

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Accepting the Appeal of Planning )  
Docket C-18-17/SDR-28-17; Overturning the )  
Planning Commission's Approval; and Denying )  
the Application for a Conditional Use Permit ) Board Order 18-21  
and Site Design Review for a 12-acre Solar Facility )  
on State Highway 47, Yamhill )  
Applicant: Yamhill Creek Solar, LLC )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on January 25, 2018, Commissioners Mary Starrett, Richard L. "Rick" Olson and Stan Primozych being present.

IT APPEARING TO THE BOARD as follows:

A. By application dated June 12, 2017, received June 27, 2017, Yamhill Creek Solar, LLC applied to the county for a conditional use permit and site design review for a 12-acre solar facility on a 27.8-acre property zoned EF-80, Tax Lot 2434-400. The application was "deemed complete" on July 31, 2017, following the receipt of additional information;

B. Following notice to surrounding property owners, a timely request for a hearing was filed with the county on September 5, 2017, by Guy Insley, Ximena Orrego and Atticus Wine, LLC. On October 5, 2017, the Planning Commission held a hearing on the application. Following the hearing and subsequent open record periods, the Commission reconvened on November 2, 2017, deliberated, and voted 5-3 to approve the application;

C. On November 16, 2017, Atticus Wine, LLC filed a timely appeal to the Board of the Planning Commission's approval of Docket C-18-17/SDR-28-17; and

D. On January 11, 2018, the appeal was heard by the Board of Commissioners. Following the hearing and a subsequent continuance, the Board reconvened on January 18, 2018, deliberated, and voted 2-1 to accept the appeal, overturn the Planning Commission's decision, and deny the application, with staff directed to prepare written findings for final adoption on January 25, 2018; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The appeal by Atticus Wine, LLC is hereby accepted, the Planning Commission's decision to approve Docket C-18-17/SDR-28-17 is hereby overturned, and the application is denied.

Section 2. The findings attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of this order.

DONE this 25<sup>th</sup> day of January, 2018 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

Chair

MARY STARRETT

By:

Carolina Rook  
Deputy Carolina Rook

Commissioner

RICHARD L. "RICK" OLSON

FORM APPROVED BY:

Commissioner

STAN PRIMOZICH

Timothy S. Sadlo

Senior Assistant County Counsel

**Exhibit A – Board Order 18-21  
Findings in Support of Decision to  
Deny Docket No. C-18-17/SDR-02-16**

**1. INTRODUCTORY MATTERS**

DOCKET NO.: C-18-17/SDR-28-17

REQUEST: Conditional use and site design review for a solar power generation facility consisting of approximately 12 acres.

APPLICANT: Yamhill Creek Solar, LLC

TAX LOT: 2434-400

LOCATION: 19381 Highway 47, Yamhill

ZONE: EF-80 Exclusive Farm Use

**2. RELEVANT APPROVAL CRITERIA**

The following criteria are applicable to the review of this application. Yamhill County Zoning Ordinance (“YCZO”) sections 402.04(M), 402.07(A and D), 1101.02 (Site Design Review), and 1202.02 (Conditional Use). Agricultural lands rules under OAR 660-033-0130(38) and Yamhill County Comprehensive Plan policies are also relevant.

**3. FINDINGS:**

**A. Background Facts**

1. *Parcel Size and Request:* The parcel is approximately 27.8 acres. The applicant intended to use 12 acres for the commercial solar power generating facility and related ancillary uses, including solar panels, electrical equipment and access roads. According to the applicant’s written statement the proposed solar facility would have consisted of solar arrays on steel racking, consisting of photovoltaic (PV) modules oriented toward the south (generally) and placed upon a fixed tilt racking system, inverters, connections to the existing power lines, as well as necessary access and safety features including access roads, perimeter roads and fencing. The proposed photovoltaic modules would have been supported by stationary piles driven up to 10 feet into the ground. The proposed photovoltaic panels were planned for an east-west orientation. The solar facility had a proposed nameplate capacity of 2.2 Megawatts (MWac), and was proposed to be operated for a minimum of 20 years.
2. *Access:* An existing private access road from the west side of State Highway 47, Tualatin Valley Highway.

3. *On-Site Land Use:* The parcel has an existing barn and grain silos, and has been used for grass seed cultivation and hay production.
4. *Surrounding Land Use and Zoning:* The surrounding parcels are zoned Exclusive Farm Use District, with EF-80 properties to the east and west and EF-20 zoned properties to the north and southeast. The surrounding area is predominantly farmland with nearby agricultural uses consisting of hazelnut orchards, grass seed, grain crops, hay production, as well as vineyard land and wine production. There are also a few rural residences in the surrounding area. Yamhill Creek runs directly to the east, on the opposite side of Oregon Highway 47, Tualatin Valley Highway. Approximately  $\frac{3}{4}$  of a mile to the south-southwest are parcels within the city of Yamhill's Urban Growth Boundary (UGB).
5. *Soils:* The parcel is located within the Yamhill-Carlton Viticulture Area and is therefore considered high-value farmland per ORS 195.300(10)(e)(C). The Natural Resources Conservation Service (NRCS) map and accompanying documents submitted by the applicant, shows that approximately 12.1% of the parcel is composed of soils considered high-value farmland. The high-value soils identified on the parcel include Carlton silt loam (CaB, Class II) and Woodburn silt loam (WuB, Class II). The remaining approximately 87.9% of the parcel is composed of soils of statewide importance, Class II and III soils. The soils identified as soils of statewide importance are Hazelair (HcB, Class III), Goodin-Dupee (DuC, Class III), and Goodin-Dupee-Chehulpum Class II).
6. *Water:* No on-site water supply is required for the use.
7. *Sewage Disposal:* No on-site sewage disposal is required for the use.
8. *Fire Protection:* Yamhill Rural Fire District.
9. *Overlay Districts:* Based on a review of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 4102590181, the subject property is not located within an identified 100-year floodplain. There are no identified historic sites or Willamette River Greenway or airport overlay district. The Department of State Lands (DSL) wetlands map indicates wetlands are not present on the property.

## **B. Conditional Use Provisions and Analysis**

1. The list of conditional uses in the EF-80 zone includes Section 402.04(M) which states:
  - M. *Commercial utility facilities for the purpose of generating power for public use by sale, and transmission towers over 200 feet in height, subject to Subsection 402.07(D) and Section 1101, Site Design Review.*

*Subsection 402.07(D): A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise on a tract not identified as*

*high-value farmland, or 12 acres on a tract identified as high-value farmland, unless an exception is taken pursuant to OAR 660, Division 4.*

The request is subject to the conditional use criteria in section 402.07(A and D) and section 1202.02 and is also subject to the Site Design Review criteria in 1101.02 of the *Yamhill County Zoning Ordinance* (YCZO). In addition to the county standards, the proposed facility is regulated under Oregon Administrative Rule (OAR) 660-033-130(38).

