

WESTCHESTER FIRE INSURANCE COMPANY
436 Walnut Street, Philadelphia, PA 19106

Bond Rider

To be attached to and made a part of Bond Number K09543910

On behalf of CCP NI Managing Member 4, LLC, as Principal, and executed by Westchester Fire Insurance Company, as Surety, in favor of Deschutes County, a political subdivision of the State of Oregon as Obligee.

In consideration of the mutual agreements herein contained, the Principal and the Surety hereby consent to the following changes:

1. Change of principal

From: CCP NI Managing Member 4, LLC
To: NorWest Energy 2, LLC

2. Change reference to NorWest Energy 2, LLC in 2nd paragraph

From: NorWest Energy 2, LLC (“NorWest”), an affiliate of Principal
To: NorWest Energy 2, LLC (“NorWest”), Principal

3. Change reference to NorWest Energy 2, LLC, an affiliate of Principal in first recital

From: NorWest Energy 2, LLC, an affiliate of Principal
To: NorWest Energy 2, LLC, Principal

4. Change all references to “NorWest” and “NorWest’s”

From: “NorWest” and “NorWest’s”
To: “Principal” and “Principal’s”

These changes are to become effective _____

All other terms and conditions of the above said bond shall remain unchanged.

Signed, sealed and dated this _____ day of November, 2025.

Westchester Fire Insurance Company

By: _____,
Attorney-in-fact

NorWest Energy 2, LLC

By _____

Title: Michael J. Discenza Jr., CFO

**Westchester Fire Insurance Company
Solar Facility Decommissioning Bond**

KNOW ALL MEN BY THESE PRESENTS: That **CCP NI Managing Member 4, LLC**, a Delaware limited liability company (hereinafter called the Principal), and **Westchester Fire Insurance Company** (hereinafter called the Surety), a corporation duly organized under the laws of the State of **Pennsylvania**, are held and firmly bound unto **Deschutes County, a political subdivision of the State of Oregon** (hereinafter called the Obligee), in the full and just sum of **One Million and No/100 Dollars (\$1,000,000.00)**, the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and each of their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee has issued to NorWest Energy 2, LLC (“NorWest”), an affiliate of Principal, and to the owner of real property located in **Deschutes County, Oregon, and legally described on the attached *Exhibit A*, a land use permit (Deschutes County Land Use File Nos. 247-15-000168-CU/247-15-000169-SP, as modified by 247-16-000225-MC** related to **(real property located at 62435 Erickson Road, Bend, Deschutes County, Oregon)** and as a requirement of such permit and NorWest’s lease of such real property from its owner, NorWest is obligated to remove the Solar Facility equipment from property located at **(62435 Erickson Road, Bend, Deschutes County, Oregon)** upon discontinuance of service in accordance with the terms of the land use permit and in accordance with the terms of that certain Improvement Agreement executed pursuant to the permit, including but not limited to Condition 12 of Deschutes County Land Use File Nos. 247-15-000168-CU/247-15-000169-SP (a copy of which is attached hereto as *Exhibit B*).

WHEREAS, the Obligee has agreed to accept this bond (provided it remains in effect for the time period identified in Condition 12) as security for performance of NorWest’s obligations under said permit during the time period this bond remains in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if NorWest shall perform its obligations under said land use permit, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise cancelled as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

1. In the event of default by NorWest, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This bond may be terminated or canceled by surety by giving not less than ninety (90) days written notice to the Obligee, stating therein the effective date of such termination or cancellation. Such notice shall not limit or terminate any obligations resulting from default by NorWest that may have accrued under this bond as a result of default by NorWest prior to the

effective date of such termination, including any failure of NorWest or Principal to secure County approved replacement surety.

3. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.
4. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
5. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
6. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall prevail in all respects.
7. It is expressly understood and agreed that this bond does not cover or guarantee rent or lease payments of any kind.
8. This bond shall not bind the Surety unless the bond is accepted by the Obligee. If the Obligee objects to any language contained herein, within 30 days of the date this bond is signed and sealed by the Surety, Obligee shall return this bond, certified mail or express courier, to the Surety at its address at:

Westchester Fire Insurance Company
436 Walnut Street, P.O. Box 1000
Philadelphia, PA 19106

Failure to return the bond as described above shall constitute Obligee's acceptance of the terms and conditions herein.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this 17th day of April, 2017.

CCP NI Managing Member 4, LLC
a Delaware limited liability company

By: 
Jonathan Butters, Authorized Person

Westchester Fire Insurance Company

By: 
Jeremy C. Rose, Attorney-in-Fact

Exhibit A
Legal Description of Real Property

That certain real property located in the City of Bend, Deschutes County, Oregon, legally described as follows:

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST ONE-QUARTER (SE1/4) OF SECTION 25, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM A FOUND 3-1/4" ALUMINUM CAP STAMPED "DESCHUTES COUNTY" MARKING THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 25; THENCE ALONG THE WEST LINE OF SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (SW1/4 SE1/4) CORNER, NORTH 00°33'50" EAST, 30.00 FEET TO A FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "S.C.E. & S.", SAID POINT BEING THE **POINT OF BEGINNING** WHICH LIES ON THE NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE LEAVING SAID NORTH RIGHT-OF-WAY, CONTINUING ALONG SAID WEST LINE OF THE SW1/4 SE1/4, NORTH 00°33'50" EAST, 1288.23 FEET TO A FOUND 5/8" IRON ROD WITH NO CAP MARKING THE CENTER-SOUTH ONE-SIXTEENTH (CS 1/16) CORNER; THENCE LEAVING SAID WEST LINE OF THE SW1/4 SE1/4, ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (NW1/4 SE1/4) CORNER, NORTH 00°35'10" EAST, 1317.95 FEET TO A FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "OMAN PLS 702", LEANING SOUTHEASTERLY 0.25 FEET, MARKING THE CENTER-QUARTER (C 1/4) CORNER OF SAID SECTION 25; THENCE LEAVING SAID WEST LINE OF THE NW1/4 SE1/4, ALONG THE NORTH LINE SAID NW1/4 SE1/4, SOUTH 89°04'08" EAST, 732.95 FEET TO A POINT WESTERLY TO AND 285 FEET OF OFF (WHEN MEASURED AT RIGHT ANGLES) THE EASTERLY RIGHT-OF-WAY LINE OF THE 125 FOOT WIDE BONNEVILLE POWER ADMINISTRATION (BPA) REDMOND-KLAMATH FALLS ELECTRICAL TRANSMISSION LINE EASEMENT; THENCE LEAVING SAID NORTH LINE OF NW1/4 SE1/4, ALONG A LINE 285 FEET WESTERLY AND PARALLEL TO SAID EASTERLY BPA EASEMENT LINE, SOUTH 01°18'06" WEST, 2329.67 FEET; THENCE SOUTH 08°51'00" WEST, 24.03 FEET; THENCE LEAVING SAID PARALLEL LINE, EAST, 288.23 FEET TO A POINT ON SAID EASTERLY BPA EASEMENT LINE; THENCE ALONG SAID EASTERLY BPA EASEMENT LINE, NORTH 01°18'06" EAST, 2348.79 FEET TO A POINT ON SAID NORTH LINE OF NW1/4 SE1/4; THENCE LEAVING SAID EASTERLY BPA EASEMENT LINE, ALONG SAID NORTH LINE OF NW1/4 SE1/4, SOUTH 89°04'08" EAST, 307.61 FEET TO A FOUND 5/8" IRON ROD WITH NO CAP MARKING THE CENTER-EAST ONE-SIXTEENTH (CE 1/16) CORNER; THENCE LEAVING SAID NORTH LINE, ALONG THE EAST LINE OF SAID NW1/4 SE1/4, SOUTH 00°30'21" WEST, 1316.69 FEET TO AN ANGLE POINT IN FENCE LINES AT THE SOUTH-EAST ONE-SIXTEENTH (SE 1/16) CORNER; THENCE LEAVING SAID EAST LINE, ALONG THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (SE1/4 SE1/4), SOUTH 89°07'25" EAST, 485.25 FEET; THENCE LEAVING SAID NORTH LINE OF SE1/4 SE1/4, SOUTH 00°00'01" WEST, 167.72 FEET; THENCE SOUTH 30°25'43" EAST, 96.38 FEET; THENCE SOUTH 02°54'34" WEST, 1037.05 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY LINE OF NEFF ROAD; THENCE ALONG SAID NORTH RIGHT-OF-WAY, BEING 30.00 FEET NORTH AND PARALLEL TO THE SOUTH LINE OF SAID SE1/4 OF SECTION 25, NORTH 89°11'09" WEST, 492.62 FEET TO A POINT ON THE LINE COMMON TO SAID SE1/4 SE1/4 AND SW1/4 SE1/4; THENCE LEAVING SAID COMMON LINE AND CONTINUING ALONG SAID NORTH RIGHT-OF-WAY, NORTH 89°10'36" WEST, 377.64 FEET TO A POINT ON SAID EASTERLY BPA EASEMENT LINE; THENCE LEAVING SAID NORTH RIGHT-OF-WAY OF NEFF ROAD ALONG SAID EASTERLY BPA EASEMENT LINE, NORTH 08°51'00" EAST, 156.86 FEET; THENCE LEAVING SAID EASTERLY BPA EASEMENT LINE, WEST, 288.43 FEET TO A

POINT 285 FEET WESTERLY AND PARALLEL TO SAID EASTERLY BPA EASEMENT LINE; THENCE ALONG SAID PARALLEL LINE, SOUTH 08°51'00" WEST, 152.67 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE LEAVING SAID PARALLEL LINE, ALONG SAID NORTH RIGHT-OF-WAY OF NEFF ROAD, NORTH 89°11'09" WEST, 663.41 FEET TO THE **POINT OF BEGINNING**.

EXCLUDING THEREFROM: BEGINNING FROM A POINT WHICH BEARS NORTH 22°53'48" EAST, 1130.77 FEET FROM SAID POINT OF BEGINNING ON THE NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE NORTH 85°06'00" WEST, 310.28 FEET; THENCE NORTH 00°34'46" EAST, 333.08 FEET TO A POINT OF CURVATURE; THENCE ALONG A 120.43 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 163.55 FEET, THROUGH A CENTRAL ANGLE OF 77°48'38" TO A POINT OF NON-TANGENCY; THENCE NORTH 00°34'48" EAST, 237.57 FEET; THENCE SOUTH 88°03'19" EAST, 408.97 FEET TO A POINT WHICH BEARS SOUTH 26°15'04" EAST, 961.65 FEET FROM SAID C 1/4 OF SECTION 25; THENCE SOUTH 00°56'34" WEST, 702.01 FEET TO THE POINT OF BEGINNING OF THIS EXCLUSION DESCRIPTION.

THIS PARCEL OF LAND CONTAINS 78.09 ACRES, MORE OR LESS.

