zones that may be required by State, Federal, and local land use laws and regulations. Grantors shall comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property adjacent to the above-described property, and shall bind the heirs, successors, and assigns of Grantors, and shall endure for the benefit of the adjacent landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third-party enforcement of this easement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015      GRANTORS

\_\_\_\_\_  
Harland W. Hafter

\_\_\_\_\_  
Jolene R. Hafter

STATE OF OREGON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public in and for said County and State, personally appeared Harland W. Hafter and Jolene R. Hafter who are known to me to be the identical individual/s described in the above document, and who acknowledged to me that they executed the same freely and voluntarily.

Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit A**

The Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 25, Township 17, south, Range 12, East of the Willamette Meridian.

The West Half of the Southeast quarter (W 1/2 SE 1/4) of Section twenty-five (25) in Township 17 South, Range twelve East, of the Willamette Meridian.



Return to: Chris Schmoyer, Associate Planner  
Community Development Dept.  
117 NW Lafayette, P.O. Box 6005  
Bend, OR 97708-6005

## CONDITIONS OF APPROVAL AGREEMENT

THIS AGREEMENT, made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, ("County"), and Harland W. Hafter and Jolene R. Hafter ("Developers"), owners of certain real property described as 62435 Erickson Road, Bend, Deschutes County, Oregon, as set forth in that certain Quitclaim Deed, dated August 11, 2013, as recorded in Volume 2013, Page 37466, of Deschutes County Book of Records ("Real Property").

### WITNESSETH:

WHEREAS County has granted approval of a land use permit 247-15-000168-CU/247-15-000169-SP ("Permit") for the Real Property upon the condition that Developers construct and maintain certain requirements as specified therein; now, therefore,

IT IS HEREBY AGREED, by and between the parties, for and in consideration of the mutual covenants and agreements herein, as a condition precedent to the granting of final approval or occupancy, as follows:

**Scope of Agreement.** This Agreement affects the Real Property described above. This Agreement shall cover those improvements and requirements described in the section of this Agreement entitled "Conditions of Final Approval." Nothing in this Agreement shall require Developers to construct any improvements under the Permit, but if Developers undertake the construction of buildings or structures, the division of real property or otherwise exercises the Permit, Developers shall be required to complete and maintain all improvements, as defined herein, in accordance with applicable County Ordinances and the Permit.

**Definition of Improvement.** As used herein, "improvement" means any private or public facility or service such as roadways, bike paths, access ways, pedestrian walkways, landscape areas, sewage collection and disposal systems, water systems, lighting systems, parking lots, cable utilities, circulation areas, outdoor storage areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut-and-fill areas, buffering and screening measures, street furniture, drainage facilities, or other similar improvements as approved and required in the Permit.

**Definition of Permanent Maintenance.** As used herein, "permanent maintenance" generally means maintenance of the structures, improvements, and landscaping that are the subject of this Agreement in a manner that will keep such structures, improvements, and landscaping in good repair or good condition and in a condition that is not a hazard to public safety. With respect to landscaping, Developers' obligations shall include, without limitation, continued irrigation of landscaping and, where applicable, pruning of landscaping to guarantee required sight distances and to otherwise protect against hazardous conditions. With respect to drainage facilities, Developers' obligations shall include, without limitation, periodic cleaning of drainage ponds, drywells, or other drainage facilities of obstructions or silt that would limit the performance or effectiveness of drainage facilities. With respect to improvements, such as pavement and sidewalks, Developers' obligations shall include, without limitation, maintenance of the impervious nature of impervious surfaces, maintenance of evenness of surfaces so that

such surfaces are not hazardous to the operation of vehicles or use by pedestrians.

**Construction and Permanent Maintenance.** If Developers are required under the Permit to construct improvements of any kind or to install landscaping or plantings and Developers elect to proceed with development under the permit, Developers agree: (1) to undertake the construction and landscaping required under the land use permit, as more specifically set forth in the conditions set out herein and in the land use permit; and, (2) in the event that this Agreement and the Permit do not expire as set forth herein, to the permanent maintenance of required landscaping and improvements.

