



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: February 17, 2016

Department: Public Works Agenda Planning Date: Feb. 11, 2016 Time required: 5 Min.

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Receive and consider appeal of hearings officer's decision approving Conditional Use (CU) 15-035/ Norwest Energy 16, LLC and Coates.

Issue, Description & Background The applicants applied for a conditional use to establish a photovoltaic solar array power generation facility on the subject property. The request was originally approved by the planning director on September 2, 2015. The applicant requested reconsideration to clarify several items and on September 18, 2015, the planning director issued a decision approving the request. That decision was appealed to the hearings officer on October 5, 2015. The hearings officer conducted a public hearing on November 4, 2015, and the written record was left open until November 27, 2015. On January 22, 2016, the hearings officer issued a decision approving the request, subject to conditions. On February 7, 2016, the hearings officer's decision was appealed to the Marion County Board of Commissioners. Three issues are raised in the appeal. First, the property is in an SGO (Sensitive Groundwater Overlay) zone. The hearings officer discusses the SGO overlay zone and concludes that it only applies to development permits for new land uses that rely on water from exempt wells, and as the proposed facility does not use water, the provisions in the SGO zone do not apply. In finding #23, the hearings officer concludes that the proposal will have no significant adverse impact on groundwater. The appellant argues that, based on a letter from Clearwater Hardrock Consulting, impacts on groundwater recharge of the aquifer from grading, soil compaction, soil hardening, runoff, and erosion soil should be evaluated in order to determine whether there will be a significant adverse impact on groundwater. Secondly, the appellant argues that multiple neighbors in the surrounding area testified that they will be negatively impacted by the installation of an industrial use that will be an eyesore. They indicate the proposed facility is unacceptably incompatible with the neighborhood and that this location is unsuitable. Lastly, the appellant discusses the impact the facility will have on wildlife habitat. Specifically, they refer to a letter from Lynda Boyer of Heritage Seedlings and Liners, which indicates that the property contains "open-grown savanna oaks" and that destruction of this habitat will have long term impact on wildlife. The appellants' appeal concludes that should the board choose to approve the conditional use, conditions be added requiring vegetative screening to reduce the visual impact to neighbors; a water study of the area by a registered geologist to evaluate the impact of the facility on the aquifer and existing wells; and that more of the old oak trees throughout the property be preserved.

Financial Impacts: None



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Impacts to Department & External Agencies

None

Options for Consideration:

1. Accept the appeal and remand the matter back to the hearings officer, requiring an agreement from the applicant to extend the 150 day decision-making deadline.
2. Accept the appeal and schedule a public hearing - the suggested hearing date is March 9, 2016.
3. Deny the appeal and uphold the hearing officer's decision approving the request.

Recommendation:

None

List of attachments:

- Copies of:
- *Appeal
 - *Hearings officer's decision
 - *Area map
 - *Photos of solar panels

Presenter:

Joe Fennimore

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Joe Fennimore gfennimore@co.marion.or.us

TO: Marion County Commissioners
Filed with Marion County Clerk
555 Court St. NE
Salem, OR 97301

FROM: Tim and Leslie Edelblute
3770 Wiltsey St. SE
Salem, OR 97317

DATE: February 7, 2016

RE: **Appeal of Hearings Officer's Decision, Case No. CU 15-035,**
Norwest Energy, 16 LLC application for photovoltaic solar array power generation facility

We submit this appeal of the Marion County Hearings Officer's decision regarding approval of the Conditional Use application for development of an industrial solar project at 6221 Coates Dr. SE, Salem, OR. Due to the important issues involved, new evidence that has come to our attention since the open-record period was closed, and overwhelming opposition by the neighborhood, we request that the CU be denied at this time or that a Public Hearing be scheduled before the Board of Commissioners.

#1: GROUNDWATER

We are located in a state and county-designated limited groundwater area. The Hearings Officer concluded on Pg. 3 of the decision dated January 16, 2016 that "applicant states the proposed use will use little or no **groundwater...**" and, on Pg. 20 states "Applicant has proven that, with conditions, there will be no significant adverse impact on watersheds, **groundwater**, fish and wildlife habitat, soil and slope stability, air and water quality, and MCC 137.060(A)(3) will be met".

Testimony is in the record regarding concerns about the impacts of grading, compaction, soil hardening, and the mass of solar arrays on erosion and run-off. However, it recently came to our attention that a critical concern was overlooked. As described in a letter dated February 5, 2016 from Mr. Joel Geier, Ph.D., Hydrogeology ([ATTACHMENT A1-A4](#)): "Considering the state-recognized sensitivity of bedrock aquifers in this area, the significance of this site as a groundwater recharge area and the potential impacts of the solar installation on groundwater recharge should be evaluated."

To provide some context, we have attached the following Parcel Maps from the Marion County Assessor's Office Cartography Department: Salem 082W19B, 082W18CC, 082W18C, 082W19A ([ATTACHMENTS B1, B2, B3, & B4](#)). These show the sizes (acreage) of the rural residential parcels that are adjacent (next to and across the street from) the proposed solar site on the west, northwest, north, and east sides, respectively. Every residence in this entire area is dependent on well water. Some of these parcels are less than 1 acre, others range from 1 to 3 acres, and some are slightly larger. At some point in the past, the default minimum size for a rural residential parcel in this area was increased by Marion County to 2 acres due to known problems with availability of water. Then, when it became increasingly evident to Oregon Water Resources Department and Marion County Planning Division that there were problems resulting from over-density in the rural residential zones, the default minimum was changed to 5 acres, as is now shown in the SGO-5 area on Marion County Sensitive Groundwater Overlay Zone map ([ATTACHMENT C](#)).

The Bureau of Land Management and Department of Energy published a report, "Final Solar PEIS (Programmatic Environmental Impact Statement)", in 2012. In Chapter 5, "Update to Impacts of Solar Energy Development", Table 5.10-1 refers to "All impacting factors" of solar projects, specifically including "increased runoff and erosion, changes in groundwater recharge" ([ATTACHMENTS D1-D2](#)). This study was obviously not specifically about the site proposed in CU 15-035. However, it makes abundantly clear that impact on "groundwater recharge" is a characteristic that should be considered. It was not considered in this case.

Importantly, in the solar array projects that we could find information about, there were NOT residences surrounding the site on three sides (as you have in this case), let alone having those nearby homes that are all totally dependent on well-water. Further, in this situation, the State and Marion County acknowledge that this is a limited-groundwater area, so extreme caution should be exercised before allowing any impact which will put any party with senior water rights in jeopardy.

We believe that you should not allow our neighborhood to be a guinea-pig, left to discover later that installation of an industrial facility (which is known NOW to potentially impact groundwater recharge) results in even more problems for our area. This could be catastrophic for any one or more of us living near the proposed industrial facility. Satisfaction of the criterion is not merely an evaluation of how much water will be used by the facility, but how it will impact the groundwater recharge.

We believe that interpretation of the requirements of the code should be made by you, our elected officials, and that you should DENY this Conditional Use application because the applicant did not meet their burden of proof that there will be no significant adverse impact on groundwater.

#2: OTHER NEGATIVE IMPACTS

On the Marion County Planning Division website, there is an explanation of "What are potential conditions of approval" ([ATTACHMENT E](#)). Paragraph 1 assures citizens that "applications are also reviewed to determine potential negative impacts on surrounding properties and the general area". Paragraph 2 continues: "If the application is approved, conditions are included to reduce impact of the development or use on surrounding properties..." and "Common conditions imposed include requiring landscaping or fencing to screen an activity...".

Multiple neighbors of the proposed site testified orally or in writing that the installation of an industrial facility next door or across the street from them would be an eyesore. They acknowledge that various farm operations and rural residential activities are expected and compatible with the neighborhood. However, they clearly indicated that hundreds of feet of chain link fence, hundreds of solar panels, and metal supporting structures that rise as high as 14 ft. above ground level (and would sit, in many cases, on fairly steep grades that rise far above any perimeter fence), would combine to create an installation which is unacceptably incompatible with the neighborhood.

Even the attorney for the applicant acknowledged in his testimony at the Public Hearing on November 4, 2015 that it was reasonable to include a requirement for plantings to screen the view of the site from neighbors as a condition of approval. However, that was not imposed by either the Planning Director or the Hearings Officer. And, unfortunately, due to the applicant's desire to prevent plants and trees from blocking sunlight on the solar panels, and the hilly topography and height of the structures, no planting plan will provide sufficient camouflage or screening to somehow hide the fact that a totally incompatible facility would be placed in the middle of existing homes.

We believe that the zoning which allows the possibility (by Conditional Use application) for a solar facility on SA (Special Agriculture) zoned property did not contemplate the presence of so many nearby homes. We believe it is an egregious, unacceptable siting of an industrial facility in an unsuitable location and you should use your authority to interpret the code to DENY this application.

#3: WILDLIFE HABITAT

Much evidence was submitted regarding the presence of abundant wildlife on the subject parcel, including 88 species of birds ([ATTACHMENT F](#)). Long after the open-record period was closed, we received a letter on January 5, 2016 from an expert on wildlife habitat who visited the site where the solar panels would be installed ([ATTACHMENT G1-G2](#)). In it, she explains the importance of preserving the "open-grown savanna

oaks” found on the site since “there is less than 5% of the historic extent of oak habitat left” in the Willamette Valley compared to 150 years ago. She explains that 10 of the 88 species documented on the neighborhood’s Wiltsey Bird List “are considered focal species by the American Bird Conservancy for priority oak habitat conservation in the Willamette Valley.”

Destruction of the old, open-grown oak trees found on this site is entirely avoidable since there are flat, treeless parcels in Salem that are designated for solar farms such as what is proposed. In addition, an active conservancy group located in northwest Oregon has expressed deep interest in preserving the oak habitat on this parcel. Last week, they initiated contact with the landowner in order to explain their method of purchasing land, putting permanent wildlife habitat easements to protect the habitat, maintaining the habitat, and restoring/expanding it where possible. This has the potential to be a win-win-win option for the landowner who wants to sell, the wildlife which sorely needs this dwindling supply of oak savanna, and the neighbors who deserve protection by the county from a totally incongruous industrial facility next-door to their homes which, at best, would be incompatible and, at worst, would negatively impact their water wells.

CLOSING:

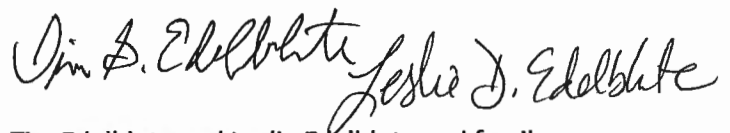
In closing, we ask that you review [ATTACHMENT H](#). It is a collage of photos taken this winter of the site, showing the majestic old oak savanna which provides sustenance, protection, and nesting locations for so much wildlife. We also ask that you consider visiting the site. To destroy such important habitat in order to install a solar power facility is entirely counter-productive to the supposedly eco-friendly purpose of solar power.

We plead with you, our county’s leaders, to ask the company that is making this proposal to find a more suitable location for a photovoltaic solar array power generation facility.

If you do not choose to deny this CU application, then we strongly suggest that the following conditions be added, at a minimum, and that you hold a public hearing so that other voices may be heard:

- Require plantings that will screen the chain link fence and the solar panels and structures in a manner that mitigates their negative impact on neighbors.
- Require a complete water study of the area to be completed by an Oregon-registered geologist, to include evaluation of the impact of grading, construction, anticipated run-off & erosion, and the installation of masses of solar panels on the aquifer recharge in our SGO area and the resulting impact on existing water wells. It should include a water inventory with calculations of new uses of water that were not provided by the applicant (for cleaning solar panels and irrigating the plants and trees that would be installed per the above condition). This report should be reviewed by Marion County and Oregon Water Resources Department prior to final approval to proceed with the project.
- Retain some of the old oak trees scattered around the parcel, rather than just the small number proposed to be retained on some of the perimeters.