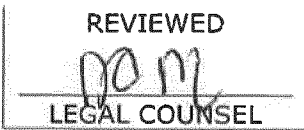
SUBJECT TO ANY EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.

BEARINGS ARE BASED ON OREGON STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 83(2011), EPOCH 2010, INTERNATIONAL FEET (DISTANCES SHOWN HEREON ARE GRID DISTANCES, MULTIPLY BY A FACTOR OF 1.000149952 TO CONVERT TO GROUND DISTANCES)

Exhibit B

Deschutes County Land Use File Nos. 247-15-000168-CU/247-15-000169-SP

See attached.



Deschutes County Official Records
Nancy Blankenship, County Clerk

2017-15847



\$403.00

01112517201700158470710714

04/26/2017 02:52:56 PM

D-AG Cnt=1 Stn=2 TM
\$355.00 \$11.00 \$21.00 \$10.00 \$8.00

After Recording Return to:
Deschutes County
Community Development Department
117 NW Lafayette Street
Bend, OR 97701

IMPROVEMENT AGREEMENT (Solar Related Improvements)

This Improvement Agreement ("Agreement"), relating to the future removal of certain improvements described in Deschutes County Planning File Nos. 247-15-000168-CU/247-15-000169-SP, as modified by 247-16-000225-MC (the "Solar Facilities"), by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, ("County"), NORWEST ENERGY 2, LLC ("Applicant") and HARLAND AND JOLENE HAFTER (collectively, "Owner").

Deschutes County Planning Nos. 247-15-000168-CU/247-15-000169-SP, as modified by 247-16-000225-MC>

RECITALS:

WHEREAS, Owner is the owner of the real property subject to the approvals granted under File Nos. 247-15-000168-CU/247-15-000169-SP, as modified by 247-16-000225-MC; and

WHEREAS, pursuant to the approvals, the Applicant is required to remove all facilities installed pursuant to the approvals not later than eighteen (18) months after the facilities are no longer in continuous use; and

WHEREAS, the approval requires the Applicant to provide a bond or other security in the amount of One Million Dollars (\$1,000,000.00) to secure the obligation to remove the Solar Facilities.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promise hereinafter stated, as follows:

1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.
2. **Real Property Description.** The real property subject to this Agreement, hereinafter the "Real Property" is described on the attached **Exhibit A**.
3. **Exhibits.** The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:

3.1. **Exhibit A** – Legal description of the Real Property.

4. Removal of Solar Facilities.

- 4.1. Applicant or Owner shall remove the Solar Facilities in accordance with the approvals.
- 4.2. The removal obligations pursuant to the approvals is as follows: Removal of the facility in its entirety, including above-ground and buried facilities, no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

5. License to Enter and Remain on Property.

- 5.1. Owner hereby grants County and County's employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the removal of the Solar Facilities.
- 5.2. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify the Owner and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Agreement for the inspections of the removal of the Solar Facilities pursuant to Section 5.1.
- 5.3. If County determines that any portion of the Solar Facilities have not been removed to County's satisfaction in accordance with the approvals and within the timeframe established by the approvals, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the applicable portion of the removal work to be completed.

6. Right to Draw on Security.

- 6.1. After the first six (6) months of the period during which Applicant and Owner have to complete the removal of the Solar Facilities in accordance with the approvals, as described in Section 4.2, if Owner notifies County that Applicant has failed to contact Owner regarding the removal of the Solar Facilities, County may notify the institution issuing the Security identified in Section 11 in writing that Owner may immediately draw upon the Security (as defined in Section 11) and complete the removal work, using the funds from the Security to cover any and all costs and expenses associated with the completion of the removal work.

6.2. Upon failure of the Applicant or the Owner to complete the removal of the Solar Facilities in accordance with the approvals, as described in Section 4.2 above to County's satisfaction by the required deadline, County shall notify Applicant and Owner in writing of such failure.

6.2.1. Applicant and Owner shall have thirty (30) days from County's notification to complete the removal of the Solar Facilities or to remedy that portion of the removal work that is incomplete or unsatisfactory.

6.2.1.1. In the event the parties agree in writing that the completion cannot reasonably and through no fault of the Applicant and Owner, be accomplished in thirty (30) days, then the parties shall agree in writing to extend such time by a period of time as is reasonably necessary to allow completion so long as Applicant or Owner promptly commences and thereafter diligently pursues completion of the removal of the Solar Facilities work.

6.2.1.2. In no event shall the period for completion be extended beyond 180 days from the date of County's notification of failure to complete per Section 6.2.

6.2.2. Should Owner fail to complete the removal of the Solar Facilities work in accordance with the approvals within the time period referred to in Section 6.2.1., then County may cause incomplete or unsatisfactory removal work to be completed.

6.2.3. If County completes the removal work, or causes or directs same, County may draw upon the Security (as defined in Section 11) for any and all costs and expenses anticipated or incurred by County, as determined by County in the completion of the removal work. If County elects not to draw upon the Security and complete the removal work, Owner may draw upon the Security and complete the removal work, using the funds from the Security to cover any and all costs and expenses associated with the completion of the removal work.

6.3. In the event that (a) the County receives notice that the institution issuing the Security identified in Section 11 will terminate or not renew the Security such that the Security will not remain in place until the expiration of this Agreement; and (b) neither Applicant nor Owner has provided alternative Security reasonably satisfactory to the County, then the County shall have the right to declare a default under this Agreement and seek and obtain the proceeds of the Security. County will have ninety (90) days from the date it receives notice from the Surety (as defined in Section 11) that the Security will terminate or that Surety will not renew the Security in which to declare a default and draw on the Security.

7. **No County Guarantee.** County does not guarantee that the Solar Facilities will be removed in accordance with the approvals or this Agreement.

8. **License to Use Permits, Specifications and Plans.**

8.1. If County determines that any portion of the removal work has not been satisfactorily completed as specified by the deadline, subject to Applicant's

and Owner's notice and cure rights pursuant to Section 6.1.1, Applicant and Owner shall, upon request of the County, license and assign to County all of Applicant's and Owner's applicable permits, plans, specifications and other documents, if any, that are necessary or useful in the completion of, or related in any manner to, the removal of the Solar Facilities, that in County's sole discretion have not been completed as specified.

8.2. Applicant or Owner, as applicable, shall be responsible for providing within any contracts for supply of labor and materials used in connection with the removal of the Solar Facilities, that such contract rights are assignable by Owner.

8.3. Upon such request, Applicant and/or Owner, as applicable, shall transfer ownership and deliver physical possession of such Permits, plans, specifications, and other documents to the County.

8.4. County may sub-assign or license the rights referred to in this Section 8 for any purpose without further approval from Applicant or Owner.

9. No Third Party Beneficiaries.

9.1. County, Applicant and Owner are the only parties to this Agreement and are the only parties entitled to enforce its terms.

9.2. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

10. **Restoration of Monuments.** Applicant or Owner shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land that is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Applicant or the Owner or any of their respective agents, employees or independent contractors.

11. **Security for Removal of the Solar Facilities.** Applicant's Security shall consist of a bond issued in the amount of One Million Dollars (\$1,000,000.00) (the "Security") issued by Westchester Fire Insurance Company (the "Surety") in favor of the County.

12. Applicant's and Owner's Obligation For Costs.

12.1. Applicant and Owner expressly acknowledge, understand, and agree that this Agreement shall not relieve either from the obligation to complete and fully pay for the removal of the Solar Facilities as set forth in this Agreement.

12.2. Should Applicant and Owner fail to perform their responsibilities under this Agreement in any manner, Applicant and Owner agree to reimburse County for all costs and fees to complete the removal of the Solar Facilities as set forth in this Agreement.

13. **Release of Security or Obligation.** County shall release the Security within sixty (60) calendar days after the Solar Facilities have been removed in accordance with this Agreement.
14. **Shortfall in Security.**
 - 14.1. If the amount available to be drawn from the Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, County may apply the proceeds of the Security to the anticipated or actual costs and expenses of completion of the removal of the Solar Facilities.
 - 14.2. Applicant and Owner shall be responsible and liable for the difference between the anticipated or actual costs and expenses incurred by County and the amount of the remaining Security.
15. **Incidental Costs.** Without limiting the generality of the foregoing, if Applicant or Owner fails to complete the removal of the Solar Facilities as required by the approvals and this Agreement, subject to Owner's notice and cure rights pursuant to Section 6.1.1, then County's costs of obtaining the proceeds of the Security and/or completing the removal and all incidental costs (including but not limited to attorney fees and court costs) to the extent not covered by the Security, shall be added to the amount due County from the Applicant and the Owner, and shall be paid to County by the Applicant and/or the Owner, in addition to and with all other amounts due hereunder.
16. **Successors in Interest.**
 - 16.1. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property.
 - 16.2. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Real Property, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.
17. **Binding Authorization.** By signature on this Agreement, each signatory, signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.
18. **Expiration.**
 - 18.1. This Agreement shall expire at the conclusion of the removal of the Solar Facilities in accordance with the approvals and this Agreement or by the express written release of Owner by County from this Agreement granted as part of an approval for a change of use of the Real Property.
 - 18.2. Upon expiration, County shall provide Owner with a document in recordable form, formally evidencing such expiration and the parties agree to execute such document with sixty (60) days of receipt of such document by the other party.

19. **No Agency.**

19.1. It is agreed by and between the parties that neither Applicant nor Owner is carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Applicant and/or Owner completes performance under this Agreement nor does County have a right to exercise any control over the activities of the Applicant and/or the Owner.

19.2. Neither Applicant nor Owner is an officer, employee or agent of County as those terms are used in ORS 30.265.

20. **No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Applicant or Owner in connection with the approvals or the Real Property, and shall have no obligation with respect to Applicant's or Owner's debts or other liabilities of each and every nature.

21. **Liens.**

21.1. Applicant and/or Owner shall pay as due all claims for work done on and for services rendered or material furnished to the Real Property and shall keep the Real Property free from construction (materialman's or mechanic's) liens.

21.2. If both Applicant and Owner fail to pay any such claims or to discharge any lien, County may do so and collect the cost from the Applicant and/or Owner or the Security.

21.3. County's payment and satisfaction of any lien pursuant to subsection 21.2 shall not constitute a waiver of any right or remedy that County may have on account of Applicant's and Owner's failure to complete the removal of the Solar Facilities in accordance with the approvals and this Agreement or to recover such expenditures from Applicant and/or Owner or from the Security.

22. **Indemnification.** Applicant and Owner shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Applicant and/or Owner under this Agreement and on the Real Property; and further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury.

23. **Limitation of Liability.** This Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.

24. **Attorney Fees and Costs.** In the event an action, suit, or any other proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, to observe any of the terms of this Agreement, or the interpretation thereof, the prevailing party shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.

25. **Waiver.**

25.1. Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.