2. The applicable criteria and definitions of OAR 660-033-130(38) are as follows:

*(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:*

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

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

*(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.*

*(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.*

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

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

As noted above, the applicant proposed the development of an approximately 12-acre commercial solar power generating facility and related ancillary uses, including solar panels, electrical equipment and access roads and this is the only existing or proposed facility within more than 1,320 feet. The subject parcel is considered high-value farmland due to the parcel's location within the Yamhill-Carlton Viticulture Area, pursuant to OAR 660-033-0130(38). The applicant has stated, and has shown on the submitted site plan (Attachment A), that the proposed facility would consist of not more than 12 acres, therefore, an exception pursuant to ORS 197.732 and OAR chapter 660, division 4 would not be required.

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

The appellant argued that the proposed use will be located on high-value farmland, as well as on arable land. Further, the appellant argued that the proposed use reduces the commercial agricultural use at the subject property below 20 acres because only approximately 15.8 acres will remain in production. If the appellant is correct in its interpretation of state law, that a proposed solar facility can fall into more than one category (both high-value and arable), then the argument is correct. However, the applicant countered that the intent of state law was not to allow a proposed use to fall within two categories, and that the limit on the size of the proposed project is 12 acres under the high-value farmland rules. Despite this open question, the county has decided to deny this project because as set forth elsewhere in this decision, the applicant is unable to meet other county criteria.

3. *(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;*

The applicant stated that the 12-acre project area had been sited to ensure that there would be no significant change in or increase to the cost of accepted farming on surrounding lands devoted to farm use. The applicant proposed the use of the existing access to the site from Highway 47 which would have allowed for the retention of the remaining agricultural land along the western area of the parcel, in order to maintain farm use in that area of the property. The entirety of the proposed solar facility is located on Goodin-Dupee-Chehulpum complex soils, which is classified as a soil of statewide importance. The area that may remain in farm use, in the western approximately 15-acres of the property,

consists of Hazelair Silty Clay Loam and Goodin Silty Clay Loam which are both classified as soils of statewide importance by the NRCS.

4. *(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;*

*(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;*

The applicant submitted a soil erosion and compaction mitigation plan (Attachment B to application) and an updated Erosion Control Plan (Exhibit B to Applicant's January 10, 2018 letter) and Updated Soil Compaction Relief Plan (Attachment C to Applicant's January 10, 2018 letter). The applicant states that the soil erosion plan was prepared using the standards set forth by the Oregon Department of Environmental Quality (DEQ). The soil erosion plan describes the project site as a relatively flat open field with a history of cultivation activity that will require little to no grading and as such is not expected to generate large areas of disturbed and exposed soils. The Erosion, Sediment & Soil Compaction Plan notes that mechanical equipment, such as material delivery trucks and diggers, will be restricted to roads.

Regarding the loss of farmland, the applicant maintains the land can be returned back to a farm use at any time and will not permanently be taken out of resource use. State law takes into consideration, and require conditions to be placed upon solar facilities, which address soils erosion and compaction, weed control and the rights of adjacent agricultural operations consistent with accepted farm practices. Problems at a previously approved solar facility raised during the hearing on this application, have led to county concerns that the applicant in this proceeding may have similar problems during construction with unforeseen erosion and compaction.

In this case, the county has concluded that the site soils are expected to have a mid to high predisposition for compaction. The Soil Compaction Relief Plan submitted by the applicant focused on immediate soil compaction impacts from construction activities. However, the county also has concerns about the long-term impacts of soil compaction on this high-value farmland caused here by the compaction from installation of the stationary piles for the proposed photovoltaic panels that would be driven up to 10 feet into the ground. Testimony in the record supports a conclusion that solar facilities may diminish the productive use of the underlying farmland after the solar panels are removed because of impacts from compaction over the life of the solar facility. The applicant did not carry its burden to establish that soil compaction from installation and use of the solar

photovoltaic panels for 20-30 years would not have long term impacts that would reduce the productivity of soil on the subject property for crop production.

5. *(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;*

The applicant submitted a weed management plan and updated Weed Management Plan stating that a customized local seed mix would be used during the construction and rehabilitation phases of development to provide active competition against any noxious weeds already established onsite, and to compete with weeds that may be introduced while the ground is temporarily disturbed while work is conducted onsite. The applicant stated that construction crews would identify any existing noxious weeds on the property, inspect equipment for the presence of the seeds of noxious weeds, and would clean all construction equipment prior to entering or exiting the work site.

The applicant proposed to minimize the amount of existing vegetation cleared during the construction and rehabilitation phase that would limit the disturbed ground that might be colonized by invasive, noxious weeds. The applicant proposed that disturbed soils would be revegetated with a customized local seed mix, and ongoing monitoring of the site for the presence of noxious weeds would continue throughout the lifecycle of the proposed solar facility. The weed mitigation plan stated the site would include the use of manual hand eradication of weeds, and herbicides. The county heard public testimony that raised concerns about the potential for herbicide drift. The county finds that the applicant did not meet its burden to analyze the potential for herbicide drift to harm neighboring crops, particularly sensitive vineyard crops.

6. *(E) The project is not located on high-value farmland soils unless it can be demonstrated that:*

*(i) Non high-value farmland soils are not available on the subject tract;*

*(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or*

*(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and*

*(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:*

*(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.*

*(ii) When at least 48 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

The site is located on high-value farmland because the site is located within the Yamhill-Carlton American Viticulture Area (YCAVA). Based on a review of the NRCS soils map, the applicant proposed to develop the solar facility on the portion of the parcel that contains soils of statewide importance. The applicant is proposing the siting of the 12-acre solar facility along the eastern-most area of the parcel so the remaining approximately 15-acre western portion could continue to be farmed. There are no other solar facilities constructed or approved within one mile of the proposed project, therefore, no further study is needed under the above criterion. Comments submitted for this project expressed concern that there are already too many solar projects in Yamhill County and that the County should consider the “cumulative effects” of these projects. Under these state administrative rules, as stated above, “cumulative effects” analysis is required when at least 48 acres of solar facilities have been constructed or received approvals within one mile of the proposed project. Since this facility is more than one mile from any other solar facility that has been constructed or approved, it is not subject to this criterion.

7. OAR 660-033-0130(38)(j): *Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility from retiring the photovoltaic solar power generation facility.*

Staff recommended that the applicant be required to post a bond, and the applicant formally objected. For reasons stated within this decision, the proposed solar facility project is denied. Therefore, no bond is required.

8. The conditional use criteria of YCZO Section 1202.02 are as follows:

***(A) The use is listed as a conditional use in the underlying zoning district;***

The request is consistent with criterion 1202.02(A) above, in that the proposed use is listed as a conditional use in Section 402.04(M) of the EF-80, Exclusive Farm Use.