**Enforcement.** This Agreement shall be enforceable against any person bound by this Agreement in possession of or having fee title to the property. If any party bound by this Agreement defaults on the obligations set forth herein, the County shall be entitled to enforce this Agreement in equity. The prevailing party at trial or on appeal in any enforcement action shall be entitled to reasonable attorney fees and costs. This provision shall not limit County's rights to use other means provided by law, including but not limited to issuing a civil citation, to enforce the conditions of the Permit.

**Authority of Signatories.** By their signatures, all signatories to this Agreement signing in a representative capacity certify that they are authorized to sign on behalf of and bind their respective principals.

**Expiration.** This Agreement and the Permit shall expire on its expiration date or by the revocation of the Permit or by the explicit release by the County from this Agreement granted as part of an approval for a change of use of the Real Property. Additionally, this Agreement and the Permit shall automatically expire upon the foreclosure of any prior encumbrance upon the Real Property which results in the extinguishment of this Agreement.

**No Partnership.** County is not, by virtue of this Agreement, a partner or joint venture of Developers in connection with activities carried on under this Agreement, and shall have no obligation with respect to Developers' debts or any other liabilities of each and every nature, and is not a guarantor of the Developers, the project, or the work to be performed.

**Limitations.** Should this Agreement violate any constitutional or statutory provision, it shall be void.

**Persons Bound by Agreement.** The original of this Agreement shall be recorded with the Deschutes County Clerk and shall run with the land. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties, the parties' successors, heirs, executors, administrators, and assigns, or any other parties deriving any right, title or interest or use in or to the Real Property, including any person who holds such interests as security for the payment on any obligation, including the Mortgagee or other secured party in actual possession of the Real Property by foreclosure or otherwise or any person taking title from such security holder.

**Conditions of Final Approval.** The following are the required conditions of final approval for the Permit:

1. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. The applicant shall conform to all such documents except as authorized or directed in this decision. Any substantial change in this approved use will require review through a new land use application.

2. The applicant shall meet all requirements of the Deschutes County Building Safety and Environmental Soils Divisions.
3. Prior to initiation of the use, the applicant shall provide evidence of DEQ National Pollutant Discharge Elimination (NPDES) Permit approval for the proposed use to the Planning Division.
4. Prior to initiation of the use, the applicant shall obtain all necessary state and federal permits for the project.
5. Prior to initiation of the use, the applicant shall complete the following:
  - a) Install the 6 foot cyclone fence with tan/sand colored mesh screening. No barbed wire is permitted. The fencing, screening and landscaping perimeter shall be modified such that it follows the property line of the area marked 'OLA' on the July 9, 2015 Bend Park and Recreation Letter, and extending south to close off the "notch". The intent is to have the collapsed ceiling area and cave entrance on the project side of the perimeter. The shrubs/trees shall be planted along the perimeter and modified perimeter consistent with the landscape plan.
  - b) Plant the shrubs in the locations shown on the approved Landscape Plan except as modified in condition 5(a). The shrubs/trees shall be a minimum of 6 feet at the time of planting.

At all times the mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.

6. Existing Landscape and topography shall be preserved to the greatest extent feasible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected. All new plantings shall be regularly watered and otherwise cared for until certified by a landscape professional to be fully established. Dead, dying or diseased vegetation in the landscape area shall be replaced within 90 days of being discovered. Existing trees preserved on the site over 6' tall that become diseased or die shall be replaced with a minimum 6' comparable tree within 90 days of being discovered and properly tended until established.
7. No solar panel shall exceed 8' in height from existing ground level, including at full extension, within an area that is 100' (more or less) from the property line. "More or less" is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In no event shall anything other than the power poles exceed 12' from existing ground level.
8. The applicant shall adhere to the soil compaction avoidance and remediation plans submitted into the record.
9. The applicant shall adhere to the plans submitted for removal of noxious/invasive vegetation and minimizing spread or reintroduction.