- 25.2. No waiver may be enforced against the County unless such waiver is in writing and signed by the County.
26. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**
- 26.1. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.
- 26.2. Any provisions herein, which would conflict with the law, are deemed inoperative to that extent.
- 26.3. Additionally, Applicant and Owner shall comply with any requirements, conditions or limitations arising under the any Federal or State law, statute, rule, regulation, executive order and policy applicable to the removal of the Solar Facilities.
- 26.4. If this Agreement is in any manner construed to constitute the lending of the County's credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.
27. **No Inducement.** No representations, statements, warranties have induced the making and execution of this Agreement, or Agreements other than those herein expressed.
28. **Governing Law.**
- 28.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- 28.2. Any claim, action, suit or proceeding (collectively, "Claim") between County, on the one hand, and Applicant and/or Owner on the other hand, that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Eugene, Oregon.
- 28.3. Owner, by signing below, hereby consents to the in personam jurisdiction of said courts. The parties agree that the UN Convention on International Sales of Goods shall not apply.
29. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held void, invalid unenforceable.
30. **Counterparts.**
- 30.1. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 30.2. Each copy of this Agreement so executed shall constitute on original.

- 30.3. If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement and each counterpart shall be noted on the recorded plat map.

31. Notice.

- 31.1. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Applicant, Owner or County at the address set forth below or to such other addresses as either party may hereafter indicate in writing.
- 31.2. Delivery may be by personal delivery, or mailing the same, postage prepaid.
- 31.3. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 31.4. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class mail or delivered as follows:

To Owner:
Harland Hafter
62435 Erickson Road
Bend, Oregon 97701

To County:
County Administrator
Deschutes County Administration
1300 NW Wall Street, Ste 200
Bend, Oregon 97703

To Applicant:
NorWest Energy 2, LLC
3250 Ocean Park Blvd., Suite 355
Santa Monica, California 90405

- 31.6. Notices shall be deemed delivered upon the earlier of actual delivery or refusal of a party to accept delivery thereof, which refusal shall include a party ignoring attempted delivery; *provided, however*, that notices sent by email shall be deemed given on the date delivered if delivered before 5:00 pm Pacific Time as shown on an e-mail record and if simultaneously transmitted by another means allowed by this Section 31.
- 31.7. Either party may change its address for notices by giving written notice to the other given in accordance with this Section 31.
- 31.8. Counsel for a party may give notices on behalf of such party.

32. **Time is of the Essence.** Time is of the essence of each and every provision of this Agreement.

33. Captions.

- 33.1. The captions contained in this Agreement were inserted for the convenience of reference only.
- 33.2. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

34. Merger Clause.

- 34.1. This Agreement and the attached exhibits constitute the entire agreement between the parties and supersede any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral, concerning the subject matters of this Agreement which are not fully expressed herein.
- 34.2. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement.
- 34.3. This Agreement shall bind all parties and its terms may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by all parties.
- 34.4. Except as otherwise expressly provided herein, any written waiver, consent, modification or change shall be effective only when in writing and signed by the parties in the specific instance and for the specific purpose given.

[SIGNATURES CONTINUED ON NEXT PAGE]

DATED this 17 day of April, 2017


BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


TAMMY BANEY, Chair


ANTHONY DEBONE, Vice-Chair


PHIL HENDERSON, Commissioner


ATTEST:

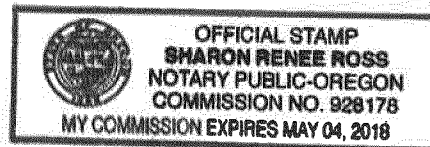

Recording Secretary

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appeared Tammy Baney, Anthony DeBone, and Phil Henderson, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

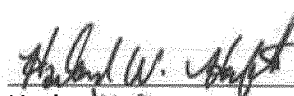
DATED this 17 day of April, 2017

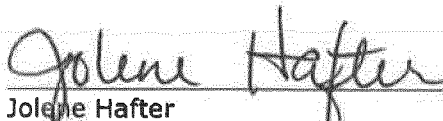

Notary Public, State of Oregon
My Commission Expires: 5-4-18



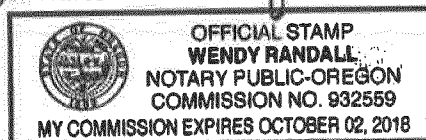
OWNER:

Dated this 21st of April, 2017


Harlan Hafter



Jolene Hafter

STATE OF OREGON)
) ss.
County of Deschutes)



Before me, a Notary Public, personally appeared Harlan Hafter and Jolene Hafter and executed the foregoing instrument.

DATED this 21st day of April, 2017


Notary Public, State of Oregon
My Commission Expires: 10/02/18

APPLICANT:Dated this 24th of APRIL,
2017**NORWEST ENERGY 2, LLC**By: [Signature]Name: Jerome O'Brien
Authorized Person

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

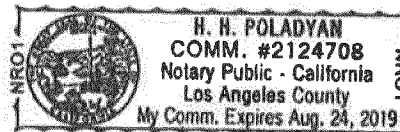
County of Los Angeles

On APRIL 24, 2017 before me, H. H. POLADYAN, NOTARY PUBLIC
(insert name and title of officer)

personally appeared JEROME O'BRIEN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]

(Seal)

EXHIBIT A
LEGAL DESCRIPTION OF THE REAL PROPERTY

That certain real property located in the City of Bend, Deschutes County, Oregon, legally described as:

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST ONE-QUARTER (SE1/4) OF SECTION 25, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM A FOUND 3-1/4" ALUMINUM CAP STAMPED "DESCHUTES COUNTY" MARKING THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 25; THENCE ALONG THE WEST LINE OF SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (SW1/4 SE1/4) CORNER, NORTH 00°33'50" EAST, 30.00 FEET TO A FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "S.C.E. & S.", SAID POINT BEING THE **POINT OF BEGINNING** WHICH LIES ON THE NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE LEAVING SAID NORTH RIGHT-OF-WAY, CONTINUING ALONG SAID WEST LINE OF THE SW1/4 SE1/4, NORTH 00°33'50" EAST, 1288.23 FEET TO A FOUND 5/8" IRON ROD WITH NO CAP MARKING THE CENTER-SOUTH ONE-SIXTEENTH (CS 1/16) CORNER; THENCE LEAVING SAID WEST LINE OF THE SW1/4 SE1/4, ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (NW1/4 SE1/4) CORNER, NORTH 00°35'10" EAST, 1317.95 FEET TO A FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "OMAN PLS 702", LEANING SOUTHEASTERLY 0.25 FEET, MARKING THE CENTER-QUARTER (C 1/4) CORNER OF SAID SECTION 25; THENCE LEAVING SAID WEST LINE OF THE NW1/4 SE1/4, ALONG THE NORTH LINE SAID NW1/4 SE1/4, SOUTH 89°04'08" EAST, 732.95 FEET TO A POINT WESTERLY TO AND 285 FEET OF OFF (WHEN MEASURED AT RIGHT ANGLES) THE EASTERLY RIGHT-OF-WAY LINE OF THE 125 FOOT WIDE BONNEVILLE POWER ADMINISTRATION (BPA) REDMOND-KLAMATH FALLS ELECTRICAL TRANSMISSION LINE EASEMENT; THENCE LEAVING SAID NORTH LINE OF NW1/4 SE1/4, ALONG A LINE 285 FEET WESTERLY AND PARALLEL TO SAID EASTERLY BPA EASEMENT LINE, SOUTH 01°18'06" WEST, 2329.67 FEET; THENCE SOUTH 08°51'00" WEST, 24.03 FEET; THENCE LEAVING SAID PARALLEL LINE, EAST, 288.23 FEET TO A POINT ON SAID EASTERLY BPA EASEMENT LINE; THENCE ALONG SAID EASTERLY BPA EASEMENT LINE, NORTH 01°18'06" EAST, 2348.79 FEET TO A POINT ON SAID NORTH LINE OF NW1/4 SE1/4; THENCE LEAVING SAID EASTERLY BPA EASEMENT LINE, ALONG SAID NORTH LINE OF NW1/4 SE1/4, SOUTH 89°04'08" EAST, 307.61 FEET TO A FOUND 5/8" IRON ROD WITH NO CAP MARKING THE CENTER-EAST ONE-SIXTEENTH (CE 1/16) CORNER; THENCE LEAVING SAID NORTH LINE, ALONG THE EAST LINE OF SAID NW1/4 SE1/4, SOUTH 00°30'21" WEST, 1316.69 FEET TO AN ANGLE POINT IN FENCE LINES AT THE SOUTH-EAST ONE-SIXTEENTH (SE 1/16) CORNER; THENCE LEAVING SAID EAST LINE, ALONG THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (SE1/4 SE1/4), SOUTH 89°07'25" EAST, 485.25 FEET; THENCE LEAVING SAID NORTH LINE OF SE1/4 SE1/4, SOUTH 00°00'01" WEST, 167.72 FEET; THENCE SOUTH 30°25'43" EAST, 96.38 FEET; THENCE SOUTH 02°54'34" WEST, 1037.05 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY LINE OF NEFF ROAD; THENCE ALONG SAID NORTH RIGHT-OF-WAY, BEING 30.00 FEET NORTH AND PARALLEL TO THE SOUTH LINE OF SAID SE1/4 OF SECTION 25, NORTH 89°11'09" WEST, 492.62 FEET TO A POINT ON THE LINE COMMON TO SAID SE1/4 SE1/4 AND SW1/4 SE1/4; THENCE LEAVING SAID COMMON LINE AND CONTINUING ALONG SAID NORTH RIGHT-OF-WAY, NORTH 89°10'36" WEST, 377.64 FEET TO A POINT ON SAID EASTERLY BPA EASEMENT LINE; THENCE LEAVING SAID NORTH RIGHT-OF-WAY OF NEFF ROAD ALONG SAID EASTERLY BPA EASEMENT LINE, NORTH 08°51'00" EAST, 156.86 FEET; THENCE LEAVING SAID EASTERLY BPA EASEMENT LINE, WEST, 288.43 FEET TO A POINT 285 FEET WESTERLY AND PARALLEL TO SAID EASTERLY BPA EASEMENT LINE; THENCE ALONG SAID PARALLEL LINE, SOUTH 08°51'00" WEST, 152.67 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE LEAVING SAID PARALLEL LINE, ALONG

{00070616;5}

EXHIBIT A

Deschutes County Document No. _____

SAID NORTH RIGHT-OF-WAY OF NEFF ROAD, NORTH 89°11'09" WEST, 663.41 FEET TO THE **POINT OF BEGINNING.**

EXCLUDING THEREFROM: BEGINNING FROM A POINT WHICH BEARS NORTH 22°53'48" EAST, 1130.77 FEET FROM SAID POINT OF BEGINNING ON THE NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE NORTH 85°06'00" WEST, 310.28 FEET; THENCE NORTH 00°34'46" EAST, 333.08 FEET TO A POINT OF CURVATURE; THENCE ALONG A 120.43 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 163.55 FEET, THROUGH A CENTRAL ANGLE OF 77°48'38" TO A POINT OF NON-TANGENCY; THENCE NORTH 00°34'48" EAST, 237.57 FEET; THENCE SOUTH 88°03'19" EAST, 408.97 FEET TO A POINT WHICH BEARS SOUTH 26°15'04" EAST, 961.65 FEET FROM SAID C 1/4 OF SECTION 25; THENCE SOUTH 00°56'34" WEST, 702.01 FEET TO THE POINT OF BEGINNING OF THIS EXCLUSION DESCRIPTION.