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

The county adopts the following findings in response to YCZO 1202.02(B). The county recognizes that the goals and policies of the Yamhill County Comprehensive Plan (“Comprehensive Plan”) are aspirational and are not approval criteria. Notwithstanding the aspirational nature of the goals and policies, this conditional use standard requires a balancing of those goals and policies of the Comprehensive Plan that apply to the proposed use, and require the county to make a finding of consistency. After consideration of the goals and policies of the Comprehensive Plan discussed in the staff report, by the applicant, and members of the public, the county determines that the applicant failed to demonstrate that the proposed use is consistent with the goals and policies of the Comprehensive Plan and adopts the following findings:

Under Section II, the Comprehensive Plan’s first Goal Statement for Agricultural Lands states:

*1. To conserve Yamhill County’s farmland for the production of crops and livestock and to ensure that the conversion of farmland to urban use where necessary and appropriate occurs in an orderly and timely manner.*

The applicant provides no information about conserving the subject property for the production of crops even though the subject property is currently farmed for grass seed and hay production. The use has been characterized as “industrial,” but it is not clearly and “Urban” or “rural” industrial type of use, and may be both. For this reason, the county is unable to conclude that this overarching Goal Statement weighs in favor of approval or denial of the application.

Under Policy A of this Goal Statement:

*Policy a: Yamhill County will have to preserve the farm lands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce and various public financial incentives.*

Solar development on farmland is currently on the rise due to the high economic incentives compared to agriculture practice. But, preservation under Policy A means that potentially high economic returns for solar facilities should not be elevated above the goal of preservation of farmlands. The changing market condition and the rise of solar development on farmlands affect the long-term productivity and sustainability of the County’s farmland for agricultural production.

The applicant stated that Portland General Electric (“PGE”) is the entity that would purchase the energy from the proposed solar facility. This interpretation of balancing the Comprehensive Plan Goals and Policies in favor of protection of farmland for farm use is further supported by the status of PGE’s existing renewable portfolio. According to PGE’s 2016 Integrated Resource Plan:

“The Solar Photovoltaic Capacity Standard is a legislative mandate that by January 1, 2020, PGE must own or contract to purchase 10.9 MW of solar

PV capacity. Individual solar systems must be between 500 kW and 5 MW in size. PGE's existing portfolio meets the requirements with resources such as Baldock Solar, Bellevue Solar, Yamhill Solar, Outback Solar, and Steel Bridge Solar. Appendix D, Existing Resources, describes PGE's solar resources."

The Oregonian reported on PGE's ability to meet this legislative mandate in its recent coverage of the issue:

"But there's a more fundamental issue at work. Both PGE and PacifiCorp have been generating more green power than required for years. As a result, they've built up huge banks of renewable energy credits that can be used to comply with the state mandates in years when they don't generate enough green power. Utilities successfully lobbied for those long-lived, bankable credits as a kind of compliance shock absorber. But PGE's bank of credits is now so big that it can satisfy the increasing mandates until 2029 or 2030 without purchasing any more physical resources."

Thus, the applicant is proposing to expand PGE's renewable energy portfolio by entering into agreements on cheap agricultural land to construct an industrial use in comparison to better suited, albeit more expensive, land within urban growth boundaries. As part of its Integrated Resource Plan, PGE prepared solar generation market research. The market research shows that fixed-tilt, ground mount utility-scale installations are significantly less expensive than commercial or industrial rooftop installations. But, the market research does not suggest that commercial or industrial installations should be abandoned because they do not pencil out. In fact, if PGE were to wait until costs plateau in another 7 years, then commercial and industrial installation will be much more competitive with the high-value farmland selected in this application. The county is reticent to sacrifice high-value farmland production for the next 20-30 years when industrial and commercial land in urban areas is more suitable for the use, and solar array installation costs are continually falling on those more appropriate sites. For PGE, time is on its side as its bank of renewable energy credits show it can satisfy legislative mandates through 2029. But, once agricultural land is industrialized, time runs out on it being available for productive farm use.

Other evidence in the record supports a conclusion that developed areas within agricultural landscapes such as rooftops, transportation corridors and parking lots; land too salty for crops to grow; reclaimed areas that were previously contaminated; and reservoirs and irrigation channels that could accommodate floating solar panels known as floatovoltaics could accommodate solar installations before paving over productive farmland. Research conducted in California cited by the appellant concluded there were enough of these underused sites for solar — which would be the equivalent area of 1.5 million football fields — that solar energy from those spaces alone could exceed the 2025 electricity demands for California by up to 13 times. Moreover, the evidence cited concluded that solar facilities could prevent the productive use of the underlying farmland after the solar panels are removed because of impacts from compaction and herbicide use over the life of the solar facility. The applicant did not provide an adequate response to these concerns.

The county also notes the observations in the record made by state agencies in a joint solar photovoltaic project siting briefing to the Oregon Governor's office on November 2, 2017, from the Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Department of Fish and Wildlife, and Oregon Department of Energy, that highlight concerns about the current state law. Based on that joint agency briefing and other information in the record, the county finds that this applicant should consider non-high-value-agricultural lands for its proposal as more consistent with the county's comprehensive plan policies. The November 2, 2017 state agency briefing highlighted agency concerns that although the rule to allow solar facilities on farmland "[w]as specifically designed to encourage solar developers to select sites with the poorest capability for commercial agriculture... Many solar projects have been approved on all types of farm and rangeland..." The briefing continued, "What was not anticipated when these thresholds were established was the proliferation of solar PV projects on less than 100 acres located on high value or productive farm ground... By creating serial solar PV projects... a developer may also avoid having to go through the goal exceptions process previously described." *Id.* These statements reflect the county's position that local code provisions such as consistency with Comprehensive Plan Goals and Policies are a safeguard to ensure that high-value farmland is not unnecessarily converted to non-agricultural uses.

The county finds that the applicant has not met its burden to show that this plan goal and policy are being advanced.

Further, the applicant attempts to downplay the high-value farmland nature of the subject property by focusing on the soils. The fact remains that the proposed site is located on high-value farmland and the county does not find it appropriate in this case to convert farmland to nonfarm use because to do so would be a failure to conserve Yamhill County's farm lands for the production of crops. The applicant continued in Exhibit F to its January 10, 2018 letter to then argue about *de minimis* sound and other effects on neighbors under this goal statement and policy, but the county finds that this plan goal and policy does not address noise and neighboring property concerns.

Based on the foregoing, this plan goal and policy weighs in favor of denial of the proposed use.