Respectfully submitted,



Tim Edelblute and Leslie Edelblute and family



ATTACHMENT
A1

February 5, 2016

Dear Committee to Save the Wiltsey Oaks:

Thank you for calling my attention to the proposal (Marion Co. Case No 15-035) to construct a commercial-scale solar installation on 12 acres of the 44-acre property bordered by Wiltsey St. SE on the north, and Coates Drive SE.

After viewing the site, I have two major concerns that the conditional use criteria in MCC 17.137.060(A) have not been sufficiently evaluated. Specifically those concerns relate to the requirement that:

*"The use will not have a significant adverse impact on watersheds, **groundwater**, fish and **wildlife habitat**, soil and slope stability, air and water quality. "*

with emphasis on the terms highlighted in bold: (1) groundwater and (2) wildlife habitat. A further concern is whether the native cultural/archaeological value of the site has been adequately taken into account. I'll elaborate on these concerns in order, noting also that these comments are provided *pro bono*.

Groundwater impacts

The South Salem Hills have been delineated as a Groundwater Restricted Area with "limited availability," by the Oregon Water Resources Department. A particular concern in this area is the long-term decline in water levels for wells in basalt.

I have not made a detailed analysis of this particular site. However based on general principles of hydrogeology, this type of upland site should be expected to function as a location where rainwater infiltrates to recharge bedrock aquifers.

Given that large, angular boulders 1 m or more in size are visible on the site, and are moss-covered (indicating that they have been present and undisturbed for many years), this likely indicates that the bedrock is close to the surface.

Considering the state-recognized sensitivity of bedrock aquifers in this area, the significance of this site as a groundwater recharge area, and the potential impacts of the solar installation on groundwater recharge should be evaluated.

In rough numbers, a 12-acre site in the Salem area receives about 40 acre-feet of precipitation per year, or about 13 million gallons of fresh water – enough to serve the needs of at least 90 households, if all of it could be utilized. The actual amount that can be utilized as a groundwater depends on how much of this infiltrates to aquifers.

Attachment AZ

Presently the site proposed for this solar installation is covered by stony Nekia and Witzel soils. The site appears to have been used mainly as pasture, which implies minimal compaction. The present grassy vegetation is likely to promote infiltration rather than runoff.

I note that the applicants have included plans for a sedimentation basin in their plans, which indicates an expectation of increased runoff, and correspondingly decreased groundwater recharge.

Increased runoff and decreased infiltration are indeed what should be expected from a solar development, due to re-grading and compaction of natural soils by heavy equipment during construction of the panels, plus the need for hardened surfaces to allow access for routine maintenance. This consequence of “site hardening” is a well-known phenomenon for standard commercial solar installations, so it should be expected in the absence of very detailed disclosures by the applicants, of measures to avoid such effects.



Wildlife impacts

The most significant features of this site as wildlife habitat are (1) the presence of numerous native Oregon white oaks more than a century in age – some of them likely at least 150 years old -- that show growth characteristics typical of an oak savanna environment, (2) the continuing oak savanna structure of the habitat, (3) documented presence of at least three bird species highly correlated to savanna habitat that are Oregon Species of Special Concern (Slender-billed Nuthatch, Western Bluebird, and Chipping Sparrow), plus a few local sightings of another Species of Special Concern, Acorn Woodpecker, and (4) highly suitable habitat for another Species of Special Concern, Oregon Vesper Sparrow, which could have easily been missed by the limited monitoring to date.

Some of the oaks on this site that would be removed to make way for the proposed solar installation are more than four feet in diameter at breast height (dbh), and many appear (at least from a distance) to be at least 2 ft dbh (see included photo). It takes at least 100 years for oaks to reach this size, so any “restoration” of the site following clearing for solar panels would be a multi-generation endeavor.

Even more significant is that most of the oaks show evidence of growth in a savanna setting, where the trees were widely spaced, so there is good development of lateral branches which are important for many wildlife species associated with oak savanna habitat.

Based on an analysis using Google-Earth images of the site, the current canopy cover by oaks is approximately 2.8 acres over the area of 21.2 acres for the main area in which the solar panels would be sited. This amounts to roughly a 13% oak canopy cover, which is well within the technical classification for oak savanna (up to 25% canopy cover).

During a brief visit to an adjoining property on December 30, 2015, I detected at least three Slender-billed (White-breasted) Nuthatches that were making use of these oaks. This was not in the expected season for Chipping Sparrows to be present, but the habitat appeared to be suitable for nesting, based on my experience in surveying similar habitats. I also noted the presence of oak mistletoe which is important as a winter food source for Western Bluebirds. Acorn Woodpeckers have been noted by neighbors of the site.

The combination of thin, rocky soils, southward/western aspect slopes, and savanna habitat structure also appears to be highly suitable for another Oregon Species of Concern, Oregon Vesper Sparrow during nesting season. This species would be difficult to detect without a focused survey, so it should be considered to be possibly present.

Most of these species would be compatible with ongoing use of this site as grazing land, under the current Special Agricultural zoning. In particular, recent research by the American Bird Conservancy indicates that Oregon Vesper Sparrows will utilize cattle- or sheep-grazed oak savannas at densities up to one pair per 2 acres, under a light-to-moderate grazing regime.

Native cultural impacts

As a rocky, hilltop site not conducive to plowing, it seems likely that this site has seen minimal disturbance since European-American settlement in the 1850s. An archaeological survey and assessment is therefore called for.

Yours sincerely,

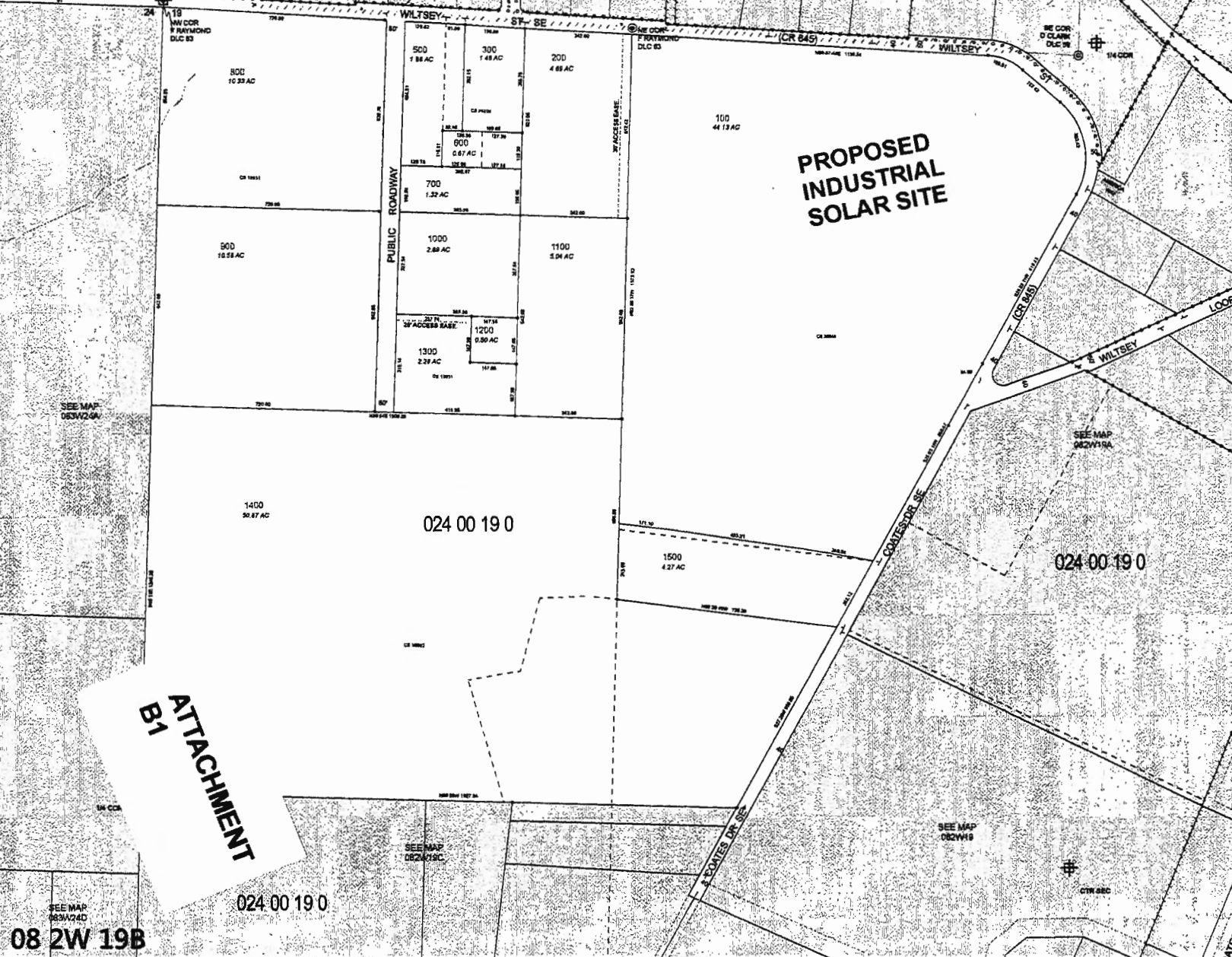
Joel E. Geier,
Ph.D., Hydrogeology

Instructor, Oregon State University Master Naturalist Program, 2013-2015.
Audubon Society of Corvallis field notes compiler, 1999-2006 & 2015
Willamette Basin field notes compiler, Oregon Field Ornithologists, 2000-2006
Contractor for Willamette Valley grassland/savanna/oak woodland bird research, 2007-2015.
Owner, Clearwater Hardrock Consulting, specializing in groundwater flow and solute transport in fractured bedrock, 1993-2016.

08 2W 19B

08 2W 19B

ANTIGUAN LN



MARION COUNTY, OREGON
 NW1/4 SEC19 T8S R2W W.M.
 SCALE 1" = 200'

LEGEND

- LINE TYPES**
- Taxlot Boundary
 - Road Right-of-Way
 - Railroad Right-of-Way
 - Private Road ROW
 - Subdivision/Plat Bndry
 - Waterline - Taxlot Bndry
 - Historical Boundary
 - Easement
 - Railroad Centerline
 - Taxcode Line
 - Map Boundary
 - Waterline - Non Bndry

- SYMBOL TYPES**
- Survey Monument
 - Road Station
 - ⊙ DLC Corner
 - + 1/16th Section Cor.
 - ⊕ 1/4 Section Cor.
 - 16, 15 Section Corner
 - 21, 22

NUMBERS
 Tax Code Number
000 00 00 0

Acreage 0.29 AC All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs

NOTES
 Tick Marks: If a tick mark is indicated on the end of a line, then the dimension goes to the tick mark. This is used when dimensions extend into public right-of-ways.