THIS PARCEL OF LAND CONTAINS 78.09 ACRES, MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.

BEARINGS ARE BASED ON OREGON STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 83(2011), EPOCH 2010, INTERNATIONAL FEET (DISTANCES SHOWN HEREON ARE GRID DISTANCES, MULTIPLY BY A FACTOR OF 1.000149952 TO CONVERT TO GROUND DISTANCES)

**Westchester Fire Insurance Company
Solar Facility Decommissioning Bond**

KNOW ALL MEN BY THESE PRESENTS: That **CCP NI Managing Member 4, LLC**, a Delaware limited liability company (hereinafter called the Principal), and **Westchester Fire Insurance Company** (hereinafter called the Surety), a corporation duly organized under the laws of the State of **Pennsylvania**, are held and firmly bound unto **Deschutes County, a political subdivision of the State of Oregon** (hereinafter called the Obligee), in the full and just sum of **One Million and No/100 Dollars (\$1,000,000.00)**, the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and each of their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee has issued to NorWest Energy 2, LLC ("NorWest"), an affiliate of Principal, and to the owner of real property located in **Deschutes County, Oregon, and legally described on the attached Exhibit A, a land use permit (Deschutes County Land Use File Nos. 247-15-000168-CU/247-15-000169-SP, as modified by 247-16-000225-MC** related to (real property located at **62435 Erickson Road, Bend, Deschutes County, Oregon**) and as a requirement of such permit and NorWest's lease of such real property from its owner, NorWest is obligated to remove the Solar Facility equipment from property located at **(62435 Erickson Road, Bend, Deschutes County, Oregon)** upon discontinuance of service in accordance with the terms of the land use permit and in accordance with the terms of that certain Improvement Agreement executed pursuant to the permit, including but not limited to Condition 12 of Deschutes County Land Use File Nos. 247-15-000168-CU/247-15-000169-SP (a copy of which is attached hereto as **Exhibit B**).

WHEREAS, the Obligee has agreed to accept this bond (provided it remains in effect for the time period identified in Condition 12) as security for performance of NorWest's obligations under said permit during the time period this bond remains in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if NorWest shall perform its obligations under said land use permit, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise cancelled as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

1. In the event of default by NorWest, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This bond may be terminated or canceled by surety by giving not less than ninety (90) days written notice to the Obligee, stating therein the effective date of such termination or cancellation. Such notice shall not limit or terminate any obligations resulting from default by NorWest that may have accrued under this bond as a result of default by NorWest prior to the

effective date of such termination, including any failure of NorWest or Principal to secure County approved replacement surety.

3. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.
4. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
5. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
6. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall prevail in all respects.
7. It is expressly understood and agreed that this bond does not cover or guarantee rent or lease payments of any kind.
8. This bond shall not bind the Surety unless the bond is accepted by the Obligee. If the Obligee objects to any language contained herein, within 30 days of the date this bond is signed and sealed by the Surety, Obligee shall return this bond, certified mail or express courier, to the Surety at its address at:

Westchester Fire Insurance Company
436 Walnut Street, P.O. Box 1000
Philadelphia, PA 19106

Failure to return the bond as described above shall constitute Obligee's acceptance of the terms and conditions herein.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this day of , 2017.

CCP NI Managing Member 4, LLC
a Delaware limited liability company

By: _____

Westchester Fire Insurance Company

By: _____
Jeremy C. Rose, Attorney-in-Fact

Exhibit A
Legal Description of Real Property

That certain real property located in the City of Bend, Deschutes County, Oregon, legally described as follows:

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST ONE-QUARTER (SE1/4) OF SECTION 25, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM A FOUND 3-1/4" ALUMINUM CAP STAMPED "DESCHUTES COUNTY" MARKING THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 25; THENCE ALONG THE WEST LINE OF SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (SW1/4 SE1/4) CORNER, NORTH 00°33'50" EAST, 30.00 FEET TO A FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "S.C.F. & S.", SAID POINT BEING THE **POINT OF BEGINNING** WHICH LIES ON THE NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE LEAVING SAID NORTH RIGHT-OF-WAY, CONTINUING ALONG SAID WEST LINE OF THE SW1/4 SE1/4, NORTH 00°33'50" EAST, 1288.23 FEET TO A FOUND 5/8" IRON ROD WITH NO CAP MARKING THE CENTER-SOUTH ONE-SIXTEENTH (CS 1/16) CORNER; THENCE LEAVING SAID WEST LINE OF THE SW1/4 SE1/4, ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (NW1/4 SE1/4) CORNER, NORTH 00°35'10" EAST, 1317.95 FEET TO A FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "OMAN PLS 702", LEANING SOUTHEASTERLY 0.25 FEET, MARKING THE CENTER-QUARTER (C 1/4) CORNER OF SAID SECTION 25; THENCE LEAVING SAID WEST LINE OF THE NW1/4 SE1/4, ALONG THE NORTH LINE SAID NW1/4 SE1/4, SOUTH 89°04'08" EAST, 732.95 FEET TO A POINT WESTERLY TO AND 285 FEET OF OFF (WHEN MEASURED AT RIGHT ANGLES) THE EASTERLY RIGHT-OF-WAY LINE OF THE 125 FOOT WIDE BONNEVILLE POWER ADMINISTRATION (BPA) REDMOND-KLAMATH FALLS ELECTRICAL TRANSMISSION LINE EASEMENT; THENCE LEAVING SAID NORTH LINE OF NW1/4 SE1/4, ALONG A LINE 285 FEET WESTERLY AND PARALLEL TO SAID EASTERLY BPA EASEMENT LINE, SOUTH 01°18'06" WEST, 2329.67 FEET; THENCE SOUTH 08°51'00" WEST, 24.03 FEET; THENCE LEAVING SAID PARALLEL LINE, EAST, 288.23 FEET TO A POINT ON SAID EASTERLY BPA EASEMENT LINE; THENCE ALONG SAID EASTERLY BPA EASEMENT LINE, NORTH 01°18'06" EAST, 2348.79 FEET TO A POINT ON SAID NORTH LINE OF NW1/4 SE1/4; THENCE LEAVING SAID EASTERLY BPA EASEMENT LINE, ALONG SAID NORTH LINE OF NW1/4 SE1/4, SOUTH 89°04'08" EAST, 307.61 FEET TO A FOUND 5/8" IRON ROD WITH NO CAP MARKING THE CENTER-EAST ONE-SIXTEENTH (CE 1/16) CORNER; THENCE LEAVING SAID NORTH LINE, ALONG THE EAST LINE OF SAID NW1/4 SE1/4, SOUTH 00°30'21" WEST, 1316.69 FEET TO AN ANGLE POINT IN FENCE LINES AT THE SOUTH-EAST ONE-SIXTEENTH (SE 1/16) CORNER; THENCE LEAVING SAID EAST LINE, ALONG THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER (SE1/4 SE1/4), SOUTH 89°07'25" EAST, 485.25 FEET; THENCE LEAVING SAID NORTH LINE OF SE1/4 SE1/4, SOUTH 00°00'01" WEST, 167.72 FEET; THENCE SOUTH 30°25'43" EAST, 96.38 FEET; THENCE SOUTH 02°54'34" WEST, 1037.05 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY LINE OF NEFF ROAD; THENCE ALONG SAID NORTH RIGHT-OF-WAY, BEING 30.00 FEET NORTH AND PARALLEL TO THE SOUTH LINE OF SAID SE1/4 OF SECTION 25, NORTH 89°11'09" WEST, 492.62 FEET TO A POINT ON THE LINE COMMON TO SAID SE1/4 SE1/4 AND SW1/4 SE1/4; THENCE LEAVING SAID COMMON LINE AND CONTINUING ALONG SAID NORTH RIGHT-OF-WAY, NORTH 89°10'36" WEST, 377.64 FEET TO A POINT ON SAID EASTERLY BPA EASEMENT LINE; THENCE LEAVING SAID NORTH RIGHT-OF-WAY OF NEFF ROAD ALONG SAID EASTERLY BPA EASEMENT LINE, NORTH 08°51'00" EAST, 156.86 FEET; THENCE LEAVING SAID EASTERLY BPA EASEMENT LINE, WEST, 288.43 FEET TO A

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EXCLUDING THEREFROM: BEGINNING FROM A POINT WHICH BEARS NORTH 22°53'48" EAST, 1130.77 FEET FROM SAID POINT OF BEGINNING ON THE NORTH RIGHT-OF-WAY OF NEFF ROAD; THENCE NORTH 85°06'00" WEST, 310.28 FEET; THENCE NORTH 00°34'46" EAST, 333.08 FEET TO A POINT OF CURVATURE; THENCE ALONG A 120.43 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 163.55 FEET, THROUGH A CENTRAL ANGLE OF 77°48'38" TO A POINT OF NON-TANGENCY; THENCE NORTH 00°34'48" EAST, 237.57 FEET; THENCE SOUTH 88°03'19" EAST, 408.97 FEET TO A POINT WHICH BEARS SOUTH 26°15'04" EAST, 961.65 FEET FROM SAID C 1/4 OF SECTION 25; THENCE SOUTH 00°56'34" WEST, 702.01 FEET TO THE POINT OF BEGINNING OF THIS EXCLUSION DESCRIPTION.

THIS PARCEL OF LAND CONTAINS 78.09 ACRES, MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.

BEARINGS ARE BASED ON OREGON STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 83(2011), EPOCH 2010, INTERNATIONAL FEET (DISTANCES SHOWN HEREON ARE GRID DISTANCES, MULTIPLY BY A FACTOR OF 1.000149952 TO CONVERT TO GROUND DISTANCES)

Exhibit B
Deschutes County Land Use File Nos. 247-15-000168-CU/247-15-000169-SP

See attached.

