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03/21/2024 11:36:10 AM

Fee: NO FEE

BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF FILE NUMBER: CUP 05-23**FINAL ORDER**

WHEREAS, Chaberton Solar Horton Rim LLC, appellant, appealed the denial of Conditional Use Permit 05-23; and

WHEREAS, the subject property is described as Tax Lots 00602, in Section 25 in Township 38 South, Range 10 East Willamette Meridian, and

WHEREAS, the Klamath County Planning Department provided proper notice of a public hearing held on February 22, 2024, before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, the applicant submitted said request for an appeal of the final decision of the Conditional Uses Permit in due form for consideration; and

WHEREAS, the Planning Commission denied the Conditional Use Permit based on Article 54.075(C)(7)(c), finding the applicant did not provide enough information to determine Article 54.075(C)(7)(c) was met; and

WHEREAS, based on testimony entered and after consideration of the whole record, the Klamath County Board of Commissioners, acting within their authority, reversed the Planning Commission's decision and unanimously APPROVED Conditional Use Permit 05-23 with conditions; and

Finding of Facts

- 1) The Klamath County Board of County Commissioners finds the subject property is zoned Exclusive Farm Use, which conditionally allows for developing 20-acre or smaller solar facilities on arable land. The proposed solar facility is 19 acres in size on arable lands.
- 2) The Klamath County Board of County Commissioners finds more than 80 acres of land developed as solar facilities in the area.
- 3) The Klamath County Board of County Commissioners finds the development of solar facilities on the subject property will not 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, acquire water rights or

diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area due to:

- a. The subject property has a poor water right of waste agricultural water and precipitation and has not been irrigated in the last 10 years.
- b. There are developed solar systems to the north and east of the subject property that block access to the subject property from other commercial farms in the area.
- c. Directly to the west, the land is uncultivated and has not been used for agricultural production.

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

The appeal of the Planning Commission's denial of CUP 05-23 is hereby reversed and approved with the following conditions:

- a. Prior to issuance of a Building Permit, the Planning Department must sign off on the Land Use Compatibility Statement (LUCS).
- b. The applicant shall draft, and have accepted by the local fire district, a fire protection and emergency response plan prior to the issuance of the Land Use Compatibility Statement by the Klamath County Planning Department. The 2019 Oregon Fire Code Section 1204 plus other related codes need to be addressed prior to the issuance of any building permits.
- c. Prior to issuance of Planning approval (LUCS) for the use, the owner shall record a restrictive covenant with the deed recognizing the rights of adjacent and nearby landowners to conduct farm and forest operations consistent with accepted farm practices and the Oregon Forest Practices Act. A copy of the recorded covenant shall be provided to the Planning Department.
- d. Prior to issuance of the Planning approval (LUCS), the project owner shall provide security sufficient for decommissioning costs in the form of a performance bond to ensure the availability of funds to cover such costs. The security bond is to cover the removal of equipment and restore the land to its original condition at the end of the project, or project abandonment and for hazard abatement.
- e. A decommissioning plan shall be provided to the Planning Department prior to issuance of the LUCS. An estimate of the decommissioning costs shall be provided with the bond and may

include a salvage and recycling estimate that would reduce the bond amount.

- f. If the perimeter fencing for the solar field is within 50 feet of a public right of way or is directly visible from the ground level of an existing residence, the applicant shall plant a 10-foot-wide strip of natural vegetation buffer or sight-obscuring fence constructed of durable and appropriate materials for the rural area before final permits and activation. If a natural buffer is installed, it should cover at least 50% of the fence's surface area within 5 years of solar field activation.
- g. The applicant shall follow conditions contained within any Klamath County Public Works Comments.

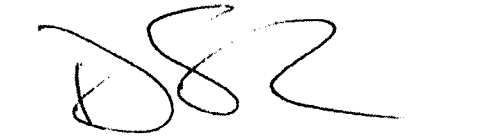
Dated this 19 day of March, 2024

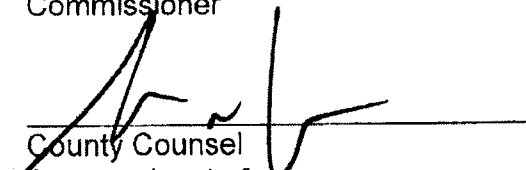
FOR THE BOARD OF COMMISSIONERS


Chair

Not Present

Commissioner


Commissioner


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 mail at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.