Policy B continues to describe that:

*Policy b: Yamhill County shall provide for the protection of farmland in large blocks through minimum lot sizes of 20, 40, and 80 acres....*

The proposed development will reduce the amount of farmland on a large block of over 20 acres to 15.8 acres, contrary to this policy. The applicant did not respond to this policy. The Board finds that because a large block of farmland will be compromised by this proposal that this policy should be weighed toward denial of the application.

*Policy h: No proposed rural area development shall substantially impair or conflict with the use of farm or forest land, or be justified solely or even primarily on the argument that*

*the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise.*

The applicant addressed Policy H, with its reference to analysis that the use would not impair or conflict with the use of farmland. The county has questioned whether the applicant met its burden under YCZO 402.07(A) and for that reason questions whether the same justification can be used to suggest that this policy weighs in favor of approval. The county notes, in contrast to the applicant's analysis, that the approval of the proposed use would result in the overall loss of farmland to a non-farm use on land that is currently proven to be suitable for farming. Therefore, the county concludes that Policy H weighs in favor of denial of the proposed use.

The county finds that on balance the first Goal Statement for Agricultural Lands and Policies A, B, and H weigh in favor of denial of the proposed use.

Under Section II of the Comprehensive Plan, the second Goal Statement for Agricultural Lands states:

*2. To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture, and urban development and their sustained use for the purposes designated on the county plan map.*

The county finds that removing farmland from agricultural production and allowing heavy construction and cover from natural light could adversely affect the long-term suitability of soil resources for agricultural uses. The county heard testimony from project opponents that chemicals associated with the solar panels may cause harm to the long-term use of the soil for agricultural uses. The applicant did not respond to this concern and did not know the chemical make-up or finish applied to the solar PV panels it would be installing. But, even if the PV panels are not chemically finished, one opponent commented that the aluminum used on the PV panels could runoff from the panels and accumulate in the soil over time. This accumulation of aluminum could adversely impact the future use of the soil for agricultural purposes. The applicant had submitted conclusory statements in a presentation that the solar PV panels do not erode, but the record contains no evidence that aluminum particles will not separate from the panels, racking, or other materials used at the solar facility over the 20-30 year life span.

Further, as referenced above, evidence in the record concluded that compaction and herbicide impacts may prevent the productive use of the underlying farmland after the solar panels are removed because of impacts from compaction and herbicide use over the life of the facility. The county does not find that the soil compaction report or weed control plan adequately addressed long-term impacts to the soil raised by project opponents. The county finds this goal weighs in favor of denial of the project.

*Policy a: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.*

The proposed use of the site would remove approximately 12 acres of high-value soils out

of production for 20-30 years. The applicant addressed this goal and policy by saying that the project will not alter the soils and the property would revert back to its previous use after the site is decommissioned. However, as described above in the discussion of Goal Statement 2 and incorporated here, the county finds the applicant did not meet its burden that soils could be preserved over the long-term lifespan of the solar facility.

The applicant also responded to this goal and policy by stating, in part, the applicant would implement the erosion control measures and noxious weeds management plans submitted. However, comments from neighboring property owners, area vintners, and the Winegrowers Association have expressed concerns that the proposed solar facility will have a significantly negative impact to the local agricultural community and wine industry in the Yamhill-Carlton American Viticulture Area (YCAVA). There are also concerns raised by those in opposition to the solar facility, regarding the loss of productive high-value farmland from this solar facility and cumulatively from the number of solar facilities now located in the county. While a cumulative impacts analysis may not be required under state regulations, the county's conditional use criteria that examines the consistency of this proposal with the Comprehensive Plan allows the county to consider the conversion of county farmland to nonfarm uses and to determine that in this instance, when more than 100 acres of county farmland has been converted to nonfarm solar facility use and such conversion does not meet the county's soil preservation goals, another solar facility should be viewed as defeating this policy. Thus, as another proposed instance of converting an additional 12 acres of Class I – IV soils away from farm use, this proposal does not help the county meet this policy.

In addition, the county considered additional variables about whether this use complies with the Comprehensive Plan to preserve soils for farm use. Solar facilities can be sited on land, on buildings, on signs, and on telephone poles. There is even technology being developed to build them into the road surface. In addition, large-scale solar fields can be located on non-high-value soils, in rural residential zones, in certain commercial and industrial zones, and on property in the urban growth boundary/city limits. In short, solar facilities have a wide variety of options to locate. Agriculture on the other hand is significantly restricted by certain unique features. One of the key features of successful agriculture is the location and availability of appropriate soils. Agriculture needs the soils, especially the high-value soils, to grow their crops. That is why soils are prominent both in the Comprehensive Plan, and also in the zoning ordinance. Chipping away at the availability of high-value farmland, especially when there are other options, appears to threaten the overall *integrity and viability of the agricultural land base*. For these additional reasons, the Board finds that this policy weighs in favor of denial of the proposal.

To the extent the applicant proposed the county adopt the findings it previously adopted in Board Order 16-427, submitted into the record of this proceeding, the county rejects the invitation. The findings in that matter were based on a different record for a different application and the applicant did not explain why the findings in that case should be adopted here. Further, the applicant's final argument to the Planning Commission merely copied the Board Order 16-427 findings without updating facts to reflect the size of the property in this application. Again, the applicant's proposed findings were offered but not

explained in the context of this application and are rejected by the county.

*Policy b: Yamhill County will continue to support ASCS soil conservation measures and SWCD best management practices designed to protect and improve forest and agricultural land productivity and to prevent unnecessary losses through excavation, stripping, erosion and sedimentation.*

The applicant stated that it would adopt best practices, but offers no specifics on how it will actually accomplish soil preservation over the long-term as set forth in previous findings and reincorporated here. Testimony was received in this matter in opposition to conversion of high-value farmland to non-farm uses. The removal of the most productive and valuable soils in this case is contrary to the county's goals to conserve soil resources. Therefore, the county finds that this policy weighs towards denial of the application.

*Policy d: Yamhill County will require that construction permits contain provisions to protect sites from soil erosion.*

The applicant stated it would obtain required construction permits that could attach conditions to protect the site from soil erosion. Since the county denies the application, the county finds this policy is not due any weight in its decision.

Under the Comprehensive Plan, Section II, Open Space, the first Goal Statement states:

*Goal Statement 1. To insure the continuance of the open space character that has always existed in Yamhill County.*

The open space character is not insured by the industrialization that would occur if this proposal were approved. The county finds that it would be counter-intuitive to achieving the balance of the Comprehensive Plan Goals and Policies by sacrificing farmland, and its aesthetic qualities in favor of industrialization, particularly in the context of continuing the open space character that exists in this area of Yamhill County, as one of the gateways to the YCAVA.