10. Prior to initiation of the use the applicant shall establish a hotline available 7 days a week during daylight hours through which a supervisory employee may be contacted to receive and promptly address reports of glare or other conditions causing interference or potential dangerous circumstances for aircraft. This number shall be provided to the appropriate personnel at the Bend and Redmond airports, Deschutes County planning, and Deschutes County Sheriff. It also shall be made available to any aviation company, pilot organization or similar group that may reasonably be considered to be in a position to responsibly report dangerous conditions. The applicant shall modify its operations or take such other steps as are necessary to promptly eliminate glare or other bonafide aviation risks.
11. Prior to initiation of the use, the project owner shall sign and record in the deed records of the County a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices as defined in ORS 30.939(2) and (4).
12. Prior to commencement of commercial electricity sales, a performance bond in favor of Deschutes County for removal and restoration, or cash, in the amount of \$1,000,000. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety, including above-ground and buried facilities, no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed.

13. Prior to initiation of the use, the applicant shall execute and record a County Condition of Approval Agreement to ensure compliance with all conditions of approval.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015.

DESCHUTES COUNTY COMMUNITY  
DEVELOPMENT DEPARTMENT

\_\_\_\_\_  
Nick Lelack, Planning Director

STATE OF OREGON            )  
  ) ss.  
COUNTY OF DESCHUTES    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, personally appeared Nick Lelack, Planning Director of the Deschutes County Community Development Department, who executed the foregoing document on behalf of Deschutes County, Oregon.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

DEVELOPERS

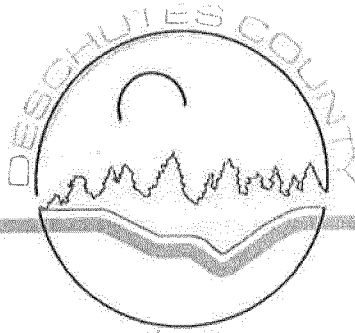
\_\_\_\_\_  
Harland W. Hafter

\_\_\_\_\_  
Jolene R. Hafter

STATE OF OREGON            )  
  ) ss.  
COUNTY OF DESCHUTES    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, personally appeared \_\_\_\_\_, known to me to be the person/s described in the above document, who acknowledged to me that she/he/they executed the same freely and voluntarily.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### CERTIFICATE OF MAILING

**FILE NUMBERS:** 247-15-000168-CU and 247-15-000169-SP (NorWest Energy 2, LLC)

**DOCUMENT MAILED:**

- 1) Hearings Officer Decision
- 2) Farm & Forest Easement to Owners, Applicant and Applicant's Attorneys
- 3) Conditions of Approval Agreement to Owners, Applicant and Applicant's Attorneys

I certify that on the 18th day of September, 2015, the attached Hearings Officer Decision, dated September 18, 2015, and items 2 and 3 above, were mailed by first class mail, postage prepaid, to the persons and addresses set forth below.

Dated this 18th day of September, 2015.

### COMMUNITY DEVELOPMENT DEPARTMENT

By: Kathleen Stockton

<b>Applicant:</b>  Norwest Energy 2, LLC 3250 Ocean Park Boulevard, Suite 355 Santa Monica, CA 90405	<b>Property Owners:</b>  Harland Hafter and Jolene Hafter 62435 Erickson Road Bend, OR 97701
<b>Applicant's Attorney:</b>  Laura Craska Cooper 15 SW Colorado Avenue, Suite 3 Bend, OR 97702	<b>Applicant's Attorney:</b>  Damien R Hall Ball Janik LLP 101 SW Main St Ste 1100 Portland OR 97204