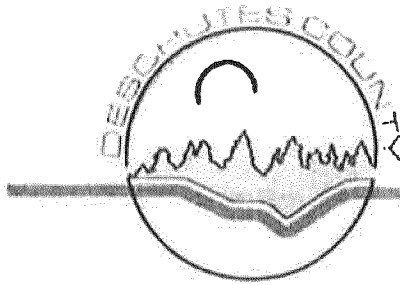


EXHIBIT B

Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

HEARINGS OFFICER DECISION

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

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

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

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

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

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

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

STAFF REVIEWER: Chris Schmoyer, Associate Planner

HEARINGS OFFICER: Dan R. Olsen

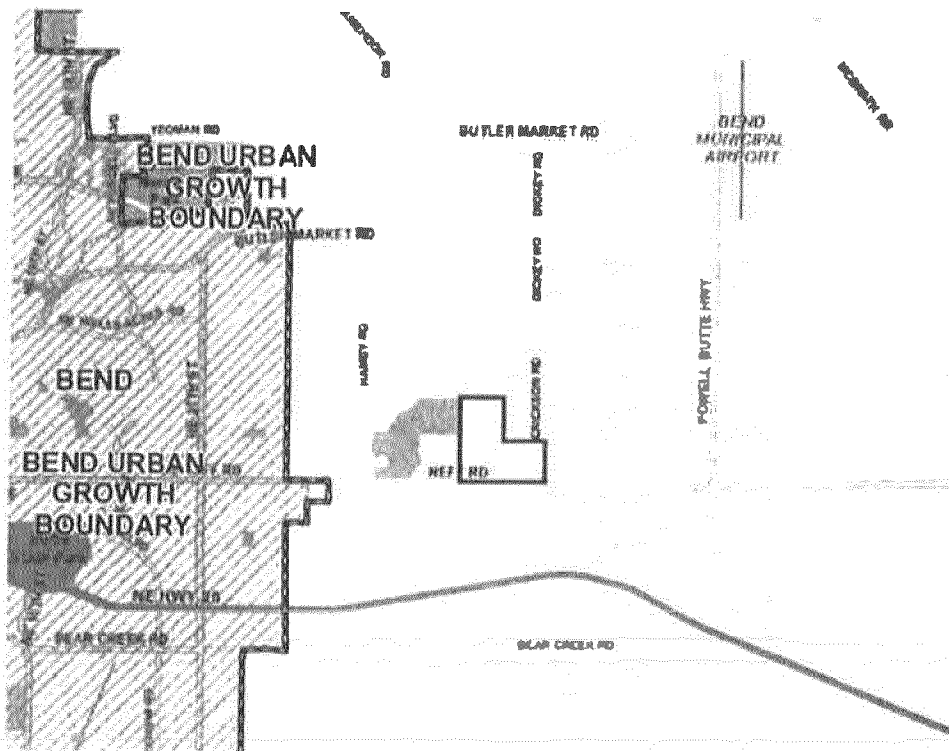
SUMMARY OF DECISION: Application Nos. 247-15-000168-CU / 169-SP are APPROVED subject to conditions of approval imposed herein and based on the findings and conclusions below.

Quality Services Performed with Pride

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

II. BASIC FINDINGS:

- A. LOCATION:** The subject property has an assigned property address of 62435 Erickson Road, Bend and is also identified as Tax Lot 501 on Deschutes County Assessor's Map 17-12-25.

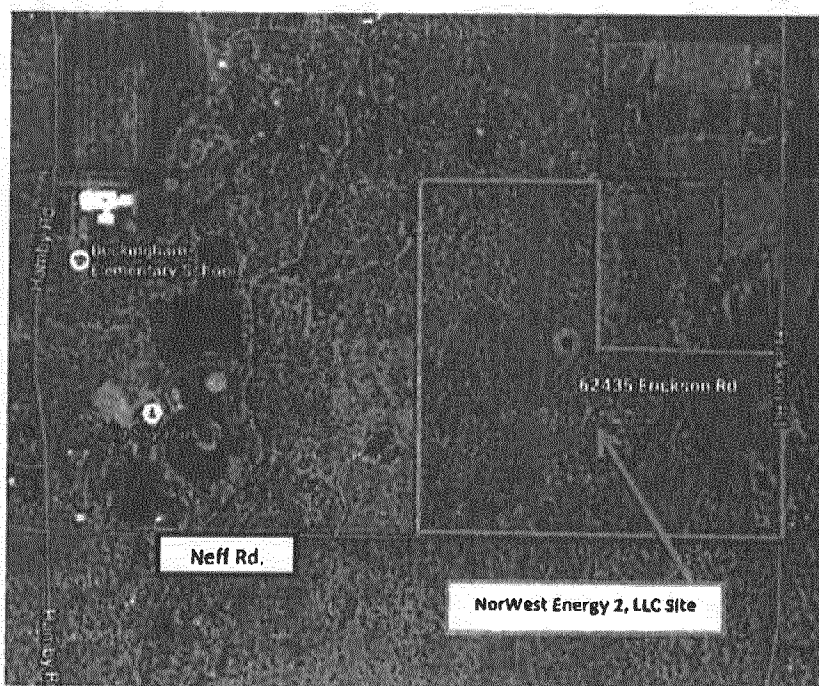


Source: Deschutes County Geographic Information System

- B. ZONING:** The subject property is zoned Exclusive Farm Use – Tumalo/Redmond/Bend subzone (EFU-TRB), and is also within the Airport Safety (AS) Combining Zone associated with the Bend Municipal Airport. An approximate 10-acre portion of the property near the intersection of Neff Road and Erickson Road, is zoned Multiple Use Agricultural (MUA-10). The EFU-zone portion of the property is designated agriculture and the MUA-10 zoned portion is designated Rural Residential Exception Area, by the Deschutes County Comprehensive Plan.
- C. PROPOSAL:** The applicant requests approval for a conditional use permit and site plan review to allow the development of a solar voltaic array (solar farm) on a portion of the subject property zoned Exclusive Farm Use-Tumalo/Redmond/Bend (EFU-TRB)

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

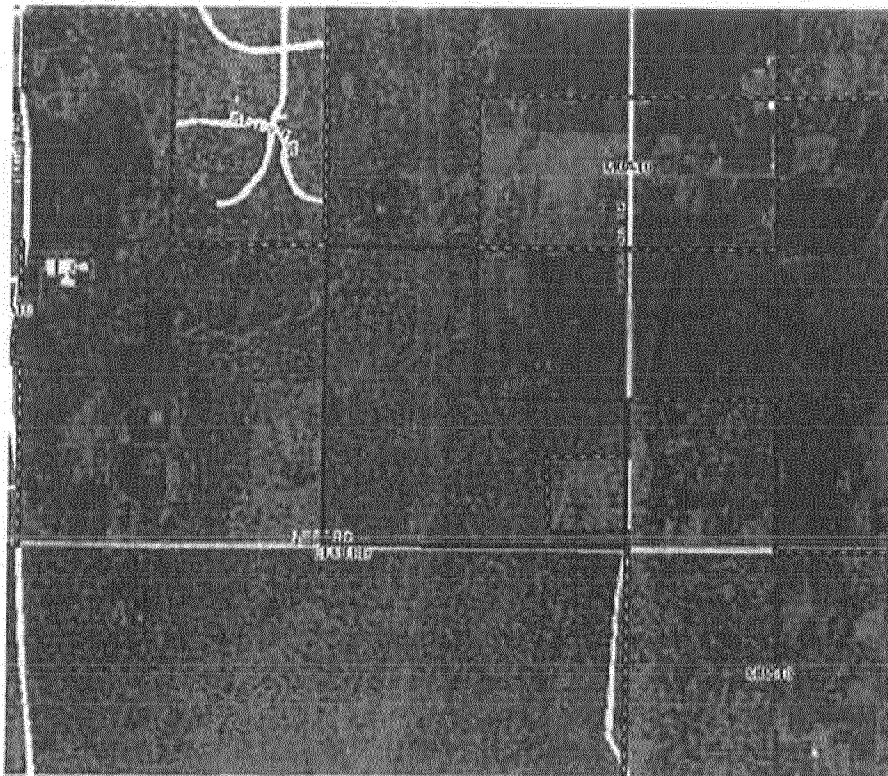
- D. **SITE DESCRIPTION:** The subject property is approximately 118.71 acres in size and has a fairly level topography. The property is bounded by Erickson Road to the east and Neff Road to the south. The property is located approximately three-fourths of a mile east of the Bend City Limits Boundary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



Source: Google Maps 2015

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

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



Source: Deschutes County Geographic Information System

F. HEARING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. **APPLICABLE STANDARDS:**

Title 18, Deschutes County Zoning Ordinance

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

1. **Section 18.16.030. Conditional Uses Permitted.**

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

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

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

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

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

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

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

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

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

2. Section 18.16.060, Dimensional Standards.

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

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

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

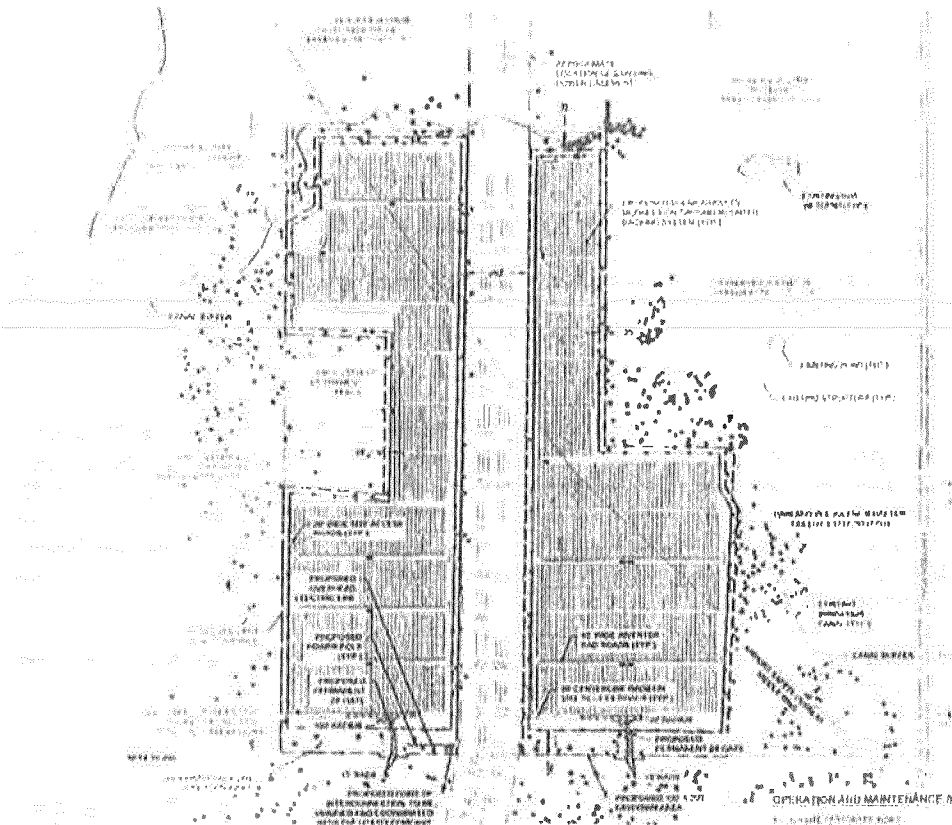
3. Section 18.16.070, Yards.

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

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

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

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



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

Chapter 18.116. SUPPLEMENTARY PROVISIONS

1. 18.116.030. Off Street Parking and Loading.