CANCELLED NUMBERS

400			
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DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 10/8/2015

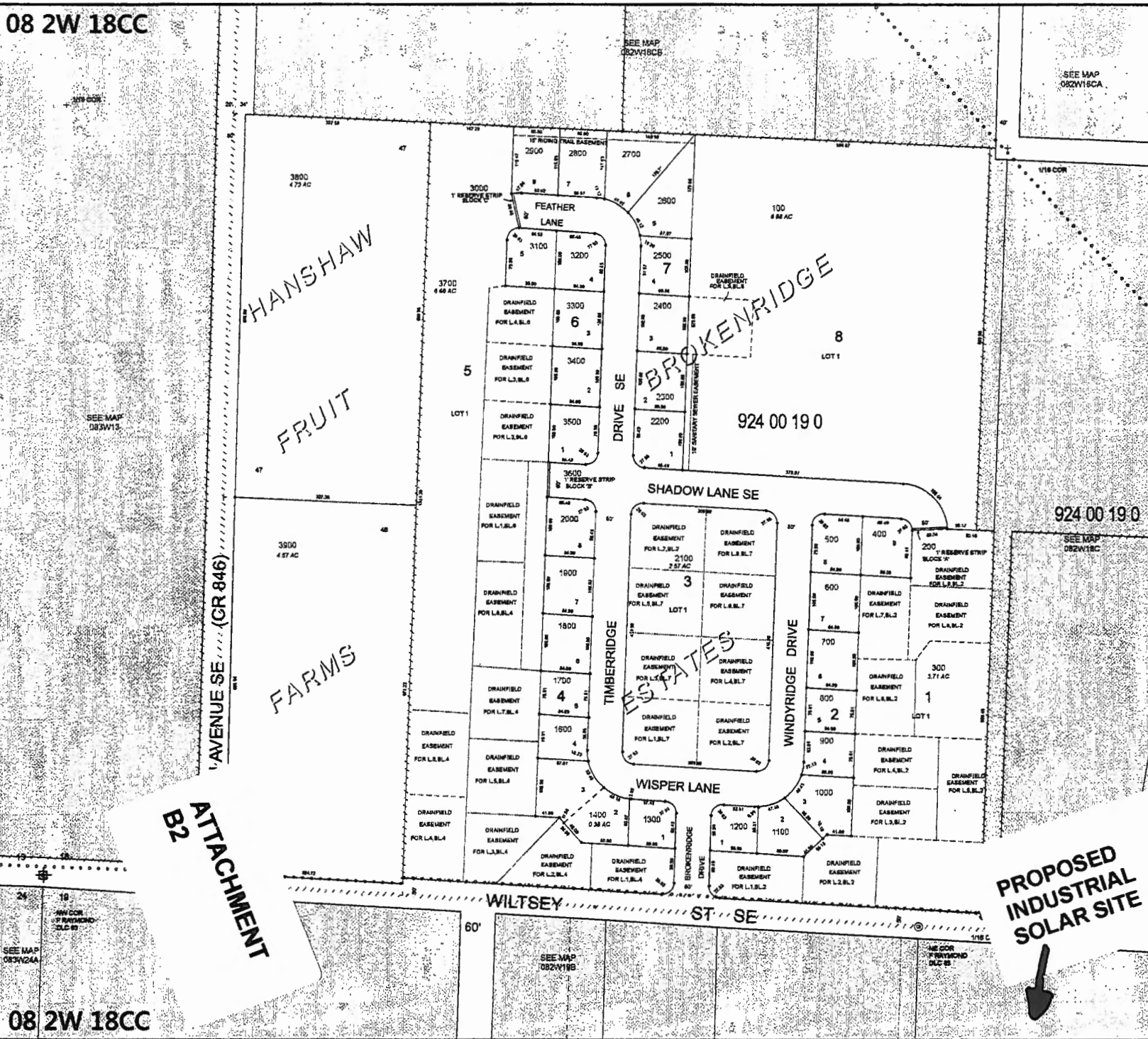
08 2W 19B

ATTACHMENT B1

08 2W 19B

08 2W 18CC

08 2W 18CC



MARION COUNTY, OREGON
 SW1/4 SW1/4 SEC18 T8S R2W W.M.
 SCALE 1" = 100'

LEGEND

- LINE TYPES**
- Taxlot Boundary
 - Road Right-of-Way
 - Railroad Right-of-Way
 - Private Road ROW
 - Subdivision/Plat Bndry
 - Waterline - Taxlot Bndry
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- SYMBOL TYPES**
- Survey Monument
 - Road Station
 - D/LC Corner
 - 1/16TH Section Cor.
 - 1/4 Section Cor.
 - 16, 15 Section Corner
 - 21, 22

NUMBERS
 Tax Code Number
000 00 00 0

Acreage 0.25 AC All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs.

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CANCELLED NUMBERS	
1500	

SCCLAIMER: THIS MAP WAS PREPARED OR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.orus

PLOT DATE: 10/8/2015

08 2W 18CC

B2 ATTACHMENT

PROPOSED INDUSTRIAL SOLAR SITE



08 2W 18CC

08 2W 18C

SEE MAP 082W189

08 2W 18C SALEM



MARION COUNTY, OREGON
SW 1/4 SEC 18 T8S R2W W.M.
SCALE 1" = 200'

LEGEND

- LINE TYPES**
- Taxlot Boundary
 - Road Right-of-Way
 - Railroad Right-of-Way
 - Private Road ROW
 - Subdivision/Plat Bndry
 - Waterline - Taxlot Bndry
 - Historical Boundary
 - Easement
 - Railroad Centerline
 - Taxcode Line
 - Map Boundary
 - Waterline - Non Bndry

- SYMBOL TYPES**
- Survey Monument
 - Road Station
 - DLC Corner
 - 1/16TH Section Cor
 - 1/4 Section Cor
 - 16' x 15' Section Corner
 - 21' x 22'

NUMBERS
Tax Code Number
000 00 00 0

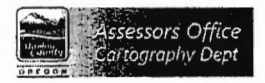
Acreege 0.25 AC All acres listed are Net Acres, excluding any portions of the taxlot within public ROW's.

NOTES
Tick Marks: If a tick mark is indicated on the end of a line, then the dimension goes to the tick mark. This is used when dimensions extend into public right-of-ways.



CANCELLED NUMBERS	
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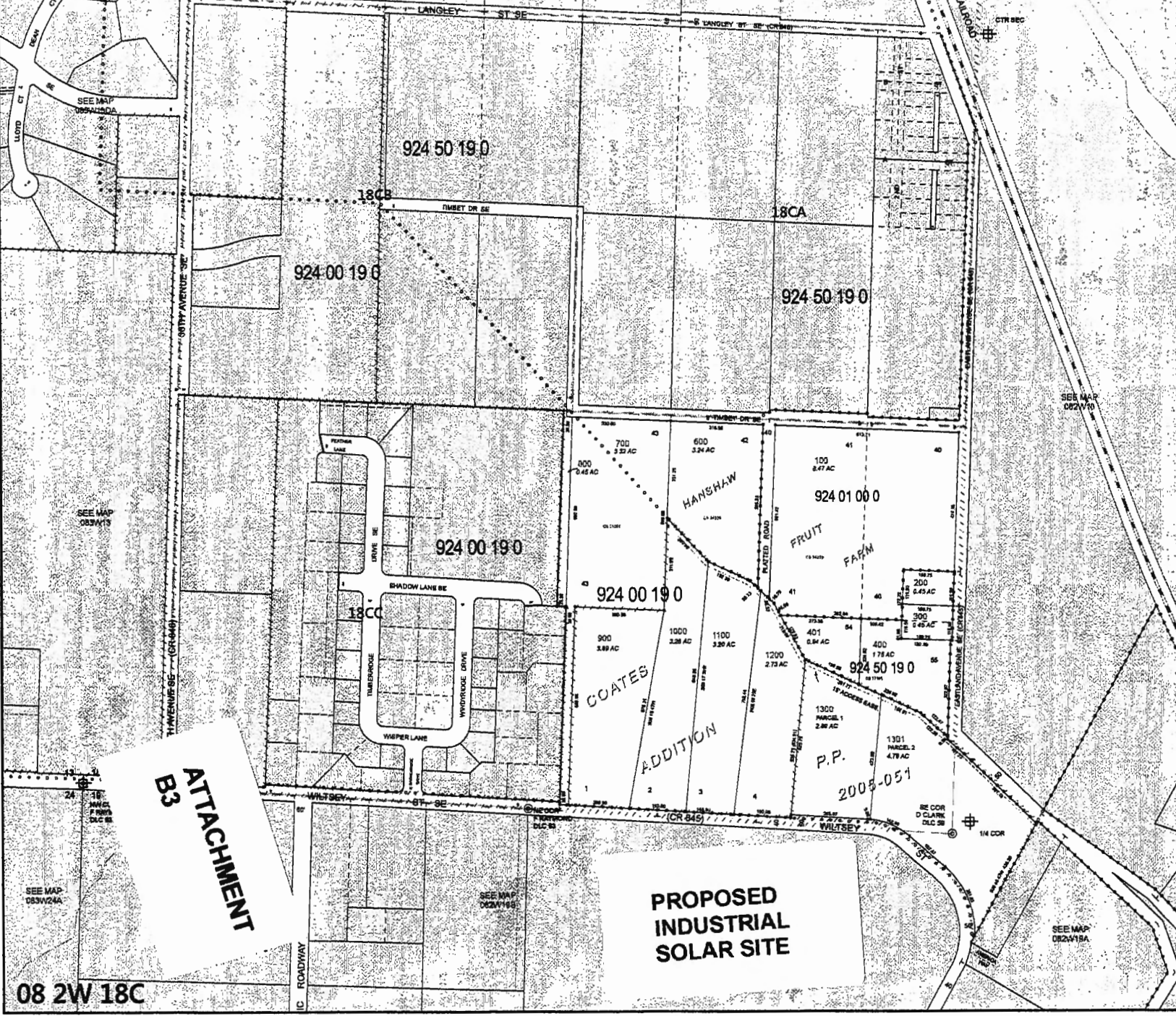
DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 10/8/2015

SALEM 08 2W 18C



B3 ATTACHMENT

PROPOSED INDUSTRIAL SOLAR SITE

08 2W 18C

SEE MAP 083W24A

SEE MAP 082W189

SEE MAP 082W18A

08 2W 19A

924 50 19 0

SEE MAP 082W18C

SEE MAP 082W18

SEE MAP 082W17

PROPOSED INDUSTRIAL SOLAR SITE

SEE MAP 082W19B

SEE MAP 082W19B

024 00 23 0

024 00 19 0

024 00 19 0

SEE MAP 082W19

B4 ATTACHMENT

CTR SEC

1/4 COR

08 2W 19A

08 2W 19A SALEM



MARION COUNTY, OREGON
NE1/4 SEC19 T8S R2W W.M.
SCALE 1" = 200'

LEGEND

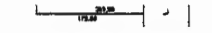
LINE TYPES	
Taxlot Boundary	Historical Boundary
Road Right-of-Way	Easement
Railroad Right-of-Way	Railroad Centerline
Private Road ROW	Taxcode Line
Subdivision/Plat Bndry	Map Boundary
Waterline - Taxlot Bndry	Waterline - Non Bndry

SYMBOL TYPES	
• Survey Monument	+ 1/16TH Section Cor
◁ Road Station	⊕ 1/4 Section Cor
⊙ DLC Corner	16_35 Section Corner
	21_22

NUMBERS
Tax Code Number
000 00 00 0

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CANCELLED NUMBERS	
200	1700
1001	1700A1
1501	1900
1700	
1700A1	
1900	

