

WALLOWA COUNTY PLANNING COMMISSION

WALLOWA COUNTY COURTHOUSE
101 S. RIVER STREET, ROOM B-1
ENTERPRISE, OR 97828

IN THE MATTER OF THE)
CONFORMANCE OF THE)
INSTALLED SOLAR ARRAY IN THE) SUPPLEMENTAL FINDINGS OF
EXCLUSIVE FARM USE ZONE AND) FACT, CONCLUSIONS, AND
IN THE WALLOWA LAKE) DECISION OF THE WALLOWA
MORAINES GOAL 5 PROTECTION) COUNTY PLANNING COMMISSION
AREA)

RE: Perry CUP# 11-02, Conformance of Solar Array in a Goal 5 Area

On September 11th, the Planning Department received a letter from the Prairie Creek Homeowners Association that Mr. Perry's solar array was not in compliance with Findings signed June 28th, 2011. A site review confirmed that there were issues with the array and a conformance workshop was scheduled for September 27th, 2011, with Public Hearings on October 25th and November 29th, with Decision on January 24th, 2012. The Hearing was noticed to property owners within 750 feet pursuant to the Public Hearing Review procedure on October 12th. The Hearing was noticed in the Wallowa County Chieftain on October 13th, 2011. The Planning Commission having reviewed the record, and the materials introduced into the record, and having heard and considered oral and written testimony in the above referenced hearing, and being fully advised, makes the following findings of fact and decision regarding the conformance of the solar array.

01. **APPLICANT:** Louis Perry
02. **OWNER:** Louis and Deyette Perry
03. **REQUEST:** To establish the compliance of a solar panel array installed on property zoned EFU in the Wallowa Lake Moraine Goal 5 Area
04. **LOCATION:** The property description is Township 2 south, Range 45, Tax Lot# 9803.
05. **PARCEL CHARACTERISTICS:** The parcel contains 90 acres, is zoned EFU and is located just south of the Silver Ditch. The parcel is accessed from Prairie Creek Road, a county road.
06. **REVIEW CRITERIA:** Article 5 (Public Hearing Review) Section 5.025(01-03); Article 9

(Conditional Use) Section 9.020(01-06); Article 15 (Exclusive Farm Use) Section 15.020 (14); Article 44 Section 44.035(A) Cultural and Wildlife, and (F); and other applicable zoning ordinances or goals of Wallowa County and or laws of the State of Oregon.

SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. Public Hearing Review requires notice of hearing be given to all owners of property lying within:

[.....]

C. Seven hundred fifty (750) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone.

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.

03. Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.

FINDING 6.1: The Planning Commission finds the public hearing was properly noticed to all property owners within 750 feet of the subject property, in a newspaper of general circulation and was posted on the Wallowa County Courthouse Public Notice Board prior to the hearing within the required time frame.

SECTION 5.035, REVIEW PROCESS AND DECISION:

01. The Public Hearing Review authority may impose such conditions of approval upon a permit as are deemed necessary to insure the use or development complies with the applicable standards and criteria.

FINDING 6.2: The Planning Commission has imposed Conditions of Approval to ensure the use or development complies with the applicable standards and criteria and is compatible with the zone and the Goal 5 moraine protection overlay (Article 44).

SECTION 9.020, REVIEW CRITERIA: After taking into account location, size, design, and the general nature of the proposed use; the hearing body must determine that the development will comply with all of the following criteria to approve a Conditional Use Permit.

01. The proposed use will be consistent with the purpose of [and is allowed conditionally in]

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the zone in which the use proposed.

FINDING 6.3: The Planning Commission finds that as expressed in Article 15, commercial utility facilities are a conditional use in the EFU zone and, are consistent with the EFU zone as per these Findings and Conditions of Approval.

02. The use will not create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.
03. The proposed use will not overburden the public services of water, sewer, storm drainage, electrical service, fire protection, and school.

FINDING 6.4: The Planning Commission finds that this development meets the above criteria and will contribute to the electrical supply available to county residents.

Additionally, the location of the proposed array is the most convenient for existing access roads, utility service, and preservation of farm land and Goal 5 resource protection.

04. The site is suitable to accommodate the proposed use, such as: topography, soils, and parcel size.
05. The proposed use will not interfere with uses permitted on adjacent parcels.
06. The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.