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

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

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

Chapter 18.124, Site Plan Review

1. Section 18.124.010. Purpose

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

2. Section 18.124.020. Elements of Site Plan

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

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

3. Section 18.124.030. Approval Required

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

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

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

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

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

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

4. Section 18.124.060, Approval Criteria

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

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

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

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

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

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

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

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

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

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

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

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

a) Install the 6 foot cyclone fence with tan/sand or green colored mesh screening. At all times, the fence and mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. At all times, the fence and mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.

b) Plant the perimeter shrubs/trees in the locations shown on the approved Landscape Plan, except as modified above. They shall be a minimum of 6 feet at the time of planting. All plantings shall be kept alive and attractive.

c) No panel shall exceed 8' in height at its maximum extension in the area that is 100' more or less from the property lines. This condition is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In no event shall anything other than the power poles exceed 12' from existing grade.

See Conditions of Approval Nos. 5-7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

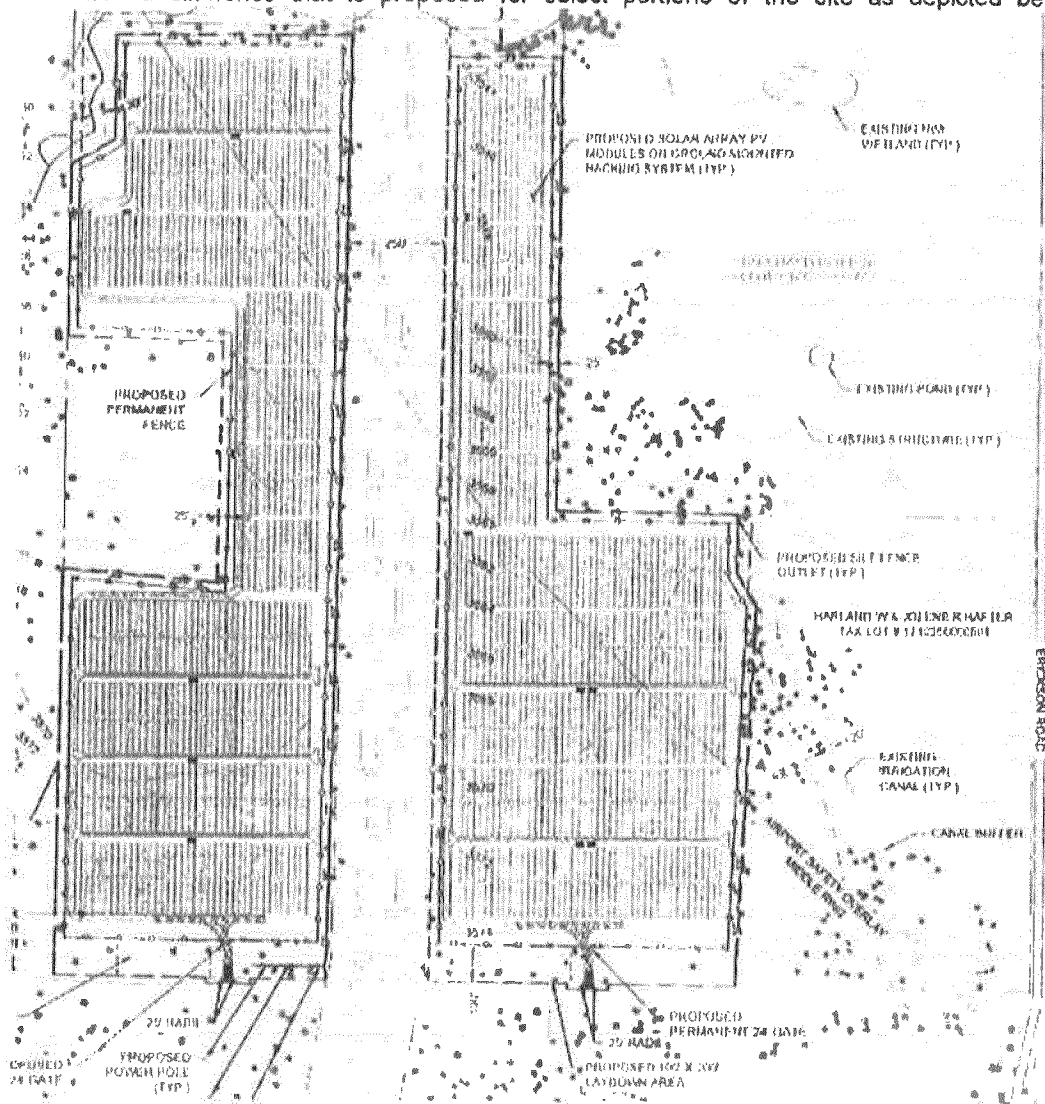
F. *Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.*

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Section 18.124.070, Required Minimum Standards

B. Required Landscaped Areas

1. **The following landscape requirements are established for multi-family, commercial and industrial developments, subject to site plan approval:**
 - a. **A minimum of 15 percent of the lot area shall be landscaped.**
 - b. **All areas subject to the final site plan and not otherwise improved shall be landscaped.**

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

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

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

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

C. Nonmotorized Access.

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

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

2. Pedestrian Access and Circulation

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

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

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

CHAPTER 18.128, CONDITIONAL USES

1. Section 18.128.015, General Standards Governing Conditional Uses

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

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

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

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

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

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

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

2. Adequacy of transportation access to the site; and

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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CU
To applicant's Consultant

EXHIBIT F

Podd, Cally M

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

Todd/Calanetta

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hearings Officer: The aesthetic component of this standard is addressed above. As regards, property values, I am not convinced that this standard is intended to address

property values, at least in the absence of strong evidence of significant or unusual impacts. My experience is that few codes address property values and, if that is intended, the language should be clear. Nearly all conditional uses may have some negative impact on property values, particularly with a site that has for a long time been essentially vacant and, to some extent, serves as open space for the area.

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

As regards the Park, the Park District has indicated that, other than the concern about fencing the cave area, addressed above, and a desire for trail connections, it has no concerns regarding the proposal. See e.g. June 18, 2015 letter. I find this convincing.

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

2. Adequacy of transportation access to the site; and

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

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

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

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

2. Section 18.128.040, Specific Use Standards

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

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

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

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

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

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

CHAPTER 18.80, AIRPORT SAFETY COMBINING ZONE

1. Section 18.80.028, Height Limitations

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

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

FINDING: The property is within the Airport Safety (AS) Combining Zone of the Bend Municipal Airport and is sited approximately 9,000 feet from the airport runway. The property is outside the approach and transition surfaces, but within the horizontal surface of the Bend Municipal Airport. The site is partially within the conical and secondary conical surfaces. The applicant indicates that except for the proposed power poles, the proposed array and related facilities will be a maximum of twelve (12) feet in height, well under 35 feet.

Staff was unable to locate a reference to the height of the proposed power poles in the submitted plans and application materials. However, it is staff's opinion, that the proposed power poles are accessory to the proposed solar panels and inverters, thus included in the conditional use permit review. As long as these poles are below a height of 200 feet, they are

[illegible]

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

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

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

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

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

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

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

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

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

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

Applicant Response: As described above, the proposed materials are non-reflective. Photographs are enclosed as **Exhibit C**. As noted in the FAA Technical Guidance for Evaluating Selected Solar Technologies on Airports referenced above and attached as **Exhibit D**, the panels are designed to absorb rather than reflect light. The reflectivity of the panels is significantly lower than that of bare soil or vegetation. See also the "Study of the Hazardous Glare Potential to Aviators from Utility-Scale Flat-Plate Photovoltaic Systems" published by the International Scholarly Research Network, which concluded that "the potential for hazardous glare from flat-plate PV systems is similar to that of smooth water and not expected to be a hazard to air navigation. A copy of this paper is also attached as **Exhibit D**. As noted by the FAA letters the applicant submitted, the FAA has no concerns about the proposed array posing any risk to aircraft.

Submitted with the application is an FAA letter, issued March 26, 2015, concluding that aeronautical study no. 2015-ANM-169-OE, associated with the site, is determined to have no aeronautical hazard to air aviation. Additionally, comments from Gary Judd, Manager for Bend Municipal Airport, indicate he does not see any issues with the proposal.

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

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

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

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

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

Hearings Officer: At the hearing there was much debate about the potential for glare or similar impacts on aviation. Much of this was generalized. The most compelling evidence came from Gary E. Miller, President of the Central Oregon Chapter of the Oregon Pilot's Association

and a member of other pilot associations and clubs. He indicated significant initial skepticism and concerns on his part and that of other pilots. He supplemented his testimony with a July 1, 2015 email, concluding that, "if the projects are built as currently specified, with a requirement to mitigate unforeseen glare with programming, the CO-OPA and the OPA have no objection..." In particular, his analysis concluded that any noticeable "uplift" will be outside the normal airport traffic area. As regards glare, he reran the SGHAT with "more accurate data" that any potential glare would be south of the FAA recommended air traffic pattern and of a lesser intensity" than anticipated and, therefore, not a significant concern. To a certain extent this contradicts the applicant's assertion that there effectively is no glare, but the convincing evidence is that any glare is minimal and not a hazard.

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

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

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

- E. Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.**

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

Hearings Officer: There was no evidence suggesting any interference.

- F. Limitations and Restrictions on Allowed Uses in the RPZ, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table I, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein**

described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.

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

3. Section 18.80.054, Conditional Uses.

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

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

4. Section 18.80.064, Procedures

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

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

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

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

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

A *Federal and State Notice.*

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

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

DESCHUTES COUNTY COMPREHENSIVE PLAN

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

Deschutes County Policies

The applicant notes that some of the opponents to the proposal claim to be in favor of renewable energy and favoring proposals such as the proposed array, but they believe that the project should be sited somewhere else. The problem with "somewhere else" is that somewhere else will not work as well operationally and will risk greater impacts on surrounding properties or wildlife. It is not feasible to place a large solar farm within a city's limits because of the high cost of land and the limits on expanding urban growth boundaries in Oregon. It is not feasible to place a large solar farm in a more rural area because in those areas, there would be significant impacts on wildlife. Locating the solar farm in this proposed location is the best way to balance impacts with our collective, societal need – and desire – for renewable energy.

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

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

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

OREGON ADMINISTRATIVE RULES:

OAR 660-033-0120

Uses Authorized on Agricultural Lands

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

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

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

(3) "*" — The use is not allowed.

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

HV Farmland	All Other	USES
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Utility/Solid Waste Disposal Facilities

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

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

OAR 660-033-0130

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

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

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

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

Hearings Officer: OAR chapter 660 regulates Agricultural Land, with specific provisions governing a "photo-voltaic solar power generation facility" as defined at OAR 660-030-0130(e). The proposal falls squarely within this definition. As staff notes, "Photovoltaic solar power generation facility" includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line and all necessary grid integration equipment.

These facilities are further subject to review in accordance with OAR 660-033-0130 (38). Beyond that, however, the OAR is ambiguous as to exactly what standards apply to the facts present in this proposal. Although the Rule has been cited in case law, including in the context of solar power facilities, I found and have been cited to no particularly helpful interpretive authority.