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 10/8/2015

SALEM 08 2W 19A

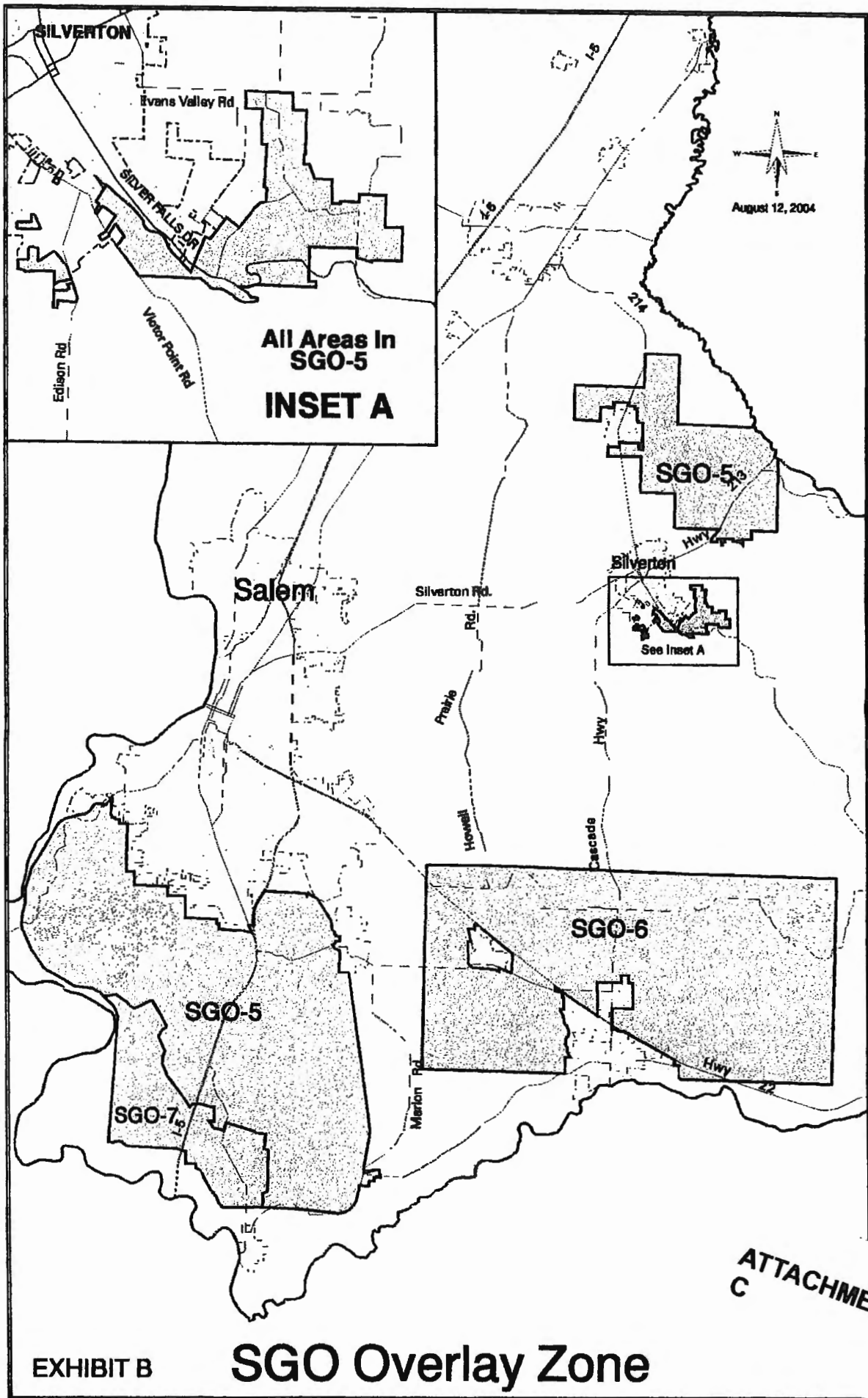


EXHIBIT B

SGO Overlay Zone

ATTACHMENT
C

1 **5 UPDATE TO IMPACTS OF SOLAR ENERGY DEVELOPMENT**
2 **AND POTENTIAL MITIGATION MEASURES**

3
4
5 **5.1 INTRODUCTION**

6
7 Chapter 5 of the Draft Solar PEIS (BLM and DOE 2010) discussed potential positive and
8 negative environmental, social, and economic impacts of utility-scale solar energy development.
9 The assessment considered both direct and indirect impacts. The impact assessment was
10 discussed in terms of common impacts (impacts that occur for all types of solar energy facilities)
11 and for technology-specific impacts. The types of solar technologies evaluated included those
12 considered to be most likely to be developed at the utility scale during the 20-year study period
13 evaluated in this PEIS, considering technological and economic limitations (i.e., parabolic
14 trough, power tower, dish engine, and PV technologies). In this Final Solar PEIS, information on
15 the impacts of solar energy development that has become available subsequent to publication of
16 the Draft Solar PEIS is presented in this section. In addition, corrections to incorrect information
17 on the impacts of solar energy development and potential mitigation measures in the Draft Solar
18 PEIS are provided via the errata table in Section 5.23.

19
20 For each resource, potential mitigation measures that could be used to avoid, minimize
21 and/or mitigate impacts from solar energy development were identified in the Draft Solar PEIS.
22 The potential mitigation measures described in Sections 5.2 through 5.21 of the Draft Solar PEIS
23 were further evaluated by the BLM to identify those appropriate for adoption as required design
24 features for inclusion in BLM's Solar Energy Program. The BLM's proposed final list of
25 required design features is included in Section A.2.2 of Appendix A of this Final Solar PEIS.
26 Changes to the mitigation measures presented in the Draft Solar PEIS (made in response to
27 comments and with additional analysis as needed) are not presented in this Section 5 update;
28 rather, all appropriate changes have been made to the required design features that are presented
29 in Section A.2.2 of Appendix A.

30
31 Chapter 5 of the Draft Solar PEIS also discussed potential impacts from the construction
32 and operation of new transmission lines. The impacts were described generically, without
33 assumptions on the length of the new transmission lines or new roadways that would be required
34 for solar energy facilities. Land disturbance impacts from transmission line upgrades were
35 assumed to be similar to those from new transmission line construction (this could be the case if
36 it is a large upgrade; for example, from a 69-kV line to a 230-kV or larger line). In this Final
37 Solar PEIS, new information on the impacts of transmission line construction and operation is
38 presented where available.

39
40
41 **5.2 LANDS AND REALTY**

42
43 Utility-scale solar energy facilities would affect lands and realty uses and activities on
44 and near BLM-administered public lands. The average solar energy facilities considered in this
45 Final Solar PEIS are large (e.g., up to several thousand acres), and they will exclude most other
46 surface uses of the land. Additional issues include the creation of an industrial landscape in stark

TABLE 5.10-1 (Cont.)

Impacting Factor	Project Phase	Consequence	Expected Relative Impact ^a for Different Plant Communities ^b				Ability to Mitigate Impacts ^c
			None	Small	Moderate	Large	
All Impacting Factors Combined (Cont.)	Overall project	Direct mortality of individuals, habitat loss, reduced productivity and diversity, habitat fragmentation, soil compaction, increased fugitive dust emissions, changes in temperature and moisture regimes, increased sedimentation in aquatic habitat, increased runoff and erosion, changes in groundwater recharge, changes in community structure and function.	None	None	None	All plant communities	Relatively difficult; residual impact mostly dependent on the size of area developed and the success of restoration activities.



- ^a Relative impact magnitude categories were based on professional judgment utilizing CEQ regulations for implementing NEPA (40 CFR 1508.27) by defining significance of impacts based on context and intensity. Similar impact magnitude categories and definitions were used in BLM (2008a,b) and assume no mitigation. Impact categories were as follows: (1) none—no impact would occur; (2) *small*—effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource (e.g., <1% of a population or community would be lost in the region); (3) *moderate*—effects are sufficient to alter noticeably but not to destabilize important attributes of the resource (e.g., >1 but <10% of a population or community would be lost in the region); and (4) *large*—effects are clearly noticeable and are sufficient to destabilize important attributes of the resource (e.g., >10% of a population or community would be lost in the region). Actual impact magnitudes on plant communities would depend on the location of projects, project-specific design, application of mitigation measures (including avoidance, minimization, and compensation) and the status of communities in project areas.
- ^b Plant communities are placed into groups based on ecological system (aquatic, wetland, riparian, and terrestrial) when the category is relevant to impact magnitude.
- ^c Actual ability to mitigate impacts will depend on site-specific conditions and the communities present in the project area. Recommended mitigation measures are presented in Section 5.10.5.
- ^d Impacting factors are presented in alphabetical order.

ATTACHMENT
D2



Marion County
OREGON

Potential Conditions of Approval for Marion County Land Use Decisions

Planning Division
5155 Silverton Rd. NE
Salem OR 97305
Ph. (503) 588-5038; fax (503) 589-3284
<http://www.co.marion.or.us/PW/Planning>

**ATTACHMENT
E**

What are "Potential Conditions of Approval"?

Marion County land use applications are reviewed to determine whether or not a proposed development or use complies with the Zone Code and other applicable regulations. Applications are also reviewed to determine potential negative impacts on surrounding properties and the general area.

If the application is approved, conditions are included to reduce impact of the development or use on surrounding properties, to obtain permits from other agencies, and compliance with other government agency regulations. Common conditions imposed include limiting hours of operation of a business, limiting the size of a development, requiring landscaping or fencing to screen an activity, street improvements, obtaining building permits, etc.

Some conditions must be implemented or completed by a certain date, or prior to obtaining other permits, or prior to taking other required action. Some conditions are ongoing, such as a restriction in hours of operation for a business. Usually, if conditions are not fulfilled or observed, the approval can be revoked.

The following is a list of typical conditions often included for certain approved land use applications. It is important to note that this is not an all-inclusive or comprehensive list of all conditions that are required for each type of approved land use application. This information is provided only for informational purposes. As each land use application varies greatly, depending on the nature and scope of the request, it is not possible to provide a list of every condition. For more information, please contact Planning staff.

Disclaimer of Liability

Our goal is to facilitate access to information which is specific to Marion County land use and zoning. Although every effort is made to keep all information current and correct, contact the office for confirmation of all information before taking action. In particular, but without limit, Marion County disclaims any responsibility for typographical errors and accuracy of the information contained on Marion County web pages. Marion County also reserves the right to make changes at any time without notice and makes no warranties or representations whatsoever regarding the content, completeness, or adequacy of this information. In any situation where official printed publications of Marion County differ from text or information contained on this website, the official printed documents take precedence. Marion County shall not be liable for any special, incidental or consequential damages, including without limitation, lost revenues or lost profits resulting from use or misuse of information contained in Marion County web pages.

Potential Conditions for all Approved Land Use Decisions

- Obtain all permits required by the Marion County Building Inspection Division.
- The development or resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
- Prior to approval, applicant shall provide verification to the Planning Division from the Public Works Land Development Engineering and Permits Division (LDEP) that each of the following conditions has been satisfied:
- Applicant should contact their local Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

Wiltsey Birds 2014

ATTACHMENT
F

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Notes
Blackbird, Brewer's													4 by feeder during Feb snow
Blackbird, Red Winged													Female 5/17
Blue Bird													
Brown Creeper													
Brown Headed Cowbird													
Bullock's Oriole													
Bushtit													
Cedar Waxwing													
Chickadee, Black Capped													
Chickadee, Chestnut Backed													
Common Yellowthroat													Heard in June, saw in August
Crow													
Dove, Eurasian Collared													Last seen May 2013
Dove, Mourning													
Duck, Mallard													Last seen April 2013
Eagle, Bald													Fly over
Finch, House													
Finch, Purple													
Flicker													
Flycatcher, Olive-sided													Last seen July 2013
Flycatcher, Pacific Slope													
Goldfinch, American													Returned 2/23
Goldfinch, Lesser													
Goose, Canada													Fly over
Groebak, Black Headed													
Groebak, Evening													Last seen Dec 2010
Hawk, Cooper's													
Hawk, Red Tailed													
Hawk, Sharp Shinned													
Heron, Great Blue													
Hummingbird, Anna's													
Hummingbird, Callope													Only seen May 2010
Hummingbird, Rufous													
Jay, Scrub													
Jay, Stellar's													
Junco													
Kestrel													
Killdeer													Shown up with snow
Kingbird, Western													Last seen June 2010
Kingfisher, Belted													Last seen Dec 30 2009
Kinglet, Golden Crowned													
Kinglet, Ruby Crowned													
Lazuli Bunting													
Nuthatch, Red Breasted													
Nuthatch, White Breasted													
Osprey													Only seen May 2011
Owl, Barred													Only seen Dec 2009
Owl, Great Horned													
Pine Siskin													
Quail, California													
Raven													
Robin													
Sapsucker, Red Breasted													
Seagull													
Sparrow, Chipping													
Sparrow, Fox													Returned Nov 3
Sparrow, Golden Crowned													
Sparrow, House													
Sparrow, Song													
Sparrow, White Crowned													
Sparrow, White Throated													Last seen Nov 2013
Spotted Towhee													
Starling													
Swallow, Barn													
Swallow, Tree													
Swallow, Violet Green													
Thrush, Hermit													Last seen May 2013
Thrush, Swainson's													
Thrush, Varied													
Turkey													Only seen April 2013
Turkey Vulture													
Vireo, Warbling													
Warbler, Black Throated Gray													
Warbler, Nashville													Last seen May 2011
Warbler, Orange Crowned													
Warbler, Townsend													Last seen Nov 2013
Warbler, Wilson's													
Warbler, Yellow													Last seen Sept 2010
Warbler, Yellow Rumped													
Western Tanager													
Wood Peewee													
Woodpecker, Acom													Only seen May 2011 front feeder
Woodpecker, Downey													
Woodpecker, Hairy													Last seen Feb 2011
Woodpecker, Pilated													10/12/2011 F in old Ash, 9/23/14 Male in old Ash
Wren, Bewick's													
Wren, House													
Wren, Winter													

88 species	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Monthly species total	29	37	33	42	45	44	39	41	48	32	38	34



HERITAGE

seedlings & liners

Unusual Deciduous Species

ATTACHMENT
G1

January 5, 2016

Dear Committee to Save the Wiltsey Oaks,

Upon reading the document approving Conditional Use Case No. 15-035 and visiting the proposed site at Wiltsey St. & Coates Dr. SE in Marion County, it strikes me as sad and unfortunate that they note the conditional use criteria in MCC 17.137.060(A), but say nothing about the anticipated impact on wildlife:

The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

The habitat that will be lost in the removal of the 100-200 year old oak trees on this 12 acres will significantly and adversely impact numerous native song birds and other wildlife that rely on the scattered remnants of oak savanna and oak woodland habitat left in the hills southeast of Salem.