The applicant disagrees and contends that since other wineries have used solar PV installations that the size and scale of the proposed facility is justified and does not interfere with the open space character. However, the county disagrees, after review of the record, including the comparison of these winery PV installations with the proposed 12-acre solar facility submitted by the appellant. The small-scale nature of other winery-installed solar PV panels is not of a comparable scale to the proposed use.

Based on the foregoing, the county finds this policy weighs in favor of denial of the proposed use.

*Policy c: Where conflicting uses are identified concerning an open space, natural or scenic resource proposal, the economic, social, environmental and energy consequences of the conflicting uses will be determined and programs developed to achieve the goal.*

The county views this policy as informing the inventory process described in Policy B, not

as an independent approval criterion or requirement for a proposed conditional use. Therefore, this policy does not enter into the balancing for the county to reach its decision, because no Goal 5 inventory is being adopted.

Under the Comprehensive Plan, Section I, Rural Area Development, the first Goal Statement states:

*Goal Statement 1. To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.*

*Policy c: All proposed rural area development and facilities:*

1. *Shall be appropriately, if not uniquely, suited to the area or site proposed for development;*

The county finds that this proposal is not appropriately nor uniquely suited to farmland. Rather, agricultural land is best suited to farm uses and cannot occur without agricultural soils. This proposal could be consistent with this Comprehensive Plan policy if it were sited in urban areas or on land that is not plan and zone designated as high-value farmland. Further, the Board finds that high value farmland is irreplaceable and should not be sacrificed for industrial-sized solar facilities.

While the applicant correctly describes that the proposed solar facility is subject to conditional use approval, and thus allowed as a rural use, that designation does not guarantee approval unless the applicant can meet its burden of demonstrating that the use meets all conditional use criteria. The fact that the county has listed this use as a conditional use does not mean that in every instance that a proposed EFU site will be determined to better accommodate the use than other zones or urban areas. Rather, the county finds that the proposed use is not appropriately or uniquely suited to the proposed area or site, and that this policy weighs toward denial of the application.

On balance, this goal and policy weighs in favor of denial of the application.

Under Comprehensive Plan, Section I, Economic Goals, the first Goal Statement states:

*Goal Statement 1. To maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county, balance the real property tax base of the various cities, and strengthen local economic bases.*

*Policy b. Yamhill County will encourage economic development projects which do not conflict with the predominant timber and agricultural character of the county.*

To the extent this policy is applicable in this context, the county finds that this proposal will not have a significant positive effect on unemployment in the county. Further, the county heard testimony about the potential for adverse impacts to the county's tourism and wine industries as a result of the transforming farmland of to non-farm uses of the type

proposed. The county finds that siting solar installations on high-value farmland is not in the short or long-term economic interest of the county, even though it would provide an income source for the property owner and increased property tax revenues to the county.

The county finds that on balance, that this plan goal and policy weigh in favor of denial of the proposed solar facility.

Under Comprehensive Plan, Section I, Industrial, the first Goal Statement states:

*Goal Statement 1. To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.*

The applicant's response to this goal statement focuses on the characteristics of the proposed use and the construction operations necessary to create the use. However, the applicant did not address the plan's goal to concentrate industrial uses within urban growth boundaries. Although the applicant claimed it could eliminate land use conflicts even if allowed to develop an industrial use outside of industrial areas, the county finds that the conflicts are not eliminated. Overall, the county finds this goal statement balances in favor of denial of the proposed use.

Policies B and E under this Goal Statement state:

*Policy b: To the greatest extent possible, industrial areas will be located within urban growth boundaries.*

*Policy e: Industrial uses will be located so that adequate buffer space is provided between incompatible land uses.*

The county finds that the applicant has failed to demonstrate that the proposed solar facility is consistent with this Goal and its policies because the industrial use is proposed outside the urban growth boundary, in an undesirable location, without an adequate buffer to prevent adverse impacts to surrounding properties, and these policies weight in favor denial of the proposed use.

Under Comprehensive Plan Section II, Water Resources, the first Goal Statement states:

*Goal Statement 1: To conserve and to manage efficiently our water resources in order to sustain and enhance the quantity and quality of flows for all consumptive and non-consumptive uses and to abate flood, erosion and sedimentation problems.*

The applicant argued that it would not use water for this proposed solar facility, resulting in an overall reduction in water use for the current grass seed and hay cultivation. The

applicant did not provide any evidence about the contended water use offset and the county cannot reach any conclusion about whether water conservation would occur. The county reviewed the applicant's submittal that stated that the current use of the property likely has at least some fertilizer runoff that would be alleviated by transforming the property to non-farm use. However, the county also heard testimony that other chemicals or components of the PV panels could potentially drain from the site and damage soils or water resources as it drains from the property. On balance, the county finds that this goal does not weigh in favor of approval or denial of this proposed solar facility.

Under Section II of the Comprehensive Plan, Fish and Wildlife, Goal Statement 1 states:

*Goal Statement 1: To conserve the fish and wildlife habitat of Yamhill County with a view to maintaining an optimum ecological balance, enhancing the sport fishing and hunting resource of the county, and protecting endangered species.*

The application observed that there are not any ESA-species or associated habitats observed on the project site. The county agrees—no evidence was submitted challenging the applicant's testimony, which appears to be correct.

*Policy b: Yamhill County will recognize the need to conserve and protect fish and wildlife habitat in its plan implementation measures; and the following will be considered in any public or private land use determination subject to county review; the impact of harvesting forested areas where there is no forest management plan for regeneration of the forest lands; the filling or drainage of swamps or marshes; the damming of rivers and streams; the location and construction of highways and utility transmission lines; and any other land development activities which significantly interfere with the vegetation or soil cover or drainage patterns in critical habitat areas.*

The applicant stated that the Comprehensive Plan does not identify fish or wildlife habitat on the subject property. This policy is not relevant to the consistency finding.

*Policy c: All identified sensitive wildlife areas will be classified as exclusive agriculture, forest land or open space. No major land use change, including but not limited to road construction and recreational developments will be permitted without approval of measures to limit undesirable impacts on sensitive wildlife areas.*

The applicant stated that the Comprehensive Plan does not identify fish or wildlife habitat on the subject property. This policy is not relevant to the consistency finding.

Under Section V of the Comprehensive Plan, Air, Water, and Land Quality, the first Goal Statement states:

*Goal Statement 1: To conserve and to protect natural resources, including air, water, soil and vegetation and wildlife, from pollution or deterioration which would dangerously alter the ecological balance, be detrimental to human health, or compromise the beauty and tranquility of the natural environment.*

*Policy e: In order to maintain and improve the quality of the county's air, water and land*

*resources, Yamhill County will seek to minimize irreversible and other long-term impacts in its development of energy resources; support efforts, where feasible, for the appropriate and efficient recovery of energy as a means to reduce waste problems; and encourage a program to recover and recycle used motor oil.*

The applicant proposed findings for Policy e, citing its intent to use best management practices to minimize air, water and land resource impacts during construction. However, the Goal Statement concerns the conservation of natural resources, including “soil,” and testimony was received asserting that the applicant had failed to demonstrate that, over the course of 20-30 years, the panels would not hurt the high-value soils on which they are proposed to be located. Policy e. states, in part, that: “Yamhill County will seek to minimize irreversible and other long-term impacts in its development of energy resources.” The applicant failed to demonstrate that the impacts of the facility over 20-30 years would not constitute a “long-term impact” to soils on the site. This policy weighs in favor of denial of the application.