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

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

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

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

Obviously, the proposal exceeds these limits for high value and arable lands. In a nutshell, the applicant's position is that the size of facility that may be permitted is a function of whether it is "located on high value farmland soils" and whether it is located on arable land/soils. If it is not on "high-value soils" and not on arable land/soils, the proposal is well within the 320 acre limit. The applicant contends that the proposal is neither on high value soils nor arable land/soils, accordingly, the 320 acre limit controls. (Applicants rebuttal dated Aug. 4, 2015)

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

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

The applicant argues that the context and legislative history support its position. First, it notes that OAR 660-033-02020 expressly states that "for purposes of this division", the definitions in ORS 197.015, the Goals and OAR 660 itself apply. It goes on to specifically define "high value farmland" as "land in a tract composed predominately of soils that are...not irrigated and classified prime, unique, Class I or II" or "irrigated and classified prime Class I or II". This argument is consistent with the general rule that a more specific definition controls over a more general one. In making this argument, however, the applicant misreads the cross-reference in (f) to include a reference to "soils" described at ORS 195.300 (10). But soils are not, in fact, mentioned in either the (f) cross-reference or ORS 195.300 (10) (c) (B).

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

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

historic irrigation. Reading the rule on its face suggests the rather incongruous conclusion that there are actually three mutually exclusive classifications:

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

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

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

Modern court decisions make it clear that they are not to insert what has been omitted or omit what has been inserted and, if possible, must give effect to all. See e.g. ORS 174.010. This is particularly true where, as here, other portions of the rule expressly refer to "soils". Courts generally will apply the doctrine that express mention of a term in one place but not another implies an intent to draw a distinction, rather than assume it is an oversight. The applicant essentially would insert into OAR 660-033-0120 (38)(f) the word "soils". This I cannot do. It does not make the arable/nonarable distinctions in the Rule inapplicable, although it significantly impacts their effect. The critical inside/outside irrigation district classification described above may not appear to make much policy sense but is not so contradictory as to be impossible to apply and give effect.

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

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

OAR 660-033-0020 (2)(a) defines Commercial Agricultural Enterprise as:

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

It is undisputed that the property is not now used for a commercial agricultural enterprise. Nor has it been so used for many years and even then apparently not particularly successfully. Thus, the project would not preclude an "existing" such enterprise. Preclude is defined in the

online Merriam-Webster as: to make (something) impossible; to prevent (something) from happening; to prevent (someone) from doing something; to make impossible by necessary consequence : rule out in advance. Certainly, one cannot both have a solar facility covering much of the site and a commercial agricultural enterprise at the same time. But I read the term 'preclude' in this context as meaning that the proposed development is what prevents a commercial agricultural enterprise from occurring or plausibly occurring. In this case, the solar facility does not preclude a commercial agricultural enterprise because the poor soils, lack of water and other factors already preclude any no realistic chance that commercial agricultural otherwise would occur. The definition of "commercial agricultural enterprise" read as a whole is written in the present tense, suggesting that there must be an existing enterprise or at least ready potential. Relatedly, there is no evidence, even from opponents who contend that there may be some potential viable agricultural use, that the agricultural uses they suggest may occur on the site would contribute in a substantial way to the existing agricultural economy or be so significant as to meaningfully contribute to maintaining established processors and markets. The applicant's Feasibility Report concludes the opposite. Approval of the solar farm makes development of a commercial agricultural enterprise on this site no less likely than would a denial.

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

OAR 660-033-0130 (38) (f) further states that, assuming the project is on high-value farmland because it is in an irrigation district, the following standards must be addressed. It is worth noting that these can be read as guidance on how a solar facility would, if it did not meet the criteria, preclude commercial agriculture. Conversely, if the standards are met, the solar facility does not preclude commercial agriculture especially in the absence of any likelihood that commercial agriculture would be feasible on the site.

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

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

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

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

Hearings Officer: The applicant has stated that there will be virtually no grading necessary for installation and the topography will be virtually unchanged, with grading only around the 12 inverter pads. The applicant submitted a Grading, Drainage and Erosion Control Plan on May 13. Botanical Developments supplemented this on July 21, noting soil compaction will be mitigated by filling and soil amending. Similarly, the July 28 submittal from the applicant details soil compaction mitigation measures. There is substantial evidence in support of concluding that there will be no unnecessary or significant soil compaction or erosion. See condition No. 8.

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

The testimony and evidence establish that the property is significantly impacted by non-native, introduced weeds and other vegetation. The applicant has proposed to substantially clear the site of such vegetation and replant portions with native species. Provided the site is adequately maintained, the proposal likely will enhance rather than degrade the site in this regard. A condition of approval will require the applicant to adhere to the plans submitted for removal of noxious/invasive vegetation and minimizing spread or reintroduction. See condition No. 9.

(E) The project is not located on high-value farmland soils unless it can be demonstrated that: (i) Non high-value farmland soils are not available on the subject tract; (ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or (iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils;

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

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

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

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

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

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

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

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

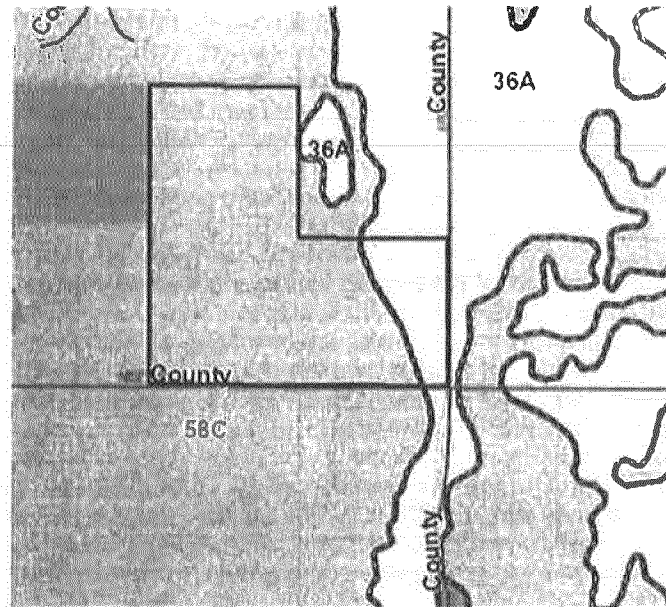
(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V-VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history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

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

Approximately 10 acres of the property is zoned MUA-10, thus is taken out of consideration for the predominance calculation. Approximately 8.8 acres of the approximate 108.71 acre EFU-zoned portion, or 7.4 percent, of the property contains NRCS Soil Unit 36A, Deskamp Loamy Sand, 0-3 percent slopes. Unit 36 is considered high value farmland where irrigated. Although a portion of the property contains NRCS Soil Unit 36A, the EFU-zoned portion of the property is predominantly, 92.6 percent in this case, comprised of Soil Unit 58C, Gosney Rock Outcrop-Deskamp Complex and is described below:

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes. This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with

rapid permeability. Available water capacity is about 3 inches. Major use for this soil type is livestock grazing. The Gosney soils have a rating of 7E, with or without irrigation. The rock outcrop has a rating of 8S, with or without irrigation. The Deskamp soils have ratings of 6E when unirrigated, and 4E when irrigated. The map below depicts the soil units that are on the property:



Source: Deschutes County GIS based on NRCS data

NRCS Unit 58C has a soils classification rating ranging between VI and VIII where not irrigated and is not classified as high value farmland. As evident in Exhibit A of the applicant's supplemental Burden of Proof Statement, received May 13, 2015, the subject parcel has no water rights and no history of irrigation. Thus, the property is not currently cultivated and is not predominantly comprised of arable soils.

The applicant's Range Inventory and Agricultural Feasibility Report (Jul 17, 2015), although apparently concluding that small portions of the site may be potentially be irrigable, supports the conclusion that the site never has been meaningfully irrigated, is comprised of VI-VIII soils and cannot support agriculture rising to the level of a commercial agricultural enterprise. Opponents submitted evidence suggesting that in the past the property may have had water rights, but that such rights were released to COID. The July 17, Central Oregon Irrigation District letter, however, states that "no water rights for COID irrigation have ever been issued" for the property.

The subject proposal is a request to establish a Photovoltaic solar power generation facility, or solar farm, on the subject property that would not exceed 80 acres in size. The property to the south, owned by Thomas Collier, has a pending proposal for a solar farm that would not exceed 80 acres in size. These two proposed solar farm projects, under ownership by the same parent company Cypress Creek Renewables, would establish a combined acreage of no more than 160 acres toward a Photovoltaic solar power generation facility or solar farm. Based on the requirements of this definition, the combined acreage for the two solar farm projects, as

opposed to the 80 acres proposed by this application, shall be considered when applying the acreage standards of this section as addressed below.

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

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that: ...

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

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

Hearings Officer: The project is not located on high-value farmland soils or arable soils as discussed above. The area marginally most suitable for irrigation appears largely to be the area not being proposed for solar facilities.

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

FINDING: The project is not located on high-value farmland soils or arable soils as defined and discussed above.

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

Hearings Officer: See finding above.

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

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

(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to

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

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

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

Hearings Officer: See Condition No. 11

(j) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

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

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

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

Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed. See Condition No. 12.

IV. CONCLUSION AND CONDITIONS OF APPROVAL:

Applications 247-15-000168-CU / 169-SP are APPROVED subject to the applicant/owner complying with the following conditions of approval:

1. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. The applicant shall conform to all such documents except as authorized or directed in this decision. Any substantial change in this approved use will require review through a new land use application.
2. The applicant shall meet all requirements of the Deschutes County Building Safety and Environmental Soils Divisions.
3. Prior to initiation of the use, the applicant shall provide evidence of DEQ National Pollutant Discharge Elimination (NPDES) Permit approval for the proposed use to the Planning Division.

4. Prior to initiation of the use, the applicant shall obtain all necessary state and federal permits for the project.
5. Prior to initiation of the use, the applicant shall complete the following:
 - a) Install the 6 foot cyclone fence with tan/sand colored mesh screening. No barbed wire is permitted. The fencing, screening and landscaping perimeter shall be modified such that it follows the property line of the area marked 'OLA' on the July 9, 2015 Bend Park and Recreation Letter, and extending south to close off the "notch". The intent is to have the collapsed ceiling area and cave entrance on the project side of the perimeter. The shrubs/trees shall be planted along the perimeter and modified perimeter consistent with the landscape plan.
 - b) Plant the shrubs in the locations shown on the approved Landscape Plan except as modified in condition 5(a). The shrubs/trees shall be a minimum of 6 feet at the time of planting.

At all times the mesh screening shall be maintained in good condition and shall be promptly repaired if ripped, torn or damaged. The fence and screening shall be inspected at least quarterly, continuously maintained and all plantings shall be kept alive and attractive. The applicant shall repair or replace damaged portions of the fence or screening within 90 days.