HABITAT VALUE PAST AND PRESENT

For the last 15 years, I have been actively restoring over 200 acres of oak and prairie on property in the Willamette Valley owned by Heritage Seedlings. It has been an amazing journey to see how our native wildlife had and had not adapted to a shrinking habitat. A mere 150 years ago, the Willamette Valley was a vast expanse of native grasslands with oak savanna (<25% canopy cover) and woodland (25-40% canopy cover) in the dryer hills. There is less than 5% of the historic extent of oak habitat left and much of it is threatened by conifer encroachment which crowds out the slower growing oak trees or by, as in this current proposal, development on the rural/urban fringe.

The oak savanna eco-system, as found on the Wiltsey parcel, hosts numerous bird species that utilize the oaks for food, nesting and cover from predators. The open-grown savanna oaks are especially critical to cavity nesting birds such as Western bluebirds (Oregon Species of Concern), white-breasted nuthatches (SOC), black-capped chickadees, and house wrens (all species utilizing this parcel in summer, as well as other seasons). These larger crowned oaks also make copious amounts of acorns and lichen – critical sources of winter protein for Western gray squirrels (an ODFW Conservation Strategy species) and black-tailed deer. These older trees have mistletoe, as well, which attracts numerous seed eating species of birds. So, each oak on the 12 acres has the potential to support multiple species of wildlife – and they do! Of the 88 species documented on the Wiltsey bird list, 10 species are exclusive to oak habitat. All of these species are considered "focal species" by the American Bird Conservancy for priority oak habitat conservation in the Willamette Valley.

In addition, the oaks' proximity to open agricultural fields further expands the species that utilize the oaks. Western bluebirds, Western kingbirds, and American kestrel, forage for prey in open grasslands. The fragmentation of our remnant oak savanna patches makes each tree significant for these wildlife species. They are an oasis in a sea of closed canopy conifer forest that now dots much of the surrounding area.

4194 71st Avenue SE
Salem, OR 97317-9208 USA
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phone: (503) 585-9835
fax: (503) 371-9688
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Page 1 of 2



HERITAGE

seedlings & liners

Unusual Deciduous Species

ATTACHMENT
G2

LAND USE

From a paper and policy standpoint, it is understandable that this part of the parcel was chosen for the Conditional Use permit since it is deemed unsuitable for cultivated crops. However, clearing this rocky, hilly land for a solar array seems short-sighted when more suitable, flat land that is already cleared can be found all over the Salem area.

The long-term impact to the wildlife species will be great. The habitat cannot be "mitigated" due to the slow growth of oak trees. Benefits from mitigation would not be seen for over 100 years. In addition, although an erosion plan states it will not adversely affect the surrounding Mill Creek watershed drainage by eroding soil down slope, this seems unlikely due to the impact of grading and proposed site modifications.

Sincerely,

Lynda Boyer
Restoration Biologist and Native Plant Manager
Heritage Seedlings & Liners

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Page 2 of 2



ATTACHMENT 1
C. AS A RESULT OF PROJECTS AND OTHER SOLICITED ACTIVITIES



THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. CU 15-035
Application of:) Clerk's File No.
NORWEST ENERGY 16, LLC ON PROPERTY) **Conditional Use**
OWNED BY JAMES E. COATES, AS)
TRUSTEE OF THE JAMES E. COATES)
REVOCABLE LIVING TRUST)

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of NorWest Energy 16, LLC on property owned by James E. Coates, as Trustee of the James E. Coates Revocable Living Trust for a conditional use to establish a photovoltaic solar array power generation facility on a 44.13-acre parcel in an SA (SPECIAL AGRICULTURE) zone at 6221 Coates Drive SE, Salem, Marion County, Oregon (T8S, R2W, S19B, tax lot 00100).

II. Relevant Criteria

Standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and Marion County Code (MCC), title 17, especially chapters 17.119, 17.120 and 17.137.

III. Public Hearing

A public hearing was held on this matter on November 4, 2015. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

- | | | |
|-----|------------------|---|
| 1. | Brandon Reich | Planning Division |
| 2. | Donald Kelley | Appellant Edelblutes' Attorney |
| 3. | Tim Edelblute | Appellant |
| 4. | Damien Hall | Applicant NorWest Energy 16, LLC's Attorney |
| 5. | Dan Orzech | For applicant |
| 6. | Jeffrey Webber | For applicant |
| 7. | Steve Gilchrist | Proponent |
| 8. | Mitch Teal | Proponent |
| 9. | Rick Day | General |
| 10. | Walton Brunson | General |
| 11. | Lew Garrison | Opponent |
| 12. | Bill Ogilvie | Opponent |
| 13. | Marlene Knieling | Opponent |
| 14. | Judy Garrison | Opponent |
| 15. | Jim Knieling | Opponent |
| 16. | Susan Wheeler | Opponent |

The record remained open until November 12, 2015 for applicant, November 19, 2015 for opponents and November 27, 2015 for applicant. The following documents were entered into the record as exhibits:

- Ex. 1 Annotated aerial photograph
- Ex. 2 Annotated topographic/soil map
- Ex. 3 Glare factor article
- Ex. 4 Solar siting/land use article
- Ex. 5 Solar environmental considerations article
- Ex. 6 Decision and case file documents from CU 12-036
- Ex. 7 Statement from Judy Garrison
- Ex. 8 Wiltsey 2010 bird inventory
- Ex. 9 November 6, 2015 statement from David Coates
- Ex. 10 November 12, 2015 cover sheet from Damien R. Hill with exhibits A and B (acoustic memorandum and erosion control proposal)
- Ex. 11 November 18, 2015 statement from Marlene Knieling with excerpts from the Pacific Northwest oak bird guide
- Ex. 12 November 19, 2015 statement from Tim, Leslie, Katie and Megan Edelblute
- Ex. 13 Memorandum in opposition by Donald M. Kelley on behalf of Tim and Leslie Edelblute
- Ex. 14 November 19, 2015 letter from Donald M. Kelley
- Ex. 15 November 19, 2015 statement, Caroline Childers for the Rural Battle Creek Road Association, Inc. (RBCRAI) Board of Directors, with attachments A-E
- Ex. 16 November 13, 2015 email from Jon Remy, Turner Fire District
- Ex. 17 Packet of solar energy environmental issues documents, printed November 19, 2015
- Ex. 18 Solar plant and desert tortoise article
- Ex. 19 *Soil Survey of Marion County Area, Oregon* excerpts
- Ex. 20 November 12, 2015 authorization to act from James E. Coates, Trustee
- Ex. 21 November 27, 2015 memorandum from Damien R. Hill

No objections were raised as to jurisdiction, conflict of interest, or to evidence or testimony presented at hearing. At hearing Rick Day stated he lives next door to the subject property but did not receive written notice of the hearing. The October 9, 2015 certification of mailing for the re-notice of the November 4, 2015 hearing, lists Richard B. Day, 4025 America Way SE as a notice recipient. This is the same address provided by Mr. Day at hearing and the address listed in the tax records of Marion County, the source for mailing addresses for local land use hearings under ORS 197.763(2)(a). Mr. Day appeared at hearing, indicating actual notice. The record was left open to allow Mr. Day and others to provide additional information and argument. Notice was proper.

In exhibit 15, RBCRAI asserts notice of public hearing was defective for not including MCC 17.110.830, MCC chapter 17.181, and OAR 690-502-0200 as applicable criteria.

OAR 690-502-0200

OAR 690-502-0200 contains regulations for the South Salem Hills ground water limited area (GLA). In *ODOT v. Clackamas County*, 23 Or LUBA 370 (1992), LUBA found statewide administrative rules need not be listed as applicable criteria under ORS 197.763(3)(b) (notice provided by the jurisdiction shall list the applicable criteria *from the ordinance and the plan* that apply to the application). Failure to list OAR 690-502-0200 was not defective notice.

MCC chapter 17.181

Under MCC 17.181.010, MCC chapter 17.181 implements MCCP environmental quality and natural resources goals and policies for groundwater. Under MCC 17.181.040, development permits for new land uses in an SGO zone that rely on water from exempt use wells are reviewed to determine compliance with MCC chapter 17.181. Applicant indicates the proposed use will use little or no groundwater. Also, under MCC 17.181.070, only residential partitions, planned unit developments, and subdivisions require SGO water-supply studies, and new dwellings on existing lots require recording SGO declaratory statements. Only residential development related land uses are reviewed under MCC chapter 17.181, and no residential development or residential-related land use actions are proposed here. Failure to list MCC chapter 17.181 was not defective notice.

MCC 17.110.830

MCC 17.110.830 states:

The impact of proposed land uses on water resources shall be evaluated and potential adverse impacts on the water resources shall be minimized.

Where evidence indicates groundwater limitations and the development will use groundwater as a water supply, the developer shall demonstrate that adequate water can be provided without adversely affecting the groundwater resource.

MCC title 17 implements MCCP goals and policies. MCC 17.110.830 is a general statement of MCCP groundwater policies, and those goals and policies are carried out via MCC chapter 17.181 review. Applicant states the proposed use will use little or no groundwater, and no residential use or land use action allowing residential use are proposed. Failure to list MCC 17.110.830 was not defective notice.

IV. Findings of Fact

The hearings officer, after careful consideration of testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Special Agriculture in the MCCP and zoned SA. The intent of the designation and zoning is to promote and protect commercial agricultural operations. The subject property is also within a sensitive groundwater overlay five-acre minimum parcel size (SGO-5) zone, and a portion of the site lies within the McNary Field airport overlay (AO) zone.
2. The property is south of Wiltsey Street SE and west of Coates Drive, and contains a dwelling and other buildings. The *Soil Survey of Marion County Area, Oregon* shows 54% of the subject property contains high-value farm soils. The property is in the 27 CFR 9.90 designated Willamette Valley viticulture area.
3. The small SA zoned parcel south of the subject property contains a nonfarm dwelling approved in CU 12-036. Most small SA zoned parcels to the west contain dwellings. Larger SA zoned parcels in farm use are southwest, southeast, and south beyond the smaller parcels. The City of Salem Urban growth boundary (UGB) is north of the subject property and contains RS (Single Family Residential) zoned property in residential use, and UT (URBAN TRANSITION) zoned properties. Properties to the east are zoned AR (ACREAGE RESIDENTIAL) and are in residential use.
4. Applicant proposes establishing a photovoltaic solar array power generation facility on approximately 12 acres of the subject 44.13-acre parcel. The Planning Director approved the request on September 2, 2015. The Planning Director provided re-notification of the decision on September 8, 2015. Applicant requested reconsideration during the appeal period to clarify property and power generation facility ownership, facility operation responsibility, and to provide details on retiring the facility. The Planning Director approved the facility again on September 18, 2015. The Planning Director's approval was appealed on October 5, 2015.
5. The Marion County Planning Division requested comments on the application from various governmental agencies.

