

Yamhill County

DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE 4th STREET • McMinnville, OREGON 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • TTY: (800) 735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

December 12, 2018

ForeFront Power, LLC
Attn: Jason Grissom
100 Montgomery St, Ste 725
San Francisco, CA 94104

Re: **Docket No. C-11-18/SDR-17-18, Tax Lot 3427-800**

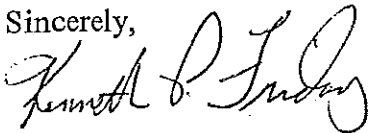
Dear Mr. Grissom:

In reference to your conditional use and site design review application for a commercial solar power generation facility consisting of approximately 12 acres on a parcel identified as Tax Lot 3427-800, the planning staff has reviewed your application and finds that it does not comply with the requirements of the *Yamhill County Zoning Ordinance* and the Oregon Administrative Rules. Your application has been denied.

This decision is based on findings and conclusions as contained in the staff report. The *Yamhill County Zoning Ordinance* provides for appeal of any action or ruling of the Planning Director to the Board of Commissioners within fifteen (15) days of the decision on a proposed action. Anyone wishing to appeal the Director's decision must file an appeal form, together with a \$250.00 fee, with this department no later than **5:00 p.m., December 27, 2018**. If no appeal is filed, the Director's decision will be final and this letter will serve as your official notice of denial of your application.

If you have any questions, please contact this office.

Sincerely,



Kenneth P. Friday
Planning Director

cc: Board of Commissioners
Assessor
Public Works
Carlton Rural Fire Department
City of Carlton
SPOs and Interested Parties
ODOT
DSL
SWCD, Attn.: Larry Ojua, 2200 W. 2nd Street, McMinnville, OR 97128 ✓
Mark & Kellene Payne, 6170 NE Old McMinnville Hwy, Carlton OR 97111 ✓
Shannon Luoma, TRC Solutions, 2701 First Ave, Ste 400, Seattle, WA 98121 ✓

STAFF REPORT
YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT

DATE: December 7, 2018

DOCKET NO.: C-11-18/SDR-17-18

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

APPLICANT: ForeFront Power, LLC

OWNER: Payne Family Trust

TAX LOT: 3427-800

LOCATION: NE Old McMinnville Hwy, Carlton (northern property line borders city limits).

ZONE: EF-80, Exclusive Farm Use District

REVIEW CRITERIA: Sections 402.04(M), 402.07(A and D), 1101.02 and 1202.02 of the Yamhill County Zoning Ordinance. Comprehensive Plan policies may also be applicable. Agricultural Lands rules under OAR 660-033-0130(38).

COMMENTS: *Dept. of Agriculture* - No comments received to date.
Dept. of Environmental Quality – No comments received to date.
Dept. of Fish and Wildlife – No comments received to date.
Dept. of Land Conservation and Development – No comments received to date.
Dept. of State Lands – See email response dated October 9, 2018.
Dept. of Transportation – See email response dated October 26, 2018.
Carlton Rural Fire District – See email response dated November 1, 2018.
City of Carlton – See letter dated October 10, 2018.
Public Works – “We have reviewed the file and find no conflicts with our interests.”
Soil and Water Conservation District – See letter dated October 23, 2018.
Barbara Matthews, 9801 NE Old McMinnville Hwy, Carlton – See response received October 18, 2018.
Jane Baer, 29740 SW Mill Creek Rd, Sheridan – See email received October 22, 2018.
Jon Giovingo, 9801 NE Old McMinnville Hwy, Carlton - See response received October 22, 2018
Mark Gaibler, PO Box 808, Carlton - See response received October 31, 2018.
Carol Fredrick and Terry McIntyre, PO Box 691, Carlton – See letter received October 31, 2018
Ximena Orrego & Guy Insley, 20501 Russell Creek Rd, Yamhill – See letter received November 5, 2018.
Friends of Yamhill County – See letter received November 5, 2018.
Miscellaneous comments (signatures illegible) – See responses received October 25, 2018

FINDINGS:

A. Background Facts

1. *Parcel Size and Request:* The parcel is approximately 36.5 acres in size and is almost completely flat and level. The applicant intends to use 12, approximately the western third, of the parcel for the commercial solar power generating facility and related ancillary uses, including solar panels, electrical equipment and access roads. According to the applicant's written statement the solar facility will consist of solar arrays on steel racking, consisting of photovoltaic modules oriented generally toward the south and mounted on a fixed tilt racking system, with inverters, a transformer pad, and connections to the existing power lines. The site plan also proposes the necessary access and safety features including access roads, perimeter roads and fencing. The proposed photovoltaic modules are supported by stationary piles driven up to 10 feet into the ground. The solar facility has a proposed nameplate capacity of approximately 2.25 Megawatts (MWac).
2. *Access:* The property has direct access onto NE Old McMinnville Highway.
3. *On-Site Land Use:* The property is dedicated to commercial agricultural uses including hay and grass seed production. There are no structures on the property.
4. *Surrounding Land Use and Zoning:* The northern property line is also the city limits of Carlton. All other adjacent properties are zoned EF-80. The properties immediately to the north, inside the city, are still being farmed including for grass seed, hay, and vineyards. The properties zoned for farm use are predominantly in farm use, and appear to primarily be farming grass seed and hay. The former Union Pacific Railroad right-of-way, now owned by the county, runs along the western border of the parcel.
5. *Soils:* The Natural Resources Conservation Service (NRCS) indicates that roughly 90% of the subject property is composed of Woodburn Silt Loam (WuB) while the remaining approximately 10% is Amity Silt Loam (Am). Both soil types are considered Class II, prime soils. Therefore the entire property is considered high value farmland.
6. *Water:* No on-site water supply is required for the use.
7. *Sewage Disposal:* No on-site sewage disposal is required for the use.
8. *Fire Protection:* Carlton Rural Fire District.
9. *Overlay Districts:* The project site is not located within an identified 100-year floodplain. There are no identified historic sites or Willamette River Greenway or airport overlay district. The Department of State Lands (DSL) noted in their agency referral comments that there appears to be a wetter area in the northeast corner of the property, but there are no mapped wetlands or hydric soils.

B. Conditional Use Provisions and Analysis

1. The list of conditional uses in the EF-80 zone includes Section 402.04(M) which states:

M. Commercial utility facilities for the purpose of generating power for public use by sale, and transmission towers over 200 feet in height, subject to Subsection 402.07(D) and Section 1101, Site Design Review.

Former Subsection 402.07(D): A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise on a tract not identified as high-value farmland, or 12 acres on a tract identified as high-value farmland, unless an exception is taken pursuant to OAR 660, Division 4.

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

Before analyzing the provisions of the YCZO and the OARs, staff would like to note that there is a jurisdictional question with regards to the county's current ability to render a decision on the application in the first instance. The application was first submitted on March 27, 2018 and was deemed incomplete. Pursuant to ORS 215.427, the county sent a letter to the applicant requesting additional information on April 6, 2018. Late in the afternoon of Friday, September 21, 2018, 178 days after the application was first submitted, the county received additional materials that provided some, but not all, of the additional information requested by the county. The county had requested an estimate of the cost to decommission the facility in order to make a determination under OAR 660-033-0130(38)(j) and YCZO 1202.04, but this information was not provided. The county also requested a preliminary drainage plan in accordance with section 1101.04 (which does not appear to have been submitted), and a detailed weed control plan for both the construction and operation of the facility (which as explained below is significantly deficient).

Under ORS 215.427, the applicant is required to either submit (1) all of the missing information; (2) some of the missing information and written notice that no other information will be provided; or (3) written notice that none of the missing information will be provided. In this case, neither the decommissioning cost estimate nor the drainage plan were submitted, the weed control plan is insufficient to determine compliance with OAR 660-033-0130(38)(f)(D), and the applicant gave no written notice that the information would not be provided. Because the applicant did not affirmatively complete one of those steps enumerated above, it appears that the application was incomplete on the 181st day after submission, rendering it void.

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

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

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

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

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

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

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

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

As noted above, the applicant is proposing the development of a 12-acre commercial solar power generating facility and related ancillary uses, including solar panels, inverter sheds, electrical equipment, fencing, and access roads. This is the only existing or proposed facility within more than 1,320 feet. The subject parcel is considered high-value farmland due to the property consisting of high-value soils. The applicant has stated, and has shown on the submitted site plans, that the proposed facility would consist of approximately 12 acres, therefore an exception pursuant to ORS 197.732 and OAR chapter 660, division 4 would not

be required. If approved, staff would recommend a condition of approval stating that the solar facility shall be established in the location and the size depicted in the applicant's site plan.