MAILING LIST NorWest Energy 2, LLC	Name	Mailing Address	City	State	Zip
	Aina Aliperti	62957 Dickey Rd.	Bend	OR	97701
	Al Urich	2115 NW Deschutes Place	Bend	OR	97701
	Al Zenke	1980 Zachary Ct.	Bend	OR	97701
	Alan Vandehey	19366 Seaton Loop	Bend	OR	97702
	Alice Elshoff	1454 NW 4th St	Bend	OR	97701
	Anne & Dave Wolf	24185 Dodds Road	Bend	OR	97701
	Bob & Fran Greenlee	63215 O.B. Riley Road	Bend	OR	97701
	Bob & Kim Atrops	21810 Eastmont Dr.	Bend	OR	97701
	Brenda Pace & Steve Kimple	60738 Golf Village Loop	Bend	OR	97702
	Carol Falleur	20123 Elder Lane	Bend	OR	97701
	Catherine Jensen	21700 Neff Rd.	Bend	OR	97701
	Chris & Kathy Jensen	61382 Orion Drive	Bend	OR	97702
	Christian K. Schuster	61100 Rustic Lane	Bend	OR	97702
	Christian Life Center c/o Daniel N.	PO Box 5549	Bend	OR	97708
	Chuck McGill	12320 Fairway Pointe Row	San Diego	CA	92128-3231
	City of Bend c/o Eric King	PO Box 431	Bend	OR	97701
	Craig & Megan Langer	62645 Erickson Road	Bend	OR	97701
	Daniel Sheridan	837 NE 9th Street	Bend	OR	97701
	David & Shelly Mortensen	20058 Millbrook Lane	Bend	OR	97702
	Dawn Stuart	23075 Bear Creek Road	Bend	OR	97701
	Diana Levey	62841 Loma Vista Drive	Bend	OR	97701-9547
	Donald & Marlene Crandall	22111 Neff Rd.	Bend	OR	97701
	Dr. Matt Shinderman, OSU Cascades	2600 NW College Way			
	Eric Strid	PO Box 2028	White Salmon	WA	98762
	Ernest Ochoa	1094 NE Locksley Dr.	Bend	OR	97701
	Frank Izo	21936 Bear Creek Road	Bend	OR	97701
	Frank R. & Anne L. Weis	21780 Eastmont Dr.	Bend	OR	97701
	Gary E. Miller	109 NW Wilmington Ave., Suite E,	Bend	OR	97702

	George Riemer	18890 Baker Road	Bend	OR	97702
	George Wuerthner	PO Box 8359	Bend	OR	97708
	Gina Chylak	1559 NW Fresno Ave.	Bend	OR	97701
	Greg Jensen	21700 Neff Rd.	Bend	OR	97701
	Harland Hafter	62435 Erickson Rd	Bend	OR	97701
	Jan Jensen	60196 Vancouver Ln	Bend	OR	97701
	Jan Plants	2755 NW Crossing Drive, Ste 201	Bend	OR	97701
	Jeanette Van Kessel	22025 Neff Road	Bend	OR	97701
	Jeri Boe	21699 Eastmont Dr.	Bend	OR	97701
	Jo Ussery	19588 Manzanita Lane	Bend	OR	97702
	Jo Ussery, Broker	550 SW Industrial Way, Ste. 100	Bend	OR	97702
	Jodi Hafter	62435 Erickson Rd	Bend	OR	97701
	John & Maria Britton	62545 Erickson Road	Bend	OR	97701
	John Jackson	21695 Neff Rd.	Bend	OR	97701
	Joyce Smith	588 Rivershore Drive	Roseburg	OR	97470
	Julie Gilbert	61490 Ward Rd.	Bend	OR	97702-9626
	Karyn Anderson	62516 Quail Ridge Road	Bend	OR	97701
	Kathie Zinn	4316 N 1325 E	Buhl	Idaho	83316
	Kathy Farr	61670 Somerset Drive	Bend	OR	97702
	Kim Tyner	PO Box 1976	Bend	OR	97709
	Larry & Sandra Beebe	21696 Neff Rd.	Bend	OR	97701
	Laurie Lakin	1016 NW Ogden Ave.	Bend	OR	97701
	Linda & Tom Denall	18380 Couch Market Rd.	Bend	OR	97703
	Linda Gillard	62211 Deer Trail Road	Bend	OR	97701
	Linda M. Hoffman	62823 Loma Vista Drive	Bend	OR	97701
	Lindsey Hardy	16 NW Kansas Ave.	Bend	OR	97702
	Lisa Thoms	1170 Holly Avenue	Cottage Grove	OR	97424
	Mariel Darzen	222 NW Irving	Bend	OR	97701
	Mary Fay	1090 NE Hobbs Ct.	Bend	OR	97701
	Mathieu Federspiel	13506 SW Sojo Lily	Powell Butte	OR	97753
	Melody Morrow Solar Light & Energy, LLC	19855 4th Street, #106	Bend	OR	97701
	Michael L. McLandress	148 NW Congress St	Bend	OR	97701