The Marion County DPW Land Development and Engineering Permits Section (LDEP) submitted a memorandum to the record on September 1, 2015, but provided a modified memorandum on November 4, 2015:

Approval of the proposal would allow a conditional use to establish a solar power generating facility on a 44.13-acre parcel. Public Works Engineering Division conditions,

requirements and advisory are given below. This Revised Memorandum simply modifies Engineering Requirement G having to do with erosion control from our original Memorandum, dated September 1, 2015, by removing an erroneous reference to the property location.

ENGINEERING CONDITIONS

Public Works Engineering requests that the following conditions lettered A and B are included in the approval of the land use case.

Condition A - Prior to final building inspection dedicate a 30-foot right-of-way half-width along the Wiltsey Street subject property frontage, and along the Coates Drive subject property frontage commencing from Wiltsey Street south to the intersection with Wiltsey Loop, in order to meet the County standard for a Local road. Dedications should be to the public, not Marion County.

Nexus is the planned construction of a public power generation facility that will generate a net increase in traffic above and beyond the existing Special Agricultural use, and the need to accommodate future road improvements including accommodation for utilities. It appears that a 10-foot deficiency in width exists along the subject property public road frontages.

Condition B - Prior to issuance of building permits, obtain a permit from MCPW to improve the Wiltsey Street subject property frontage with addition of 3 to 5-foot width gravel road shoulder with associated drainage earthwork and tree removal, depending on site-specific location and as field determined by the MCPW Engineering Inspector. Prior to final building inspection, obtain MCPW Engineering inspection acceptance of that work.

Nexus is for traffic safety. The gravel shoulder provided shall be a total of 3 to 5 feet in width, depending on location, with 5% downslope, 8 inches in thickness, $\frac{3}{4}$ " to 1"-0, compacted, crushed rock meeting MCPW Engineering construction standards. There are several large diameter trees within 10 feet from the edge-of pavement that are in the way of shoulder widening, and in and of themselves present as fixed object hazards to vehicular traffic.

ENGINEERING REQUIREMENTS

The following comments lettered C through K, are informational only regarding County requirements and issues that the applicant must address if the proposal is approved. They are not part of the land use decision-making process.

- C. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. The following sub-requirements, numbered #1 through #3, apply to access.
- 1) At the time of application for building permits, an Access Permit will be required to establish a new access, including a temporary construction entrance. The Applicant will be required to demonstrate that sufficient Intersection Sight Distance is available or achievable. Existing redundant accesses not integral to the proposed development (described below) will be required to close, but not necessarily including access related to the existing residential/agricultural development situated on the southern portion of the property.
 - 2) Permanently close an existing gated access on Wiltsey Street. Permanent closure involves culvert removal and reestablishment of the drainage ditch cross-section, and replacing gates with fencing.
 - 3) It will be required to install a driveway culvert at the existing gated access on Coates Drive, which is affiliated with the existing residential/agricultural development. This may need to be done under a separate Access Permit from that issued for the development if the Applicant is different.
- D. Proposed improvements on the subject property such as security fencing and vegetative screening should not reduce available sight distance through the horizontal curve linking Wiltsey Street and Coates Drive that is already limited by a raised embankment. Furthermore, private fencing is not allowed within the public right-of-way (R/W). Fencing within the public R/W not associated with the existing residential/agricultural/livestock land use will need to be removed from within 30 feet of roadway centerline.
- E. Prior to or at the time of application for building permits, MCPW Engineering will require submission of three (3) sets of civil site plans depicting among other things, grading and management of stormwater runoff. Stormwater detention may or may not be required, however permanent BMPs to prevent concentrated flow will definitely be required as part of the design. It is highly advisable to gain MCPW Engineering concurrence with a civil site plan prior to application for building permits in order to avoid delays in issuance of building permits.

- F. An irrigation waterline crossing of Wiltsey Road that will likely no longer serve the northern portion of the farm property slated for redevelopment will need to be removed or properly abandoned. This could be done under the same Permit to be issued for placing shoulder rock.
- G. Prior to issuance of building permits, the Applicant will be required to show evidence of having obtained a DEQ National Pollutant Discharge Elimination System 1200-C Permit. The Permit is required by DEQ for all construction activities that disturb one-acre or more. The Applicant is advised that Marion County Inspectors will be conducting intermittent visual monitoring of construction erosion control practices and reporting back to DEQ as necessary, in addition to any DEQ inspections.
- H. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) per Marion County Ordinance #00-10R, which are due as a condition for issuance of building permits. Following initial construction, monthly maintenance and as-needed maintenance will be conducted. The Applicant will need to submit a traffic estimate to MCPW.
- I. Any work, including utility work within the public R/W will require a permit from Public Works.
- J. The Applicant is advised that a portion of Coates Drive along the southern portion of the Coates Drive property frontage, south of the intersection with Wiltsey Loop, is classified as a Local Access Road that is not maintained by Marion County. Maintenance of Local Access Roads is the responsibility of adjacent property owners. Nevertheless, any improvements to the Local Access Road portion of Coates Drive require a permit from MCPW Engineering since it still is a public right-of-way.
- K. It is the responsibility of the Applicant to preserve and protect the current pavement condition Index (or PCI) rating (as applicable) and the structural integrity of adjacent paved and graveled county roads to the satisfaction of Marion County Public Works during transport of materials and construction activities. Failure to preserve and protect the road may result in the applicant being responsible for replacing or reconstructing the damaged road at his/her own expense.

ENGINEERING ADVISORY

The applicant is also advised of the following potential issue, lettered L that has bearing on the proposal:

- L. The Applicant is advised that construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner. A natural ephemeral drainage channel parallels the west property line. Filling-in of that channel may induce an increase in runoff onto the western neighbor's property. Depending on the grading scheme, it may be prudent to install a mitigation swale in its place along the west property line.

Marion County Building Inspection commented that permits would be required for construction.

All other contacted agencies either did not respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

"'Preponderance of the evidence' means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests." (Citation omitted.)

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, applicants have not met their burden and the application must be denied. If the evidence for every criterion is a hair or breath in applicants' favor, then the burden of proof is met and the application will be approved.

MCC 17.119

2. Under MCC 17.119.100, the Planning Director has the power to decide all conditional use applications. Under MCC 17.119.140,

after the Planning Director's final decision, interested persons may appeal the decision no later than 15 days after the decision is mailed. The final Planning Director's decision is dated September 18, 2015. The 15th appeal day fell on Saturday, October 3, 2015, so the appeal date extended to Monday, October 5, 2015. Neighboring property owners appealed the decision on October 5, 2015. The appeal was timely filed by interested persons.

3. Under MCC 17.119.150, if the Planning Director's decision is appealed, the hearings officer shall conduct a hearing. The hearings officer may hear and decide this matter.
4. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. Two property line adjustment deeds were provided for the record, one recorded at reel 3339, page 334 with property descriptions A through E, and one recorded at reel 3499, page 322 with property descriptions A through E. Property description C from the second recorded deed appears to show the subject property (map tax lot 082W19B00100) and it is in the name of James E. Coates, as Trustee of the James E. Coates Revocable Living Trust. The Marion County Assessor's Office also lists Mr. Coates, as trustee, as owner of the subject property. Mr. Coates, as trustee, authorized NorWest 16 to file the application. MCC 17.119.020 is satisfied.
5. Under MCC 17.119.025 a conditional use application shall include signatures of certain people, including the authorized agent of an owner. Mr. Coates, as trustee of the subject property, authorized NorWest to sign the application. Sam Lines, a NorWest vice president, is authorized to sign the application for NorWest. MCC 17.119.025 is satisfied.
6. Under MCC 17.119.070, before granting a conditional use, the hearings officer shall determine:
 - (A) That the hearings officer has the power to grant the conditional use;
 - (B) That the conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
 - (C) That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.
7. Under MCC 17.119.030, the hearings officer may hear and decide only those applications for conditional uses listed in MCC title

17. MCC 17.137.050(F)(3) lists a photovoltaic solar power generating facility, subject to MCC 17.120.110 as a conditional use in the SA zone. Photovoltaic solar power generation facility as defined in OAR 660-033-0130(38)(e)(e):

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

ORS 757.300 deals with customers of electricity providers who generate power for personal use and sell excess power to the provider for its use. ORS 757.365 involves a Public Utility Commission pilot program for small retail customer solar energy systems. Based on the applicable ORS, OAR and application (including site plan, narrative and supporting documentation), it is found applicant proposes photovoltaic solar power generation facility as conditionally permitted under the MCC. MCC 17.119.070(A) is met.

8. MCC 17.137.010 contains the SA zone purpose statement:

The SA (special agriculture) zone is applied in areas characterized by small farm operations or areas with a

mixture of good and poor farm soils where the existing land use pattern is a mixture of large and small farm units and some acreage homesites. The farm operations range widely in size and include grazing of livestock, orchards, grains and grasses, Christmas trees and specialty crops. The range in size of management units present no significant conflicts and allow optimum resource production from areas with variable terrain and soils. It is not deemed practical or necessary to the continuation of the commercial agricultural enterprise that contiguous ownerships be consolidated into large parcels suitable for large-scale management. Subdivision and planned developments, however, are not consistent with the purpose of this zone and are prohibited.

This zone allows the flexibility in management needed to obtain maximum resource production from these lands. It emphasizes farm use but forest use is allowed and protected from conflicts. The SA zone is intended to be applied in areas designated special agriculture in the Marion County Comprehensive Plan.

The SA zone retains Class I through IV soils in commercial farm units comparable to those in the vicinity or in small-scale or specialty commercial farms where the land is especially suited for such farming. The SA zone is intended to be a farm zone consistent with ORS 215.283.

Under MCC 17.119.010, a conditional use is an activity that is similar to other uses permitted in the zone, but due to some of its characteristics that are not entirely compatible with the zone could not otherwise be permitted. MCC 17.137 and, by reference, MCC 17.120.110 provisions are intended to carry out the purpose and intent of the SA zone. Review of proposed conditional use under MCC 17.120.110 and 17.137 criteria ensures the proposed use will be in harmony with the purpose and intent of the SA zone. The criteria are discussed below and are met. MCC 17.119.070(B) is met.

9. Conditions set forth below are required to meet applicable criteria, thereby protecting the public health, safety and welfare, protecting the health or safety of persons working or residing in the area, and protecting property or improvements in the neighborhood. MCC 17.119.070(C) is satisfied.

MCC 17.120.110

10. MCC 17.120.110 is based on ORS 215.283(2)(g), OAR 660-033-0120 with accompanying table that lists photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale as an authorized use on agricultural lands, and OAR 660-033-0130(38) which contains minimum standards for photovoltaic facilities. OAR 660-033-0130(38) provides three solar power generation facility siting scenarios: siting on high-value farmland, arable lands, and nonarable lands.

The record shows 54% of the subject property is composed of class III Nekia silty clay loam, 2 to 7 percent slopes (NeB) and class III Nekia silty clay loam, 7 to 12 percent slopes (NeC) soils. Under ORS 215.710(3), tracts of land in the Willamette Valley composed of predominantly class III soils qualify as high value farmland. At 54% class III soils, the subject tract qualifies as high-value farmland, and is evaluated under MCC 17.120.110(B), (E) and (F):

- B. For high-value farmland soils described at ORS 195.300(10) [refers to ORS 215.710 discussed above], the following must be satisfied:
 1. A photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004;
 2. The proposed photovoltaic solar power facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing 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;
 3. 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;

4. 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;
5. Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;
6. The project is not located on high-value farmland soil unless it can be demonstrated that:
 - a. Non-high-value farmland soils are not available on the subject tract; or
 - b. 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
 - c. The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised on non-high-value farmland soils;
7. 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:
 - a. 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;
 - b. When at least 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as

a single project or multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the overall land use pattern of the area will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

E. A condition of any approval for a photovoltaic solar power generation facility shall require the project owner to sign and record in the deed records of Marion County a document binding the project owner and project owner's successor in interest, prohibiting them from pursuing a claim for federal relief or cause of action alleging injury from farming or forest practices defined in ORS 30.930(2) and (4).