FINDING 6.5: The Planning Commission finds that the proposed development, as conditioned, is relatively low impact and is sited to take advantage of topography and to minimize the impact on agricultural uses.

The Commission further finds that although the development is located, at its closest point, about 60 feet from the Silver Lake Ditch, the applicant will seed the area with local grasses or their equivalent and will minimize soil disturbance during construction and will use existing access.

SECTION 15.020, BUILDINGS AND ACTIVITIES PERMITTED CONDITIONALLY: In the Exclusive Farm Use Zone, the following uses and activities and their accessory buildings and uses are permitted subject to the provisions of Article 9 (Public Hearing Review).

14. Commercial utility facilities for the purpose of generating power for public use by sale.

[.....]

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FINDING 6.11: The Commission finds that whereas the solar array is privately owned, the power produced has been sold to Pacific Corp and will enter the power grid.

Additionally the array is located in an area of relatively poor soils and will occupy only 2.5 acres.

SECTION 44.035, PROGRAMS OF PROTECTION BY AREA

A. ENTIRE GOAL V AREA

Protection of Historic, Cultural, and Archaeological Resources

Development proposals for sites involving known or highly probable potential cultural resources including historic or prehistoric sites, buildings, objects, and properties related to American and Native American history, architecture, archaeology and culture, such as settler or Native American artifacts, must include a survey and assessment of the site and resources by authorities judged competent by the review authority, and a management plan, if indicated, responsive to the findings of the assessment, for historic/cultural resource protection. (more)

FINDING 6.12: The Commission finds that there are no known or highly probable cultural resource sites that would be impacted by this development.

Wildlife Habitat

The wildlife habitat resource zone map includes the entire Goal 5 area and is designated as a 3C protection area. With the exception of properties zoned CR-2 and R-2 (as of 01/01/96), all development shall be reviewed by the local office of ODF&W. ODF&W may request the clustering of buildings associated with the development or with buildings on adjacent parcels, to lessen the developmental affect on wildlife.

The programs of protection for those areas designated 3A, 3C more restrictive, 3C less restrictive scenic resource area, or especially sensitive big game habitat, are more rigorous than for those areas outside of those boundaries.

For the areas outside of those boundaries, the following rules apply (Exception--those areas described in 44.030 (C1) and (C2)):

1. In resource zones there shall be a 100 foot setback for residential use from streams for the purpose of preserving habitat for game birds, fur bearers, fish, and non-game wildlife.
2. There shall be a 100 foot setback for residential use from rookeries and wetland areas identified on the habitat map of the land use plan.

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FINDING 6.13: The Planning Commission finds that the proposed development is not within a mapped big game habitat or migration route.

F. 3C PROTECTION AREA (Less restrictive--Conditional and permitted uses allowed, with restrictions):

Within those areas on the back side of the Moraines (the East side of the Eastern Moraine and the West side of the Western Moraine which have been designated a 3C protection status (less restrictive), conflicting uses will be specifically limited.

1. Uses may be allowed subject to the requirements of Article 9, Conditional Use Permit, provided that:

- a. It is a permitted or conditional use in the underlying zone.
- b. The use will be visually subordinate to the partial retention level and conform to design standards of structure height, color, and other considerations required of Article 18, Recreation Residential Zone.

FINDING 6.14: The Commission finds that this use is a conditional use in the underlying zone (EFU). As the development as installed is 12 to 13 feet in height and has a frame of raw aluminum, the development will meet the requirement for partial visual retention only if the attached Conditions are met.

Additionally, to further mitigate visual impacts, pole, wiring, and equipment installation shall conform to Option #1 as established by PP&L and detailed in the attached Conditions.

- c. Cuts or fills shall not significantly alter the essential integrity of the geologic formation of a moraine or the visual character of the area when construction is complete. All topography shall be returned to within two feet of pre existing conditions unless visual subordination and geologic integrity and appearance is determined by the review authority to be enhanced by not meeting a two-foot standard. Cuts and fills of more than two feet shall be rounded on top above the road and filled below so as to make the terrain appear more natural and reseeded. Prior to construction permit approval and subsequent to construction, the applicant shall submit topographic site surveys on two foot intervals as proof of compliance.
- d. The minimum lot size for newly created parcels and for new dwellings on existing or new parcels shall be that of the underlying zone. Legally established parcels of less than 160 acres in resource zones may be eligible for a dwelling provided that, in addition to all other criteria of this article, the following criteria are also met:

i. The parcel would have qualified for a dwelling either as a lot of record or under the template or multi-tract test prior to the adoption of this article.

ii. The structure or use can be made visually subordinate to the partial retention level by use of the existing landscape, or by other means acceptable to the review authority.

iii. Within the East Moraine Goal V Deer Habitat Area, the applicant supplies a plan, acceptable to the review authority, for the mitigation of adverse effect on wildlife habitat. The review authority shall solicit the Wallowa County office of the Oregon Department of Fish and Wildlife or other competent local review authority for comment on potential conflict with wildlife habitat.