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

The applicant has not addressed this criterion nor submitted evidence to support a finding of consistency with the state's requirement that the facility not create unnecessary negative impacts on agricultural operations on the subject property. However, the site plan indicates that the access road will traverse the entire width of the parcel from the access point on Old McMinnville Highway to the edge of the solar facility. This will result in cutting the existing agricultural field in half with a long, skinny sliver on either side. Instead of a unified remainder field of approximately 24.5 acres, there will be two leftover fields of approximately 12 acres each in what appears to be a suboptimal configuration. This appears to create one of the negative impacts envisioned by the rule, namely the construction of a road which creates small or isolated pieces of property that are more difficult to farm. Absent any explanation by the applicant for why the road is proposed in that location, (rather than along a property line, for instance) staff cannot determine that the facility will not create unnecessary negative impacts on agricultural operations conducted on the remainder of the parcel.

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

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

The applicant submitted a soil erosion and compaction plan that details how soil erosion and compaction will be avoided or remedied. The Erosion Control Plan (prepared by TRC, a civil engineering company) notes that the Oregon Department of Environmental Quality (DEQ) Construction Stormwater Best Management Practices Manual was consulted for the preparation of the report and the proposed control measures that could be implemented to minimize erosion or soil compaction. The DEQ BMP manual indicates that construction activities should be avoided during the wetter months due to the likelihood for increased soil erosion and compaction. Furthermore, the county now has some experience with the actual

construction of similar facilities and has seen problems during construction in the winter months. With conditions requiring adherence to the submitted soil erosion and compaction plan, and limits on the time of year in which construction activities are allowed to take place, standards (B) and (C) are met.

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

The applicant submitted a Weed Mitigation Plan (alternatively called “Vegetative Maintenance Plan” or “Weed Management Plan” in the application materials), part of which appears to have been prepared for the applicant by TRC – see plan sheet C-003. The so-called “plan” is extremely deficient and provides mostly conclusory statements not backed by evidence or an actual plan of action. It does not address any measures to mitigate the introduction or spread of weeds during the construction phase at all. In addressing maintenance activities, the applicant simply states in the Vegetative Maintenance section (Exhibit 3 of the initial application) that a contractor will be responsible for “inspecting and maintaining the vegetative integrity of the site.” This is followed by some explanation of mowing the vegetation. On sheet C-003, submitted with the supplemental materials on September 21, there is a single paragraph devoted to “Weed Management Plan” which includes additional conclusory statements that a contractor will be responsible for the site and that manual methods in addition to herbicides may be used. No actual or proposed long-term maintenance agreement is included with the plan.

The standard requires the county to determine that the proposed project will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. The lack of specificity in the plan and the conclusory statements make the plan unenforceable if attached as a condition of approval. The materials submitted are not sufficient to demonstrate compliance with this standard and do not meet the plain-text requirements set out in the rule.

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

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

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

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

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

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

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

Based on a review of the NRCS soils map, the applicant is proposing to develop the solar facility on a portion of the parcel that contains high-value soils. However the chosen location meets criterion (i) above because the entire parcel is composed of high value soils and thus non-high value soils are not available. There are no additional solar facilities approved or in place in the study area.

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

In order to ensure the condition in OAR 660-033-0130(38)(j) above is met, staff recommends that if the application is approved a condition of approval should be placed that, at the end of the solar project's lifespan (or revocation of the permit), the operator of the solar facility project shall completely remove the solar panels, all related infrastructure and equipment, and shall provide the County with a bond or other security instrument which imposes on ForeFront Power, LLC the responsibility for retiring the solar facility. Staff recommends as a condition of approval that the applicant shall submit a final decommissioning estimate, prepared by a licensed professional engineer, which does not include the projected salvage value of the solar facility materials, prior to the issuance of any requisite building and electrical permits.

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

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

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

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

Regarding criterion 1202.02(B), staff recognizes that the goals and policies of the Yamhill County Comprehensive Plan ("Comprehensive Plan") are aspirational and are not approval criteria. Notwithstanding the aspirational nature of the goals and policies, this conditional use standard requires a balancing of those goals and policies of the Comprehensive Plan that apply to the proposed use, and require the county to make a finding of consistency. The applicant's

narrative makes no more than a conclusory and arbitrary statement that the application does meet the goals and policies. Opponents of the proposed use, however, have named specific goals and policies that appear to weigh against the proposed use such as preservation of high value soils (Agricultural Lands Goal Statement 2, Policy A); preservation of farmland in the face of economic pressures on the land to convert to other uses (Agricultural Lands Goal Statement 1, Policy a); and appropriateness of the site (Rural Development Goal Statement 1, Policy C).