Under Section VI, the Energy Conservation portion of the Comprehensive Plan, the first and second Goal Statement and relevant policies under the second Goal Statement state:

*Goal Statement 1: To reduce the per capita use of fossil fuels and other non-renewable sources of energy through efficient and appropriate use of all energy.*

*Goal Statement 2: To promote the conservation of existing depletable energy resources and the development of local, renewable resources to ensure that an adequate supply will be available to Yamhill County citizens at a reasonable cost.*

*Policy d: Yamhill County will promote development of renewable energy resources, including but not limited to solar, wind, water and biomass.*

*Policy l: Yamhill County will assist local governments to promote the use of conservation, solar and other renewable sources of energy supply.*

The application makes general findings that capturing local renewable solar energy and its potential use locally furthers the purpose and intent of these goals and policies, and reduces reliance on non-renewable fossil fuels. As a general matter, the county agrees that these goal statements and policies tend to weigh in favor of approval of the proposed solar facility. However, the Board heard testimony that questioned whether there was adequate evidence in the record to support the applicant’s assertion that consumption of energy produced by the solar facility will occur in Yamhill County, or that showed a “reasonable cost” benefit. This factor weighs in favor of approval.

On balance, the comprehensive plan goals support preservation of farmland instead of the proposed non-farm use solar facility. The county’s responsibility under the consistency standard is to make findings of consistency with the Comprehensive Plan policies by balancing of all relevant goals and policies. The Agricultural Land goals and policies to protect and preserve farmland, soils, large blocks of farmland, as well as protecting rural areas all weigh stronger for preservation of farmland for farm use than any alleged gain in provision of renewable energy sources. The county further balances the Comprehensive

Plan goals and policies in favor of farmland protection because a solar facility can be located on non-farmland. Overall and as weighed against each other, the Agricultural Land, Open Space, Rural Area Development, and Economic Goals of the Plan weigh in favor of denying this application.

10. (C) *The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features.*

Regarding criterion 1202.02(C), the parcel is approximately 27.8 acres with direct access onto a state highway, Oregon Highway 47. The applicant proposed using the parcel's existing point of access to Highway 47, located in the southern area of the property.

The applicant noted that, if approved, the remaining acreage of the parcel would remain undisturbed by the applicant during the development and operation of the proposed solar facility and continue to be used for growing grass seed or other crops. Although the parcel's topography appears to be suitable for the proposal because the subject property is relatively level, and there are no identifiable wetlands or other known natural features, including trees or wildlife habitat that may be negatively impacted by the proposed solar facility, the Board denies the application under other criteria as set forth in this Decision.

11. (D) *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district.*

Regarding criterion 1202.02(D), the "surrounding area" is zoned Exclusive Farm Use, EF-20 and EF-80, and is predominantly dedicated to farm uses with rural residences. The "surrounding area" includes all of the following described properties, and generally includes properties within view of the subject property. The 99-acre property to the west and south of the proposed facility is a hazelnut orchard. North of the subject parcel is a 47.6-acre parcel that is planted to vineyard and also grass seed production. The neighboring parcels to the east and southeast of the subject parcel, across Highway 47, are both dedicated to grass seed and hay production.

The owner of the hazelnut orchard testified in favor of the proposal. The Planning Department has heard concerns from other neighboring farmers and business owners in the area, including the Yamhill-Carlton Winegrowers Association, regarding the potential negative impact to the wine industry in the Yamhill-Carlton area due to the location of the solar facility within the Yamhill-Carlton American Viticulture Area. The Yamhill-Carlton Winegrowers Association also expressed concern that the solar facility will take high-value farmland away from farmers, causing lasting harm to soil biology at the installation site, while also negatively impacting the aesthetics and character of the Yamhill and Carlton communities. The Yamhill-Carlton Winegrowers Association noted that the industrial appearance of the proposed solar facility along Highway 47 is "completely incompatible with attracting the high end customers that support our wineries, eat at our restaurants, stay at our B&B's, shop at our stores, and buy gas at the service stations."

The appellant also testified extensively, arguing that the county should interpret its land

use regulations, including those focused on character, to preserve the outstanding views and sites on its agricultural land. The appellant argued that this criterion allows the county to foster the character of this part of the county as a working agricultural area, with a focus on its importance to the wine region and the arguments are summarized:

The appellant cited this character as being recognized and lauded throughout the country, with the New York Times concluding, “Most Willamette wineries are family operations, and the business of the valley is clearly agriculture....”

The appellant also argued that the scenic views are essential to the unique experience of Yamhill County’s wine country and vital to the image and beauty of Willamette Valley wines. From the appellant’s perspective, no amount of screening or buffering can fully mitigate the adverse impacts that will be caused by a solar array in its viewshed.

The appellant asserted that: converting the subject property to a solar facility will permanently alter the character of the surrounding area and will substantially impair the ability to use the surrounding area for producing agricultural crops, including wine grapes; that the proposed facility would diminish the amount of farmland in the surrounding area and reduce the availability of large blocks of agricultural land for agricultural uses; and that the adverse impact will also reduce the value of land in the surrounding area which substantially impairs the future ability to refinance, lease, or sell the land for producing agricultural crops and wine.

Further, the appellant argued that the proposed solar facility will adversely impact not only the current use of the appellant’s property (ostensibly, because of the view), but other surrounding properties as well. EFU zoning allows (outright or conditionally) for an array of uses, including wineries, agri-tourism, dwellings, and other farm and non-farm uses. The ability to site any of these particular uses on EFU lands surrounding this solar facility will, according to the applicant, be limited due to the character-changing nature of the siting of the proposed solar facility on the proposed site. The appellant further argued that the local economy is driven by agriculture and agricultural-related businesses that rely on the preservation of the character of the area—from hot air balloon operators and restaurants to area bed and breakfasts, and that all of these businesses are reliant on the preservation of farmland and the rural character of the area. In addition, the subject property is located along well-travelled Highway 47 and, according to the appellant, a solar facility is not the type of use that visitors should see when finally having the opportunity to travel to the wine country and rural agricultural areas.

Standard (D) is addressed specifically to the “character of the surrounding area,” which is different from whether surrounding farm uses suffer a significant change in farm practices or increase in farm costs, as argued by the applicant. The scale of the proposed project (12 acres) and its location distinguishes it from small arrays that are found in many locations, including at local wineries.