6. Existing Landscape and topography shall be preserved to the greatest extent feasible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected. All new plantings shall be regularly watered and otherwise cared for until certified by a landscape professional to be fully established. Dead, dying or diseased vegetation in the landscape area shall be replaced within 90 days of being discovered. Existing trees preserved on the site over 6' tall that become diseased or die shall be replaced with a minimum 6' comparable tree within 90 days of being discovered and properly tended until established.
7. No solar panel shall exceed 8' in height from existing ground level, including at full extension, within an area that is 100' (more or less) from the property line. "More or less" is intended to provide the operator with a few feet of flexibility to address transition to taller racking. In no event shall anything other than the power poles exceed 12' from existing ground level.
8. The applicant shall adhere to the soil compaction avoidance and remediation plans submitted into the record.
9. The applicant shall adhere to the plans submitted for removal of noxious/invasive vegetation and minimizing spread or reintroduction.
10. Prior to initiation of the use the applicant shall establish a hotline available 7 days a week during daylight hours through which a supervisory employee may be contacted to receive and promptly address reports of glare or other conditions causing interference or potential dangerous circumstances for aircraft. This number shall be provided to the appropriate personnel at the Bend and Redmond airports, Deschutes County planning, and Deschutes County Sheriff. It also shall be made available to any aviation company, pilot organization or similar group that may reasonably be considered to be in a position

to responsibly report dangerous conditions. The applicant shall modify its operations or take such other steps as are necessary to promptly eliminate glare or other bonafide aviation risks.

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

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13. Prior to initiation of the use, the applicant shall execute and record a County Condition of Approval Agreement to ensure compliance with all conditions of approval.

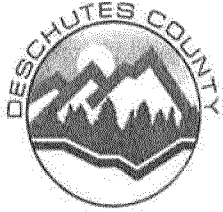
Dated this 18th day of September, 2015

Mailed this 18th day of September, 2015



Dan R Olsen, Hearings Officer

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



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners Business Meeting of April 17, 2017

DATE: April 12, 2017

FROM: Chris Schmoyer, Community Development, 541-317-3164

TITLE OF AGENDA ITEM:

Consideration of Board Signature Document No. 2017-232, Improvement Agreement for NorWest Energy 2, LLC

PUBLIC HEARING ON THIS DATE?: No

CONTRACTOR:

NorWest Energy 2, LLC is applicant/operator of Solar Farm

Attorney for NorWest Energy 2, LLC is Laura Craska Cooper

Contractor/Supplier/Consultant Name: As indicated on the Decommissioning CCP NI Managing Member 4, LLC, a Delaware limited liability company (Principal) and Westchester Fire Insurance Company (surety)

AGREEMENT TIMEFRAME: Starting Date: Document recordation Ending Date: Cessation and reclamation of solar farm site.

INSURANCE:

Insurance Certificate Required: Bond insured by:

**Westchester Fire Insurance Company
436 Walnut Street, P.O. Box 1000
Philadelphia, PA 19106**

Insurance Review Required by Risk Management: Yes or No

BACKGROUND AND POLICY IMPLICATIONS:

Improvement Agreement for decommissioning bond related to cessation of Solar Farm required by condition of approval in County Hearings Officer decision for Land Use File Nos. 247-15-000168-CU and 247-15-000169-SP for applicant NorWest Energy 2, LLC (See Staff memo for additional information).

No known policy implications.

FISCAL IMPLICATIONS: No known fiscal implications.

ATTENDANCE: Item is for Consent Agenda only. Staff attendance not required.
However, CDD staff Chris Schmoyer will be in attendance in the event Board has questions.

RECOMMENDATION & ACTION REQUESTED:

Signing of Improvement Agreement Document 2017-232 by Board of Commissioners related to Decommissioning Bond associated with the NorWest Energy 2, LLC Solar Farm east of Bend.

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections above the Official Review line.

Date: 4/12/17

Department: CDD

Contractor/Supplier/Consultant Name: NorWest Energy 2, LLC

Contractor Contact: Laura Craska Cooper is attorney for applicant

Contractor Phone #: 541-693-0061

Type of Document: Improvement Agreement for decommissioning bond related to solar farm

Goods and/or Services: Please be as complete as possible.

Background & History: Improvement Agreement for decommissioning bond related to cessation of Solar Farm required by condition of approval in County Hearings Officer decision for Land Use File Nos. 247-15-000168-CU and 247-15-000169-SP for applicant NorWest Energy 2, LLC.

Agreement Starting Date: Date Recorded
removal of solar facility and reclamation of the site

Ending Date: Cessation,

Annual Value or Total Payment: Decommissioning Bond is valued at one million dollars

☐ Insurance Certificate Received (check box)
Insurance Expiration Date:

Bond is insured by:
Westchester Fire Insurance Company
436 Walnut Street, P.O. Box 1000
Philadelphia, PA 19106

Check all that apply:

- ☐ RFP, Solicitation or Bid Process
☐ Informal quotes (<\$150K)
☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? ☐ Yes ☐ No

If No, has budget amendment been submitted? ☐ Yes ☐ No

Is this a Grant Agreement providing revenue to the County? ☐ Yes ☐ No

4/12/2017

Special conditions attached to this grant: _____

Deadlines for reporting to the grantor: _____

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance:

Name: _____

Phone #: _____

Departmental Contact and Title: Chris Schmoyer, Associate Planner, CDD

Phone #: 541-317-3164

Department Director Approval: _____

Signature

Date

Distribution of Document: Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

Official Review:

County Signature Required (check one):

☒ BOCC (if \$150,000 or more) – BOARD AGENDA Item

☐ County Administrator (if \$25,000 but under \$150,000)

☐ Department Director - Health (if under \$50,000)

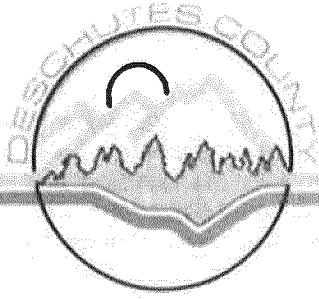
☐ Department Head/Director (if under \$25,000)

Legal Review

Date

Document Number 2017-232

4/12/2017



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

Phone: (541) 388-6575 Fax: (541) 385-1764

<http://www.deschutes.org/cd>

MEMORANDUM

TO: Board of County Commissioners

FROM: Chris Schmoyer, Associate Planner

DATE: April 12, 2017

RE: Document No. 2017-232 Improvement Agreement for NorWest Energy 2, LLC

Schedule

This matter is scheduled as a consent agenda item for consideration by the Board of County Commissioners (Board) at their 10:00 am business meeting on April 17, 2017.

Summary

NorWest Energy 2, LLC is seeking consent from the Board for an improvement agreement and associated decommissioning bond in the amount of \$1,000,000 for their Solar Farm east of Bend. NorWest Energy 2, LLC is leasing approximately 78 acres of a 118 acre parcel owned by Harlan and Jolene Hafter. The property is bounded by Erickson Road to the east and Neff Road to the south. The property is located approximately three-fourths of a mile east of the Bend City Limits Boundary and Urban Growth Boundary (UGB).

In September of 2015 a County Hearings Officer issued a decision approving a conditional use permit and site plan review to allow the development of a solar voltaic array (solar farm) on a portion of the subject property zoned Exclusive Farm Use (EFU-TRB).

The decommissioning bond was required as a condition of approval of the County Hearings Officer's decision for this matter. The purpose of the condition is to ensure that the site is reclaimed following cessation of the solar farm facility. Below is the condition, Condition 12, from County Hearings Officer's decision for Land Use File Nos. 247-15-000168-CU and 147-15-000169-SP:

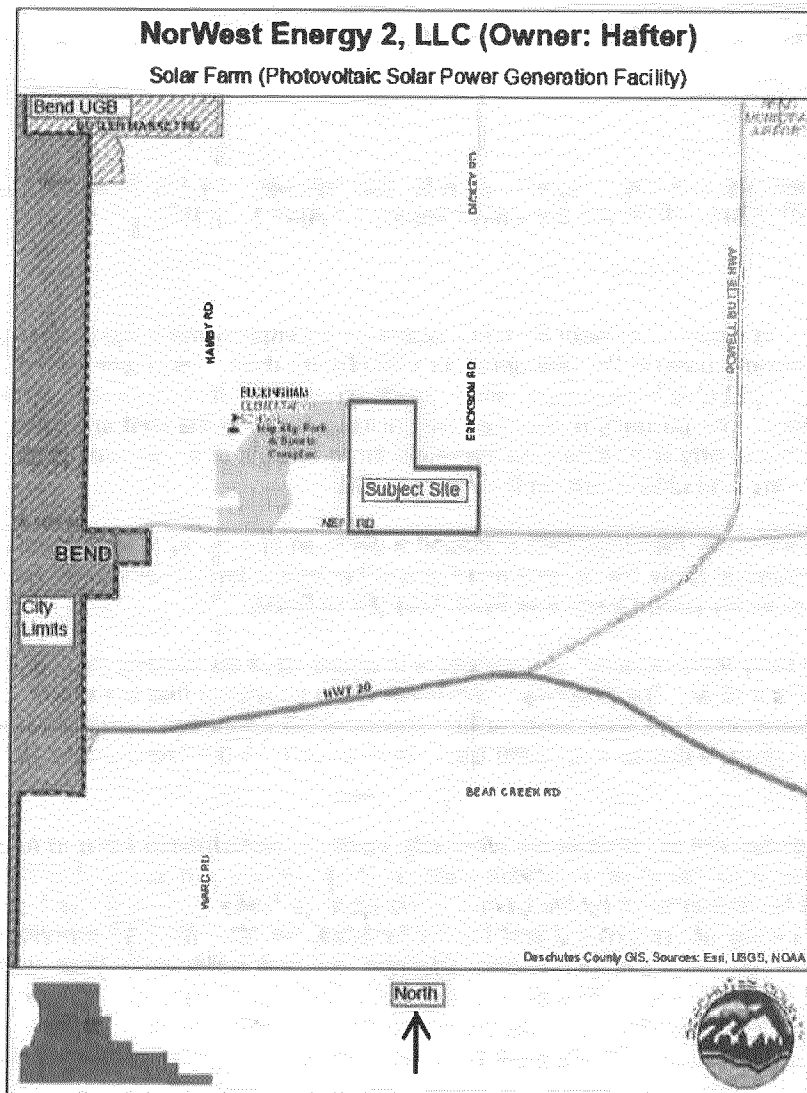
12. *Prior to commencement of commercial electricity sales, a performance bond in favor of Deschutes County for removal and restoration, or cash, in the amount of \$1,000,000. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety, including above-ground and buried facilities, no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding*

Quality Services Performed with Pride

subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.

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Below is a vicinity map identifying the subject property:



Attachments

1. Improvement Agreement, Document No. 2017-232
2. Draft Decommissioning Bond
3. Exhibit B to the Decommissioning Bond