After consideration of the inconsistencies with the goals and policies of the Comprehensive Plan raised by members of the public, and the applicant's total lack of response regarding those issues, staff believes that the applicant has failed to demonstrate that the proposed use is consistent with the goals and policies of the Comprehensive Plan.

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

Regarding criterion 1202.02(C), the parcel encompasses approximately 36.5 acres which is of sufficient size to support a solar facility of 12 acres. The parcel has frontage directly onto NE Old McMinnville Highway, though at the moment there is no developed driveway. The parcel is relatively flat and there are no natural features to speak of within the property. The location of the parcel adjacent to the city of Carlton and three-phase electrical transmission lines makes interconnection with the grid easier. The parcel appears to be suitable for the proposed use considering the factors listed in 1202.02(C).

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

Regarding criterion 1202.02(D), most of the surrounding area is zoned Exclusive Farm Use, with the exception of lots inside Carlton city limits to the north. The surrounding area is zoned EF-80 and the majority of the parcels are large acreage properties producing grass seed and hay. Further away to the south, along Highway 47, are some rural residences on small lots with some timber and pasture uses. The applicant's information shows that the facility should not cause significant glare to the properties located to the south because the panels are made up of materials that absorb most of the incoming light and reflect only a small percentage back, similar to a flat water body. Grass seed and hay farming on the adjacent parcels will not be impeded by the proposed use. The property owner to the north, who is inside city limits but has a vineyard on-site, expressed some minor concern with potential pesticide use and requested a condition of approval that would limit the timing of pesticide use so that it did not negatively impact their crop of wine grapes. There is a significant stand of trees along the western property line which should block views of the facility from surrounding properties on the other side of the highway or motorists on the highway. With conditions requiring adherence to the submitted landscaping and screening plans, the request is consistent with criterion (D).

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

Regarding criterion (E), the site appears to have adequate public facilities and services. The site is served by the Carlton Rural Fire Department, and no comments or concerns were submitted to the Planning Department regarding the proposed solar facility. The fire department only asked for an all-weather road surface within the boundaries of the facility and a way to get through the gate in case of emergency. The proposed use does not need long-term water supply or sewage disposal. Electricity would be provided by PGE or from on-site generation. The applicant states that there will only be occasional visits by maintenance vehicles and by the contractor reviewing the effectiveness of the proposed noxious weed management plan so traffic will be minimal. The Public Works Department was notified of the application and indicated there would be no conflicts with their interests. The Department of Transportation (ODOT) indicated they had no issues with the application because no access was proposed onto the state highway. However, any utility work that needs to be done in the ODOT right-of-way will be required to obtain any and all necessary ODOT permits. With conditions the proposed use satisfies criterion 1202 (E).

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

Regarding criteria 1202.02 (F), as addressed in Findings B. 11, and B. 12. of this staff report, the applicant has stated that the location of the 12-acre facility will not impact or conflict with existing or allowable farm, forest, or rural residential uses on neighboring properties.

14. Conditional uses in the Exclusive Farm Use District must also comply with the following criteria (YCZO Section 402.07(A)):
1. *The use will not force significant change in accepted farming or forest practices on surrounding lands devoted to farm or forest use.*
 2. *The use will not significantly increase the cost of accepted farming or forest practices on surrounding lands devoted to farm or forest use.*

The subject tract and the proposed solar facility are entirely within the Exclusive Farm use zone (EF-80). The surrounding parcels are dedicated to farm uses including hay and grass seed production, vineyards, and rural residential uses. As indicated in Findings B. 4., B. 11., and B. 12. above, the applicant has stated that once the proposed solar facility is established there are no emissions generated that could impact neighboring farm or forest uses. The applicant has stated a willingness to record an affidavit which recognizes the rights of adjacent agricultural operations consistent with accepted farm practices pursuant to OAR 660-033-0130(38)(i), and this requirement shall be a condition of approval.

C. Site Design Review Criteria

1. Section 1101.02 for Site Design Review requires consideration of the following factors in the review of site development plans:
 - (1) *Characteristics of adjoining and surrounding uses;*

Regarding criterion 1101.02(A)(1) above, staff has addressed this in Section A.4 and B.14 of this report.

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

Regarding criterion 1101.02(A)(2) above, the applicant addresses this criterion in the application, stating that the construction and operation of the solar facility will add tax revenue for Yamhill County. The applicant also states that the solar facility will produce a more steady income than the relatively variable farm yields currently produced. On this point it is important to note, however, that county and state protections for farmland are premised on the fact that farming will often produce lower economic returns than many other uses, hence the need for protection. There are no identified financial difficulties that may result in delay or premature abandonment of the project mid-construction and a decommissioning bond will be required as a condition of approval.