	Cathy Jensen	222 NW Irving Avenue	Bend	OR	97701
	Mike & Diane Reif	22050 Stormy Lane	Bend	OR	97701
	Miriam Deeth	62450 Quail Ridge Road	Bend	OR	97701
	Miriam Deeth	62450 Quail Ridge Rd.	Bend	OR	97701
	Nancy Coleman	PO Box 8561	Bend	OR	97708
	Nancy Tyler	1151 NE Ross	Bend	OR	97701
	Nunzie Gould	19845 JW Brown Rd.	Bend	OR	97701
	Patricia Heatherman	250 NW Franklin Ave., Ste. 402	Bend	OR	97701
	Paul N. Isreal	50 SE Scott #13	Bend	OR	97703
	Peter R Caine (aka Bob Caine)	62260 Erickson Rd	Bend	OR	97701
	Peterkin & Associates c/o Marial Darzen	222 NW Irving Avenue	Bend	OR	97701
	Quent Gillard	62211 Deer Trail Road	Bend	OR	97701
	R.K. Schrock	110 Vicksburg Ave.	Bend	OR	97701
	Rachel G. Baker	628 NW Harmon Blvd.	Bend	OR	97703
	Renata Thommen	61382 Ward Rd	Bend	OR	97702
	Richard LaFollette	290 SE Fifth Street	Bend	OR	97702
	Ronald & Gayle Rupprecht	21795 Eastmont Drive	Bend	OR	97701
	Royne Patokoski	20636 Pine Vista Drive	Bend	OR	97702
	Sam Newman	1455 NW 8th Str.	Bend	OR	97701
	Sandy & Jim Schneider	64682 Cook Ave. #14	Bend	OR	97701
	Shelley Mortensen	20058 SW Millbrook Lane	Bend	OR	97702
	Sheree MacRitchie	431 NW Franklin Ave.	Bend	OR	97701
	Stephanie Morris	24035 Dodds Rd.	Bend	OR	97701
	Steve & Sandra Miller	61535 SW Longview St	Bend	OR	97702
	Sue Bastian	20362 Rock Canyon	Bend	OR	97701
	Susan Marshall	Greg Ct.	Bend	OR	97701
	Toby Bayard	20555 Bowery Lane	Bend	OR	97701-8850
	Tom & Linda Denall	18380 Couch Market Rd.	Bend	OR	97701
	Tom Collier	PO Box 5609	Bend	OR	97708
	Tommy & Carol Cobos	22060 Neff Rd.	Bend	OR	97701
	William & Karen McClure	62419 Quail Ridge Road	Bend	OR	97701
	William S. Herz	PO Box 718	Bend	OR	97709



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

---

## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of October 19, 2015**

---

*Please see directions for completing this document on the next page.*

**DATE:** October 16, 2015

**FROM:** Susan Ross                      Property & Facilities                      541-383-6713

**TITLE OF AGENDA ITEM:**

Consideration of Board signature of Document 2015-676, a Warranty Deed to John P. Keifer.

**PUBLIC HEARING ON THIS DATE?** No

**BACKGROUND AND POLICY IMPLICATIONS:**

Through the direction of the Board of Commissioners, Deschutes County advertised and negotiated the sale of the Design Center at 2127 S. Highway 97, Redmond. The sale includes the existing land, the existing structure and all associated on-site amenities. The negotiated sale price is Two Million, Two Hundred Thousand Dollars (\$2,200,000).

After the Board of Commissioners sign this deed, the Buyer will complete the sale process (including necessary documents for their financing of this purchase through Deschutes County – Promissory Note and Trust Deed provided by County) with AmeriTitle in Bend, OR. It may necessary for Deschutes County to sign additional documents associated with the closing. The Board of Commissioners should designate the Director of the Property and Facilities Department with the authority to sign any necessary documents on behalf of the Board upon closing of the sale.

**FISCAL IMPLICATIONS:**

No on-going implications. Gross sales price is \$2,200,000. The buyer paid \$500,000 as a down payment. Deschutes County will carry a 20-year Note on the property for the remaining \$1,700,000.

**RECOMMENDATION & ACTION REQUESTED:**

Staff recommends signature of Document 2015-676.

**ATTENDANCE:** James Lewis, Property Manager

**DISTRIBUTION OF DOCUMENTS:**

Original to James Lewis.