The county generally agrees with the testimony of the appellant and opponents, disagrees with the testimony of the applicant, and finds that the installation of the proposed solar facility, of 12 acres and with an active 20-30-year lifespan, will adversely change the

natural farmland and rural character of this area over the life of the project, even though the proposed use is otherwise listed as conditionally allowed in the zone. The county finds that the proposed solar facility, at the proposed location, on high value farmland, is a character-changing use, and that the preservation of the pastoral character of the surrounding area (described above) is important for continued use of farmland for farming, as well as to enable the wine industry to continue to flourish, and for continuation of the agri-tourism businesses and events that rely on the existing character of the area.

12. ***(E) The proposed use is appropriate, considering the adequacy of the public facilities and services existing or planned for the area affected; and***

Regarding criterion (E), the site appears to have adequate public facilities and services. The site is served by the Yamhill Rural Fire Department, and no comments or concerns were submitted to the Planning Department regarding the proposed solar facility. The proposed use does not need long-term water supply or sewage disposal. Electricity would be provided by PGE or from on-site generation. The Oregon Department of Transportation (ODOT) submitted a statement recommending that the applicant submit an "Application for Upgrade to an Existing State Highway Approach" to: improve the existing approach to the proposed site from Highway 47; to address the temporary increase in traffic during the construction phase; and to accommodate the safe and free flow of traffic for maintenance trips to the site. These conditions could be met through imposition of a condition of approval. As set forth in this decision, the county denies the application based on the applicant's inability to meet other criteria.

13. ***(F) The use is or can be made compatible with existing uses and other allowable uses in the area.***

Regarding criterion 1202.02 (F), the surrounding area under consideration is zoned Exclusive Farm Use, EF-20 and EF-80, and is predominantly dedicated to farm uses with rural residences. The county received concerns from neighboring property owners and business owners in the area, including the Yamhill-Carlton Winegrowers Association, project neighbors, and other farmers, regarding the potential negative impact to the wine industry, the removal of high-value farmland from productive agricultural uses, and a significant change in character to the area due to the installation of the proposed solar facility. In addition, adjacent neighbors described that the proposed solar facility would be incompatible with their residential use of their properties. The appellant testified that the proposed solar facility would be incompatible with its planned winery, and could not be made compatible.

The application states the proposed solar facility will not have an adverse impact on existing farming practices or other uses on neighboring properties, and the applicant provided testimony and evidence to support this view. The appellant and opponents presented extensive testimony and evidence of the incompatibility of the proposed project with other allowable uses in the area. Weighing all of the evidence, the county finds the applicant did not meet its burden to show that the proposed solar facility is compatible, or can be made compatible, with existing and other allowable uses in the area.

14. Conditional uses in the Exclusive Farm Use District must also comply with the following criteria (YCZO Section 402.07(A)):

1. *The use will not force significant change in accepted farming or forest practices on surrounding lands devoted to farm or forest use.*
2. *The use will not significantly increase the cost of accepted farming or forest practices on surrounding lands devoted to farm or forest use.*

The county interprets these standards to be consistent with ORS 215.296. As explained in Schellenberg v. Polk County, 21 Or LUBA 425, 440 (1991) and successive cases, the ORS 291.296(1) test requires that the county identify the accepted farm and forest practices occurring on *surrounding* farm lands, and then consider whether the proposed use will force a significant change in, or significantly increase the cost of, identified practices. Under ORS 215.203(2)(c), “accepted farming practice” is defined as: “a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.”

For purposes of this analysis, the “area” under consideration includes EFU land roughly within 1,000 feet of the subject property. Hay, grass seed, filberts (hazelnuts), grapes and wheat were identified by the applicant as the most common farm crops being produced in the area, and there may be other crops being grown that are not visible from public roads. Plowing, burning, application of herbicides and pesticides, disking of orchards and machine harvesting are accepted farm practices in the area under the ORS 215.203(2)(c) definition. Additionally, bird netting, visual devices, propane cannons, and other noise devices are commonly used for bird control in vineyards, and are generally accepted as farm practices. There may also be organic and sustainable agricultural practices taking place. Automated machinery and farm labor are both used extensively to tend and harvest most of the crops noted. Farm machinery is routinely transferred from field to field on the adjacent state highway.

As noted above, neighboring property owners, including the appellant vineyard owner and the Yamhill-Carlton Winegrowers Association Board of Directors, have submitted concerns that the proposed solar facility may have a negative impact on the marketability of farm crops and products derived from farm crops (wine) produced in the area.

In addition, the appellant submitted concerns about the long-term impacts to soil from being covered by solar panels for 20-30 years, as well as from soil compaction and long-term exposure to herbicides. The county also heard concerns that aluminum used on the PV panels could runoff from the panels and accumulate in the soil overtime and adversely impact the future use of the soil for agricultural purposes. Neither the proof presented, nor the rebuttal by the applicant, is compelling. The applicant submitted conclusory statements that the solar PV panels do not corrode, but the record contains no evidence that aluminum particles will not separate from the panels, racking, or other materials used at the solar facility over the 20-30 year life span, or that no other coatings are present that

might leach into the soil. However, these claimed potential impacts are to the site itself, not to surrounding farm or forest practices.

The appellant also claimed that recent changes in the law transformed wineries into farm uses. The county reaches no conclusion in this regard.

Based on all of the testimony and evidence in the record, the county concludes that the proposed use, which following construction would be (essentially) passive, would not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, and would not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

### **C. Site Design Review Criteria**

1. The purpose of site design review is stated as follows:

*The site design review process is intended to guide future growth and development in accordance with the Comprehensive Plan and other related county ordinances, to provide for an effective process and framework to review commercial and industrial development proposals, to insure safe, functional, energy-efficient developments which are compatible with the natural and man-made environment, and to resolve potential conflicts that may arise between proposed developments and adjacent uses. This section shall apply to all development in all Commercial, Industrial, and Public Facilities Districts, all development in the PRO District, and all other uses as may be required by this ordinance in the AF, EF, F-80, AF-10, VLDR and LDR Districts.*

The county finds that, contrary to assertions by the applicant that the Site Design Review factors focus solely on on-site impacts, the site design factors specifically aim to resolve potential conflicts with adjacent uses. Where the county finds that the potential conflicts cannot be resolved through appropriate design, these factors weigh against approving the design of the site.

Section 1101.02(A) for Site Design Review requires consideration of the following factors in the review of site development plans:

- (1) *Characteristics of adjoining and surrounding uses;*

Regarding factor 1101.02(A)(1) above, the Board has addressed this in earlier sections of these findings.