F. 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.

11. Applicant states the subject photovoltaic solar power generation facility is on no more than 12 acres of the subject property. The definition of photovoltaic solar power generation facility includes not only the assembly of equipment that converts sunlight into electricity and then transfers the electricity, but includes electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, service roads and "all other necessary appurtenances."

Site plans show two fenced solar panel areas with access from Wiltsey Street to the west panel area. Applicant shows no access road leading to the east panel area, but shows a gate from each array area opening across from each other onto the strip of land between the two array areas. Also, a "point of interconnection" is shown outside the array area near existing structures and on class III soils. If this is where the facility will be connected to the electrical grid, it would be a necessary part of the facility that needs to be included in the facility acreage as would the accessway to the east array area. The latest erosion control plan shows temporary sediment basins with accompanying silt fences outside the 12 acre site with one set in a farm

field area. If these were permanent fixtures, they could be classified as "other necessary appurtenances" that could interfere with commercial farm use, but as temporary fixtures during construction, any interference with farm fields will be minimal and passing.

Setting out the facility in the manner applicant proposes, with fringe areas on three sides between the solar array area and rights-of-way or adjoining properties could be seen as isolating areas of the property in a way that the whole northern portion of the parcel could be precluded from commercial agricultural use. That is not the case here.

This criterion states that the use "shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken..." This does not say the solar farm can be no more than twelve acres, or no more than 12 acres on high value farmland, but that it can preclude no more than 12 acres of "commercial agricultural enterprise". Theoretically, a solar facility could take 12 acres out of commercial farm use along with however many acres are in the parcel that cannot be put to commercial farm use.

Here, the class VI Nekia very stony clay loam, 2 to 30 percent slope (NsE) and Witzel very stony silt loam, 3 to 40 percent slopes (WtE) soils in the northern portion of the parcel, including the array and fringe areas, already make the area incompatible with commercial cultivation, with or without the solar array. Still, cultivated crops are not the only commercial farm uses to consider. The WtE soils that make up the majority of the northern part of the parcel are not just unsuited to cultivation, but are poorly suited to pasture and are not within a woodland suitability group. The NsE soils making up most of the remaining area might be used for grass pasture and are in woodland suitability group 3c2, and livestock could access and graze the fringe area and trees could continue to grow there. One other consideration in evaluating this criterion is that the use that must not be precluded is not just farm use, but must be commercial farm use, and it is not clear the NsE soils could sustain commercial farm use, especially considering the relatively small amount of NsE soil on the property.

As sited, no or minimal land is lost from potential agricultural production because the soils in the area are not suited to commercial agricultural production. As such, it is feasible to meet this criterion even if additional land is needed to accommodate things like a grid connection or drainage basin outside the array area. As a condition of approval, applicant's final site plan shall accurately show all OAR 660-033-0130(e) component areas and acreage calculations, and demonstrate that

facility components take no more than 12 acres out of potential commercial agricultural production. As conditioned, the solar field will not preclude use of more than 12 acres for commercial farm use, and a goal 3 exception will not be required under MCC 17.120.110(B)(1).

12. The subject property has a distinct division of high and nonhigh-value farm soils. The subject solar array will be sited on and accessed via the nonhigh-value soil area. The high value portions of the property contain farm fields and a dwelling area, and the access road off of Wiltsey does not divide, remove or impede the use of agricultural fields nor will the project be placed in a manner that restricts farm use of the remaining parcel area. Once built, the facility will be fairly passive, and with the drainage and weed control plans required below, the proposed facility will not create unnecessary negative impacts on agricultural operations conducted on portions of the property not occupied by project components. MCC 17.120.110(B)(2) is met.
13. Applicant provided construction and post construction preliminary stormwater and erosion control documents with explanations and supporting calculations prepared by engineer Lukas Klovinš. These calculations have not been challenged. Additionally, MCDPW LDEP stated it would require site plans showing grading and stormwater runoff management and permanent best management practices to prevent concentrated flow of stormwater. DPW also states that an Oregon Department of Environmental Quality NPDES 1200-C discharge permit will be required. Making applicant's stormwater plan, and DPW review and approval of a grading and drainage plan conditions of approval, along with a showing that NPDES 1200-C permitting requirements have been met, will show the presence of the photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property, and MCC 17.120.110(B)(3) will be met.
14. Construction and maintenance activities will result in some soil compaction, but the solar array area is made up of class VI NsE and WtE soils that are not suitable for cultivated crops, and the dominant WtE soil is not suitable for pasture or woodland use. Soil compaction of the site will not reduce the productivity of the soil for crop production on the subject property. MCC 17.120.110(B)(4) is met.
15. Applicant submitted a preliminary weed abatement plan involving after construction replanting with cleaned native species seed mix and seasonal manual eradication of weeds thereafter. The plan shows abatement and control are feasible. A long-term maintenance agreement will be required as a condition of approval. Additionally, the subject property is within the

Marion County weed control district and subject to MCC chapter 8.20. Applicant shall submit a final weed mitigation and control plan to Marion County DPW, overseer of the weed control district, for review and approval. As conditioned, construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. As a conditioned MCC 17.120.110(B)(5) is met.

16. The project is not located on high-value farm soil. MCC 17.120.110(B)(6) is not applicable.
17. 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:
 - a. 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;

* * *

Applicant and the Planning Director state, and it is not contested, that there are no other solar facilities within a one-mile radius of the subject property. A planning staff report (or in this case, a Planning Director's decision) can itself constitute substantial evidence even if it is not supported by other evidence. *Petes Mountain Homeowners Association v. Clackamas County*, 55 Or. LUBA 287, 313 (2007). Applicant met its burden of proving there are no other solar facilities within one-mile of the proposed solar power generation facility. MCC 17.120.110(B)(7) is met.

18. A condition of approval will require the project owner to sign and record in the deed records of Marion County a document binding the project owner and project owner's successor in interest, prohibiting them from pursuing a claim for federal relief or cause of action alleging injury from farming or forest practices defined in ORS 30.930(2) and (4). As conditioned, MCC 17.120.110(E) is satisfied.
19. Neighboring property owners propose bonding for the project. Applicant accepts signing ongoing site maintenance and decommissioning agreements binding applicant and any future owner as conditions of approval. Applicant also provided an estimated cost of decommissioning compared to salvage value of materials, and salvage value exceeds decommissioning costs by over \$78,000, showing incentive to decommission. With the conditioned agreements imposing responsibility for retiring the photovoltaic facility on applicant, bonding is not required.

MCC 17.137.060(A)

20. Under MCC 17.137.060(A), the following criteria apply to all conditional uses in the SA zone:

1. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.
2. Adequate fire protection and other rural services are or will be available when the use is established.
3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.
5. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

21. *Farm practices.* MCC 17.137.060(A)(1) incorporates OAR 660-033-0130(5) and ORS 215.196(1) requirements. ORS 215.196(1) as interpreted in *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991), requires a three-part analysis to determine whether a use will force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm use. First, the county must identify the accepted farm and forest practices occurring on surrounding farmland and forestland. The second and third parts of the analysis require that the county consider whether the proposed use will force a significant change in the identified accepted farm and forest practices, or significantly increase the cost of those practices.

Before evaluating farm practices, it must be determined which properties need to be looked at. Farm use on the subject property was considered above. Only farm uses on surrounding properties are considered here. Areas within the Salem UGB and city limits, and the AR zone are not considered. The nonfarm

dwelling property abutting the subject property to the south cannot be considered. Small SA zoned properties west of the subject property are in residential rather than farm use. This leaves three nearby farm parcels; tax lots 082W19B01400 (McAllister Family Trust), 082W1900500 (James E. Coates) and 082W19A01900 (James E. Coates) to consider.

No one representing the farm property owners appeared to complain of potential impacts on farm use of these properties. No forest practices are alleged or obvious on these properties. According to applicant, farm use in the area is limited to grazing cattle and cattle will be unharmed because the solar project will not discharge dust, smoke or other matter. Opponents suggest noise from the site may have a negative impact on cattle but offered no evidence on the matter. Applicant notes that solar farms are co-located with livestock and provided photographs of sheep, alpaca and cattle among the same type of solar array. Additionally, the three farm parcels are insulated from the proposed solar field by distances of an estimated 600' to southeast, over 1,200' to the south and about 625' to the southeast, reducing the effects of noise on the farm properties.

Applicant did not provide greatly detailed information on farm practices, but as living beings cattle would require feed, water, and occasional medical attention. And, like other crops, cattle would be harvested and likely transported off site for processing. Given the generally passive solar use, it is more likely than not that farm practices will not be hindered by nor will their cost go up with installation of the proposed use. MCC 17.137.060(A)(1) is satisfied.

22. *Adequate services.* Utility lines are available to the subject property. No new well or septic systems are proposed. DPW LDEP requested, and applicant agreed to, property dedication to accommodate roadway improvements for the site. DPW will require grading and stormwater management plans and NPDES permitting that can be made conditions of approval. Turner Fire District is satisfied that appropriate fire protection can be provided for the use. With conditions requiring right-of-way dedication, roadway improvements, drainage control and fire district regulation compliance, adequate services are or will be available upon development. MCC 17.137.060(A)(2) is satisfied.
23. *Significant adverse impact.* The property is within an SGO zone but no residential development is proposed. Neighbors note several wildlife species in the area, but the site is not within or near an MCCP identified major or peripheral big game habitat area. As referenced in MCC 17.110.835, MCCP identified big game and wildlife habitat areas are the county's concern and what must be considered when making a land use decision. No MCCP

identified watershed areas are on or near the subject property. The property is not in or near an MSCP identified floodplain area, and is not in a geologic hazard area. The solar panels are solidly encased and emit no particulates and leach no materials. The solar array area is sloping and trees will be removed, but applicant submitted stormwater and erosion control plans that show containment is possible, and final plans will be reviewed by DPW as conditions of approval. Applicant has proven that, with conditions, there will be no significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, and MCC 137.060(A)(3) will be met.

24. *Noise.* Noise sensitive residential uses are near the subject site. Though solar collection panels act passively and make no noise, inverters that convert direct current electricity to alternating current electricity for transfer to the electrical grid produce noise. The proposed facility requires only one inverter that will be placed at the south-central area of the facility, which is at the center of the subject property. Inverter noise abates as the sun sets because electricity production declines. The noise stops altogether during hours of darkness because no electricity is generated.

Marion County's noise ordinance, MCC chapter 8.45, at MCC 8.45.080(A) specifically exempts sounds generated by conditional use permit activities from prosecution if the activities are conducted in accordance with the terms and conditions of the permit. Conditional uses do not get a free pass on noise, but the noise standards must be set in the conditional use permitting process to be effectively enforced.

State noise regulations are found in Oregon Department of Environmental Quality (DEQ) OAR 340-035. In *Johnson v. Marion County*, 58 Or LUBA 459 at 470 (2009), the Land Use Board of Appeals found that Marion County did not adopt OAR 340-035 noise regulations as the county's own. This does not mean the OAR cannot be looked to for guidance when evaluating noise in specific situations, or cannot be set as the noise standard in conditional use decisions. The following OAR 240-035-0035(1)(b)(B)(i) standard is adopted as a part of this order to ensure MCC 17.137.060(A)(4) is met:

No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed

the levels specified in Table 8, as measured at an appropriate measurement point..."

Under OAR 340-035-0015(33), a new industrial or commercial noise source means any industrial or commercial noise source for which installation or construction was commenced after January 1, 1975 on a site not previously occupied by the industrial or commercial noise source in question. There are no known prior commercial or industrial uses of the subject property on January 1, 1975 or before. The subject proposed solar power generating facility is a new industrial or commercial noise source.

Under OAR 340-035-0015(47), a previously unused industrial or commercial site means property that has not been used by any industrial or commercial noise source during the 20 years immediately preceding commencement of construction of a new industrial or commercial source on that property. Agricultural activities and silvicultural activities generating infrequent noise emissions shall not be considered as industrial or commercial operations for the purposes of this definition. No known commercial or industrial uses occurred on the subject property in the past 20 years. The subject site is a previously unused industrial or commercial site.

