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Fee: NO FEE

BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF FILE NUMBER CLUP 3-22**FINAL ORDER**

WHEREAS, Hayden Mountain PV2, LLC, applicant, requested approval of an amendment to the Comprehensive Plan approving an Exception to Statewide Planning Goal 4 (Forest Lands) and the establishment of a Limited Use Overlay to allow a 906-acre solar facility on two tax lots with a combined acreage of 22,608 acres; and

WHEREAS, the subject property is described as Tax Lot 100 in Section 33 in Township 40 South, Range 5 East Willamette Meridian and Tax Lot 1100 in Sections 4 and 9 in Township 41 South, Range 5 East Willamette Meridian; and

WHEREAS, the Klamath County Planning Department provided proper notice of a public hearing held on September 27, 2022 before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, an interested party requested that the record be held open and the Planning Commission granted the request, with the written record held open until October 5, 2022 for new evidence, October 12, 2022 for rebuttal or response to evidence, and October 19, 2022 for the applicant's final legal argument/summary statement; and

WHEREAS, the Planning Commission held the public hearing and accepted oral testimony on the application and then continued the public hearing on the application to October 25, 2022; and

WHEREAS, following the periods established for the submittal of additional written records, the Planning Commission reopened the public hearing and deliberated at its October 25, 2022 meeting; and

WHEREAS, based on testimony entered and in consideration the whole record, and accepting the information provided in the application and in applicant's supplemental submittals, together with the findings in the Staff Reports, as findings of fact, the Klamath County Planning Commission concluded the application was in conformance with State Law, the Klamath County

Comprehensive Plan, and the Klamath County Land Development Code, and forwarded a unanimous recommendation of Approval for Planning File CLUP 3-22 to the Board of County Commissioners; and

WHEREAS, with a recommendation for approval from the Klamath County Planning Commission, based on testimony entered and after consideration of the whole record, and accepting the information provided in the application and in applicant's supplemental submittals, together with the findings in the Staff Reports, as findings of fact, the Klamath County Board of Commissioners acting within their authority, accepted the Planning Commission's recommendation, and unanimously **APPROVED** the request of Planning File CLUP 3-22.

The Klamath County Board of Commissioners hereby issues an **ORDER** for approval of an Exception to Statewide Planning Goal 4 (Forest Lands) and establishing a Limited Use Overlay for a 906-acre solar facility on the subject property described as Tax Lot 100 in Section 33 in Township 40 South, Range 5 East Willamette Meridian and Tax Lot 1100 in Section 4 and 9 in Township 41 South, Range 5 East Willamette Meridian.

In support of its Order, the Klamath County Board of Commissioners finds and concludes, as follows:

SECTION 1. FINDINGS AND CONCLUSIONS: Based upon the evidence in the whole record, the Klamath County Board of Commissioners find that this application is consistent with the applicable approval standards and hereby adopts and expressly incorporates the factual and legal findings and conclusions submitted by the applicant (Sections 2 through 5 and Appendix F of applicant's Application Consolidated Application for Conditional Use Permit, Site Plan Review Approval, and Goal 4 Exception, February 2022; applicant's Completeness Response for CLUP 3-22, Hayden Mountain PV2 Solar Project, Klamath County, Oregon, and attachments thereto, submitted April 15, 2022; applicant's Supplemental Information Submitted in Response to Department of Land Conservation and Development August 30, 2022 Comment, submitted September 13, 2022; and applicant's Final Summary Statement, submitted October 19, 2022, provided as Exhibit C), as well as the factual and legal findings and conclusions in the Staff Reports (Exhibit B), as our own Findings and Conclusions. The Klamath County Board of Commissioners make the following additional findings with respect to this application. Where factual conflicts arose, the Klamath County Board of Commissioners has weighed the evidence and resolved them consistent with these finding(s).

1.1 The Klamath County Board of Commissioners finds that proper legal notice was sent to the applicant, agent, adjacent property owners, affected agencies and media on April 20, 2022. Legal notice was published in the Friday, September 2, 2022 and Saturday, September 3, 2022, editions of the Herald and News (legal ad).

1.2 The Klamath County Board of Commissioners finds that the additional evidence submitted by applicant on October 12, 2022 was responsive to evidence and information provided by an

interested party on October 5, 2022 and was therefore consistent with the County's decision to hold the record open and properly entered into the record. However, for the reasons described below, the Board does not rely on the applicant's October 12, 2022 rebuttal evidence in making its determination in this final order.

1.3 The Klamath County Board of Commissioners finds that the proposed use of the subject property is eligible for an Exception to Goal 4 under the catch-all provision of Oregon Administrative Code (OAR) 660-004-0022(1). Alternatively, the proposed use is eligible for an Exception to Goal 4 under OAR 660-004-0022(1)(b) or OAR 660-004-0022(3).

1.4 The Klamath County Board of Commissioners finds that there is need and ample reasons justifying the Exception to Goal 4 as outlined in Exhibits B and C. Among other reasons, the use is locationally dependent and requires the combination of locational attributes of the subject property, the use furthers multiple County and state policies by providing responsibly sited renewable energy, and the use will strengthen economic development in the County.

1.5 The Klamath County Board of Commissioners finds that the additional rebuttal evidence submitted by the applicant on October 12, 2022 provides further support for the Exception to Goal 4 but is not necessary for our finding of compliance with the applicable standards.

1.6 The Klamath County Board of Commissioners finds that the Exception to Goal 4 and application of the Limited Use Overlay is in compliance with the Oregon Revised Statutes, Oregon Administrative Rules, Statewide Planning Goals, the Klamath County Comprehensive Plan, and Articles 47, 48, 55, 57 and 59.8 of the Klamath County Land Development Code. Specifically, the Exception to Goal 4 is in compliance with Articles 47 and 58.9 of the Klamath County Land Development Code based on the findings provided in Exhibit B and Exhibit C, applicant's February 2022 Application, Sections 2 through 4.


NOW, THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS ORDER AS FOLLOWS:


The Klamath County Planning Director shall draft for adoption by the Board of County Commissioners an Ordinance granting the Exception to Statewide Planning Goal 4 and adding the Limited Use Overlay to the subject property as shown on attached Exhibit A.

Dated this 29 day of November, 2022

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FOR THE BOARD OF COMMISSIONERS


Chair


Commissioner


Commissioner

Out of Office Today

County Counsel
Approved as to form

NOTICE OF APPEAL RIGHTS

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21-days following the date of the mailing of this order. Contact LUBA for information as how to file this appeal (LUBA by phone 1-503-373-1265 or by mail at 550 Capitol Street NE, Suite 235, Salem Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.