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

Regarding criterion 1101.02(A)(3), the property has approximately 350 feet of frontage along NE Old McMinnville Highway but does not appear to have any existing driveways. If approved, the applicant will be required to obtain any necessary permits from the Public Works Department for new driveways and/or modifications to an existing approach within the county right-of-way. The applicant will also be required to coordinate with the county road department to effectively and safely manage the projected increase in traffic during the mobilization, construction, and demobilization phases of development as a condition of approval. Once the solar facility has been established there will be minimal visits to the site by maintenance workers and the area within the facility's fence line will be sufficient for parking. As mentioned above, the fire department has requested that if the facility is approved there be an all-weather road surface inside the perimeter of the facility and a way to get through the gate. With conditions, the parcel is of sufficient size for appropriate internal circulation of traffic and large enough to provide parking.

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

Regarding criterion 1101.02(A)(4), as addressed in Findings B. 3., B. 4., B. 5., B. 12., and B. 14. above, the applicant states that construction activities during installation are not expected to be incompatible with surrounding residential, farm, or forest uses as construction activities will be short-term and limited to typical daytime construction hours. The application indicates that during the daylight hours only, when the facility will be operating, the inverters and transformer would generate a low, humming noise which quickly dissipates and minimal noise may be heard outside of the fenced area. The applicant maintains that these sound levels are not expected to be distinguishable above quiet rural sound levels at a distance of the nearest adjacent properties. There are significant trees visually buffering the proposed facility site from Highway 47. The applicant is proposing the installation of a security fence around the perimeter of the facility. Staff believes if the application is approved it would be appropriate to require, as a condition of approval, that the security fence include sight obscuring slats or other sight obscuring material and that landscaping be placed along the portions of the facility that border neighboring property lines.

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

Regarding criterion 1101.02(A)(5) above, there are no natural features on site to retain. The entire property has been actively farmed for decades.

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

Regarding criterion 1101.02(A)(6) above, the applicant's plans indicate that the entire parcel is almost completely flat. There are no identified potential hazard areas anywhere on the subject parcel and it is not within a floodplain.

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

Regarding criterion 1101.02(A)(7), the notice of the proposed use was sent to the surrounding property owners within 750 feet of the outside boundaries of the subject parcel and published in a newspaper of general circulation as required by Section 1402 of the *Yamhill County Zoning Ordinance* and state law. While a number of comments were received urging the county to deny the application, many of the comments did not cite to any applicable review criteria by which the county should do so. A number of objections were raised regarding inconsistency with the goals and policies of the Comprehensive Plan as discussed above and staff agrees that the applicant has not carried their burden of proof in that regard.

The landowner immediately to the north of the proposed facility (inside the City Limits), who has a vineyard on-site, requested that if the application is approved, a condition should be placed prohibiting the use of herbicides between early spring and December. They also requested that only low shrubs be placed along the northern boundary of the facility in order to maintain the current airflow. There was some concern that the prevailing air pattern could be modified if tall trees and shrubs were planted. If the application were approved, staff would recommend appropriate conditions to address these concerns.

CONCLUSIONS FOR DENIAL:

1. The proposed solar facility does not meet the standards listed in OAR 660-033-0130(38)(f)(A).
2. The applicant has failed to meet the burden of proof regarding the standards listed in OAR 660-033-0130(38)(f)(D).
3. The applicant has failed to meet the burden of proof for consistency with the conditional use approval criteria of Section 1202.02 of the *Yamhill County Zoning Ordinance*.

CONCLUSIONS FOR APPROVAL:

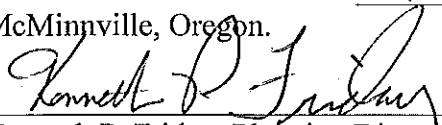
1. The proposed solar facility is listed as a conditional use in the Exclusive Farm Use zone subject to site design review approval and is limited to no more than 12 acres when it is located on high-value farmland.

2. With conditions, the request is consistent with the site design review standards in Section 1101.02 of the *Yamhill County Zoning Ordinance*.

DECISION:

The application by ForeFront Power, LLC for conditional use and site design review for a 12-acre commercial solar facility on Tax Lot 3427-800 is denied.

DATED AND SIGNED this 11th day of December, 2018, at
McMinnville, Oregon.



Kenneth P. Friday, Planning Director
Yamhill County Planning and Development