Applicant must meet OAR 340-035-0035(1)(b)(B) standards for a new noise source on a previously unused site. Under OAR 340-035-0035(1)(b)(B)(i), the noise limit for new sources on previously unused sites is **the lower of** the ambient statistical noise level, L10 or L50, plus 10 dBA (decibels on an A weighted scale), **or** the OAR 340-035, Table 8 noise level. L10 is the noise level equaled or exceeded 10% of an hour (six minutes). L50 is the noise level equaled or exceeded 50% of an hour (30 minutes). Table 8 allowable statistical noise levels allowed in any one hour, from 7 a.m. to 10 p.m. are, L50=55 dBA, L10=60 dBA, L1=75 dBA, and from 10 p.m. to 7 a.m. are, L50=50 dBA, L10=55 dBA, L1=60 dBA.

Applicant has not conducted a noise study but provided information from a German noise study conducted on the type of inverter unit proposed for this project. Applicant provided a site plan showing the subject property, the location of the proposed inverter, and radiating expected ambient noise levels based on the German sound study. The German study is well documented and there is no evidence that it was not appropriately conducted. The study shows the inverter emits 66.4 dBA at 30' and 52.41 dBA at 150' from the inverter. (Applicant's memo provides result values in dB but that appears to be in error because the study provides values in dBA. The hearings officer finds applicants stated results are dBA values which translate well to DEQ sound regulations.) Study distance

measurements are stated in meters, but applicant converted the measurements to feet. The nearest off-site noise-sensitive receptor is nearly 600' away and the noise level there is expected to be 35 dBA. This shows it is feasible to meet sound standards.

Applicant will need to record baseline measurements to determine the ambient noise level of the site to calculate ambient level plus 10 dBA. This measurement will be used to determine whether the plus 10 dBA or table 8 standard applies, and how to specifically meet that requirement. A condition of approval will require applicant to provide a site-specific engineer-certified plan showing how the facility will operate within the determined standard. As conditioned, noise associated with the use will not have a significant adverse impact on nearby land uses, and MCC 17.137.060(A)(4) is satisfied.

25. *Water impounds/mineral and aggregate sites.* No MCCC identified mineral and aggregate sites or potential water impounds are on or near the subject property. MCC 17.137.060(A)(5) is satisfied.

AIRPORT OVERLAY ZONE

26. The subject property is within the airport overlay (AO) zone of the City of Salem's McNary Field. MCC chapter 177 governs the Marion County AO zone. Under MCC 17.177.030, three airport development districts are provided within the airport overlay zone. These three districts are shown on the official zoning map showing the height limits adopted at the time the airport overlay zone is applied.

- A. *Airport Development District.* This district consists of those lands, waters and airspace area at or below the primary, transitional and approach surfaces described in MCC 17.177.020(C).

1. *Use Limitations.* Any use, accessory use, buildings and structures otherwise allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

- a. No obstruction or object shall be permitted if it extends above the transitional and approach surfaces as defined in MCC 17.177.020(C).

- b. Roadways, parking areas and storage yards shall be located in such a manner that vehicle lights will not result in glare in the eyes of the pilots, or in any other way impair visibility in the vicinity of the runway approach.

- c. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.
- d. No game preserve or game reservation shall be permitted if the animals or birds have the potential to become a hazard to air navigation.
- e. No structure or use intended for public assembly shall be allowed except by a conditional use permit.

B. Horizontal Surface District. This district consists of the land, water and airspace underneath the horizontal surface as described in MCC 17.177.020(C).

1. Use Limitations. Any use, accessory use, building and structure allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

a. No obstruction shall penetrate the horizontal surface as defined in MCC 17.177.020(C).

b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

C. Conical Surface District. This district consists of the land, water and airspace underneath the conical surface as described in MCC 17.177.020(C).

1. Use Limitations. Any use and accessory uses, buildings and structures allowed in the underlying zone shall be permitted; provided, that no obstruction penetrates the conical surface as defined in MCC 17.177.020(C).

27. Under local rules, the hearings officer may take official notice of judicially noticeable facts and ordinances, resolutions, rules and regulations of the United States, the State of Oregon, Marion County, and the incorporated cities within Marion County. To determine which districts apply here, the hearings officer takes official notice of the Federal Aviation Administration (FAA) approved airspace surfaces from the 2012 City of Salem draft Salem Airport master plan, page 291. The illustration shows the subject property is within the conical surface of the Salem Airport. Under MCC 17.177.020, conical surface means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to one for a horizontal distance of 4,000 feet. Under MCC 17.177.030(C)(1), any SA zone

use is allowed as long as the conical surface is not penetrated. The conical surface at the subject property is at about 400'. The solar facility is at ground level. In addition, applicant conducted site-specific glare and FAA safety studies. MCC 17.177.030(C) is satisfied.

VI. Order

It is hereby found that applicant has met the burden of proving applicable standards and criteria for approval of a conditional use application to establish a photovoltaic solar array power generation facility on a 44.13-acre parcel in an SA zone have been met. Therefore, the conditional use application is **GRANTED**, subject to the conditions set forth below. These conditions are necessary for the public health, safety and welfare.

1. Applicant shall obtain all required permits from the Marion County Building Inspection Division.
2. Prior to issuance of building permits, applicant shall provide evidence of an Oregon Department of Environmental Quality 1200-C construction storm water permit to the Planning Division and Public Works Land Development Engineering and Permits Division.
3. Prior to final building inspection applicant shall dedicate a 30-foot right-of-way half-width along the Wiltsey Street subject property frontage, and along the Coates Drive subject property frontage commencing from Wiltsey Street south to the intersection with Wiltsey Loop, to meet the County standard for a local road. Dedications are to the public, not Marion County.
4. Prior to issuance of building permits, applicant shall obtain a permit from MCPW to improve the Wiltsey Street subject property frontage with addition of 3 to 5-foot width gravel road shoulder with associated drainage earthwork and tree removal, depending on site-specific location and as field determined by the MCPW Engineering Inspector. Prior to final building inspection, applicant shall obtain MCPW Engineering inspection acceptance of that work.
5. Prior to or at the time of building permit application, applicant shall submit civil site plans showing grading and stormwater management, including permanent best management practices to prevent concentrated flow to MCPW for review and approval.
6. Prior to final inspection of building permits, applicant shall submit its final Stormwater Erosion and Sediment Control plan to minimize and mitigate soil erosion and compaction resulting from

construction of the photovoltaic solar power generation facility to MCDPW for review and approval, and shall implement the plan.

7. Applicant's weed control plan requiring replanting disturbed soils with a weed-free local seed mix and committing to establishing a schedule of weed eradication and vegetation management activities sufficient to maintain a healthy and sustainable plant community on the project site for as long as the photovoltaic solar power generation facility remains on the property shall be submitted to Marion County DPW for review.
8. Applicant shall provide a site-specific, engineer-certified plan showing how the proposed solar facility will operate within the noise standard adopted as a part of this order.
9. Applicant shall submit a signed decommissioning plan agreeing that at the end of the useful life of the photovoltaic solar power generation facility, and binding applicant or any successor to retiring the facility substantially in conformance with the decommissioning plan submitted with the application, including removing all non-utility owned equipment, conduits, structures, and foundations to a depth of at least three feet below grade at the end of the facility's useful life.
10. Applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
11. Applicant shall provide proof to the Marion County Planning Division that Turner Fire District has approved applicant's building access and premise identification plan.
12. Applicant shall submit a detailed final site plan accurately depicting all areas of OAR 660-033-0130(e) components, with accurate acreage calculations, and demonstrating that facility components take no more than 12 acres out of potential commercial agricultural production. Development shall significantly conform to the site plan, but minor variations from the site plan, but not the 12-acre standard, are permitted upon review and approval of the Planning Director.
12. Failure to continuously comply with conditions of approval may result in this approval being revoked by the Planning Director. Any revocation may be appealed to the county hearings officer for a public hearing.
13. This conditional use shall be effective only when commenced within two years from the effective date of this order. If the right has not been exercised, or an extension granted, the

variance shall be void. A written request for an extension of time filed with the director prior to the expiration of the variance shall extend the running of the variance period until the director acts on the request.

VII. Other Permits

The applicant herein is advised that the use of the property proposed in this application may require additional permits from other local, state or federal agencies. The Marion County land use review and approval process does not take the place of, or relieve the applicant of responsibility for, acquiring such other permits, or satisfy any restrictions or conditions thereon. The land use permit approved herein does not remove, alter or impair in any way any covenants or restrictions imposed on this property by deed or other instrument.

VIII. Effective Date

The application approved herein shall become effective on the 9th day of February 2015, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this order. In case of Board review, this order shall be stayed and shall be subject to such final action as is taken by the Board.

IX. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem) by 5:00 p.m. on the 8th day of February 2016. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 22nd day of January 2016.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Don Kelley
Kelley & Kelley
110 N 2nd St
Silverton OR 97381

Agencies Notified
Planning Division
Public Works Engineering
Building Inspection
AAC Member No. 3
Turner Fire Department

Vernon Coates
5205 South Bend Dr SE
Salem, OR 97306

Jeffrey Webber
320 Lee St #905
Oakland, CA 94610

Mitch Teal
1418 Arabian Ave SE
Salem, OR 97317

Mark Cheney
1219 Manzanita St NE
Keizer, OR 97303

Susan Wheeler
3690 Wisper Ln SE
Salem, OR 97317

Margaret LaFrance
18626 Butteville Rd NE
Aurora, OR 97002

Damien Hall
101 SW Main Ste 1100
Portland, OR 97204

Lew and Judy Garrison
3626 Wiltsey St SE
Salem, OR 97317

Steve Gilchrist
755 Ironwood Dr SE
Salem, OR 97306

Marlene and Jim Knieling
3791 Wiltsey St SE
Salem, OR 97317

Wayne and Barbara Benson
4042 Wiltsey Lp SE
Salem, OR 97317

Jim Andersen
6511 Coates Dr SE
Salem, OR 97317

Bill and Judy Ogilvie
4045 America Way SE
Salem, OR 97317

Stephen and Evelyn Lineburger
3302 Antigua Lane SE
Salem, OR 97317

David Lockard
3305 Antigua Ln SE
Salem, OR 97317

Caroline Childers
Robert McDaniel
6336 Mahalo Dr SE
Salem, OR 97317

Laura Gallagher
495 Rural Ave S
Salem, OR 97302

Tim and Leslie Edeblute
3770 Wiltsey St SE
Salem, OR 97317

Cassie Cooper
6132 Coates Dr SE
Salem, OR 97317

Dan Schmidt
3524 Deer Lake Ct
Salem, OR 97317

Joan and Patrick Gallagher
6248 31st Ave SE
Salem, OR 97317

Waldon Brunson
6122 Coates Dr SE
Salem, OR 97317

Rick Day
4025 America Way
Salem, OR 97317

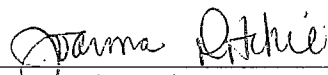
Jon Remy Jr.
Turner Fire Chief
7605 3rd Street SE
Turner, OR 97392

James Coates
6221 Coates Dr SE
Salem, OR 97317

Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Dan Orzech
c/o Damien Hall
101 SW Main Ste 1100
Portland, OR 97204

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes, addressed as noted above, and deposited in the United States Post Office at Salem, Oregon, on the 7th day of January 2016, and that the postage thereon was prepaid.



Joanna Ritchie
Secretary to Hearings Officer






ZONING MAP

Input Taxlot(s): 082W19B00100

Owner Name: JAMES E COATES RLT &
Situs Address: 6221 COATES DR SE
City/State/Zip: SALEM, OR, 97317
Land Use Zone: SA
School District: SALEM-KEIZER
Fire District: TURNER

Legend

-  Input Taxlots
-  Highways
-  Lakes & Rivers
-  Cities



scale: 1 in = 638 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.