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

Regarding factor 1101.02(A)(2) above, neighboring property owners of adjacent properties and vineyards as well as the Yamhill-Carlton Winegrowers Association have all submitted concerns regarding the potential negative economic impact to the local wine industry. The Yamhill-Carlton Winegrowers Association submitted a statement suggesting the industrial appearance of the proposed solar facility along Highway 47 is “completely incompatible

with attracting the high end customers that support our wineries, eat at our restaurants, stay at our B&B's, shop at our stores, and buy gas at the service stations.” The Yamhill-Carlton Winegrowers Association which self-identifies as a representative of at least 65 vineyards and 50 winery facilities in the area, including Elk Cove Vineyards, Ken Wright Cellars, Belle Pente, Penner Ash, Shea Vineyard, Willakenzie Estate, Soter, Jackson Family, and Maison Louis Jadot. Adam Campbell, the owner and winemaker for Elk Cove Vineyards, states that his farm and winemaking business employs “30 full time employees (plus many more seasonally) and greatly increase the tax base of the county. We sell almost a million bottles of wine every year and sell our products throughout the US and in 12 export markets bringing tax dollars back to our great state and country.” Mr. Campbell goes on to note that his tasting room attracts approximately 20,000 visitors every year from out of state and that these visitors contribute to Yamhill County's greater economy by patronizing bed & breakfasts, restaurants, gas stations, neighboring rooms, and other commercial enterprises. Mr. Campbell, and the other members of the Y-C Winegrowers Association, go on to express concern that a solar facility, located “on a major entry point to our YC AVA [Yamhill-Carlton American Viticulture Area] and an industrial solar facility will severely alter the aesthetics and character of the area.” Owner of the appellant vineyard LLC, Ms. Orrego, along with Mr. Campbell and the members of the Yamhill-Carlton Winegrowers Association have all expressed concern that the introduction of a solar facility of the size proposed at the location proposed will alter the character of the area in such a way that it deters patrons from visiting area tasting rooms which could have a negative economic impact to Yamhill and Carlton area businesses.

The appellant also provided information analyzing the wine industry impact on the state and the county finds that the importance of the wine grape to the state economy should not be ignored. In 2013, the Oregon wine grape became the state's most valuable fruit crop, with a market value of nearly \$128 million. This value translates to a large share of the county economy – providing direct jobs on vineyards, indirect employment for farm sales related businesses, and tourism that relies on the wine industry. In contrast, the applicant stated that there is only the potential for short-term construction work for the proposed use, but even that contention was called into question by local residents. The applicant did not provide any evidence that local jobs would be provided during construction of the proposed facility.

Further, the appellant submitted evidence in connection with this factor, and YZCO 1101.02(A)(4) related to adequate visual buffering, that if approved, the appellant would be required to install large trees to attempt to mitigate visual impacts to its property. The cost of the trees and irrigation system were estimated to be approximately \$40,000. In addition, the appellant argued that the installation of trees would remove additional land for potential vineyard production, and could also cause the appellant to relocate its planned winery if it were able to move forward with such use.

The applicant addressed this factor in the application, stating that the construction and operation of the solar facility may provide employment opportunities, as well as income to the property owner, and increased tax revenues to the County. The applicant notes that the proposed solar facility will add \$15,400 in tax revenue per year, for Yamhill County.

The applicant did not respond to Atticus' specific comments about tree planting. Although these concerns could potentially be addressed through the imposition of conditions of approval, the county is denying this application for other reasons specified in these findings.

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

Regarding factor 1101.02(A)(3), the property is served by an existing access road off of Oregon State Highway 47. The Oregon Department of Transportation had recommended that the applicant submit an "Application for Upgrade to an Existing State Highway Approach", to improve the existing approach to the proposed site from Highway 47 to address the temporary increase in traffic during the construction phase and to accommodate the safe and free flow of traffic for maintenance trips to the site, if the proposed use were approved. As set forth in this decision, the county denies the application based on the applicant's inability to meet other criteria.

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

Regarding factor 1101.02(A)(4), the applicant stated that construction activities during installation are not expected to be incompatible with surrounding farm uses as activities would be short-term and limited to typical daytime construction hours of 7:00 am to 10:00 pm. The application indicated that during the daylight hours only, when the facility will be operating, the inverters and transformer would generate a low, humming noise which quickly dissipates and minimal noise may be heard outside of the fenced area. The applicant maintains that these sound levels are not expected to be distinguishable above quiet rural sound levels at a distance of the nearest adjacent properties.

The applicant proposed the installation of a security fence with green slats around its perimeter, and landscaping, but the elevation of the property will likely still allow a view of the racks under the panels from the road and neighboring properties. The applicant did not acknowledge that impacts to neighboring views would be affected and made no attempt to respond to concerns about this incompatibility beyond the small fence and landscaping that would be built and installed at ground level around a portion of the property. As stated above, under 1102.02(A)(2) and reincorporated here, the applicant did not address visual mitigation concerns raised by neighbors of the facility. The small fence would not mitigate view impacts from neighboring properties that sit on higher elevations than the subject property.

There was also testimony from a neighbor who is an electrician familiar with solar installations, that the inverter would cause noise impacts to his property. He said that given his elevation and certain wind conditions, the noise from the inverter would be a nuisance for him and his family. The county finds this testimony to be credible, suggesting that the inverter has the potential to cause a nuisance to neighboring properties.

In addition, the county considered testimony submitted by the neighbor of an almost identical (in terms of size) solar facility that was recently constructed. She said that the

views have interfered with the character of the area, and that the noise from the inverter is a nuisance.

The county finds the applicant did not meet its burden to show that the proposed solar facility could be constructed with adequate noise or visual buffering from incompatible neighboring residential uses.

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

Regarding factor 1101.02(A)(5), the applicant has stated that there are no natural features, including trees or wildlife habitat located in the proposed solar facility site. As set forth in this decision, the county denies the application based on the applicant's inability to meet other criteria.

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

Regarding factor 1101.02(A)(6) above, no hazard areas have been identified. As set forth in this decision, the county denies the application based on the applicant's inability to meet other criteria.

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

Regarding factor 1101.02(A)(6), the notice of the proposed use was sent to the surrounding property owners within 750 feet of the outside boundaries of the subject tract and published in the newspaper of general circulation as required by Section 1402 of the *Yamhill County Zoning Ordinance* and state law. One comment suggested the County revisit the issue of allowing solar facilities as a conditional use on high-value farmland, however the siting of solar facilities is regulated under Oregon Administrative Rule (OAR) 660-033-130(38) and these criteria were addressed above. Applications are reviewed based on the law in effect when filed.

These findings address the recommendations and other comments received in the proceedings to consider the application submitted. As set forth in this decision, the county denies the application based on the applicant's inability to meet all applicable criteria as specified in these findings.

\*END\*