Comment by ODFW or other competent authority that a plan is not satisfactory may be sufficient cause for rejection of the proposed use if the review authority determines the adverse impacts cannot be adequately mitigated.

FINDING 6.15: See Finding 6:14. The Commission finds that the development will use the existing access road, will be relatively low impact, as conditioned, and is not located within a mapped big game habit or migration area.

e. The review authority may require specific siting standards including but not limited to, a requirement that approved structures must be located in close proximity to existing similar structures which are either existing or proposed on that same parcel, so as to minimize impact on the resource.

FINDING 6.16: The evidence shows that the development is located to take advantage of topography and is located as far down (north) on the parcel as possible to minimize impact on the visual resource

f. Evidence is provided by the applicant that the site on which any development or use proposed is suitable to physically sustain the use. This evidence shall be in the form of a structural design and geological soils report supporting the development submitted and signed by a licensed geological engineer. This requirement may be waived by the review authority when the natural grade of the immediate area where development will be sited or other areas directly affected by the development are less than 20%.

FINDING 6.17: The Commission finds that the grade of the immediate area where development will be sited or other areas directly affected by the development is less than 20%; therefore the above requirement for evidence is waived.

g. Evidence is supplied by the applicant which shows that the proposed development is not located in an area containing a Federal or State sensitive, endangered or threatened listed plant

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species. If the development is located in a resource zone, and no Federal or State monies are involved or permits required, the owner must develop an inventory of State sensitive, endangered or threatened listed plant species present, and participate in applicable State and local programs to mitigate the impact of the development on the sensitive, endangered or threatened listed species. If Federal or State monies are involved or permits required, the development must also conform to applicable Federal and State regulations.

FINDING 6.18: The Commission finds that the proposed development is not within a mapped sensitive, threatened or endangered listed plant species area.

h. No development will be allowed on the Crest of the Moraines. In addition, any development must be below the skyline as seen from the sensitive view areas (Map G5-2). Therefore, the highest point of any use or structure including, but not limited to, an antenna, satellite dish, and/or chimney shall be at least 20 vertical feet below the line of sight to the skyline from all points in the sensitive view areas. These measurements shall be performed by a licensed surveyor or engineer at the applicant's expense and shall be measured from the edge of the traveled way (in the case of a road) or viewing area nearest the proposed structure from a viewer height of 5 feet above the surface through the proposed structure normal to the Moraine skyline. Compliance may be demonstrated by engineered or computer assisted drawings but in the case of a dispute, a performance test utilizing a physical representation of the height of the structure may be required.

A structure or use whose highest point is 60 vertical feet below the crest line of the nearest moraine, measured in a circumference from the highest point of the structure to the crest line of the Moraine, shall be considered to have met the requirements of this section.

The applicant may propose and the review authority may approve an alternative plan to protect the scenic resource, skyline, and crest.

FINDING 6.19: The Commission finds that as shown in photos submitted by the applicant, as viewed from the Imnaha Highway, the proposed solar array will not impinge on the crest of the moraine.

The Planning Commission recognizes that, according to the Goal 5 maps of appendix 5.8, Prairie Creek Road is not a mapped Goal 5 sensitive view area.

i. Excavation for roads shall be subject to the provisions of Article 36 (Salmon Habitat Preservation) and Article 32 (Road Design), shall follow the terrain, shall be visually subordinate to the landscape as viewed from sensitive view areas (Map G5-2), and shall not have cuts or fills that exceed two feet.

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However, if less impact may occur by using methods that would violate the above stated cut and fill requirements, the applicant may propose, and the Wallowa County Natural Resources Technical Advisory Committee may recommend other standards which may be approved if visual subordination and geologic integrity and appearance is determined by the review authority to be enhanced by not meeting a two-foot standard.

Prior to construction of a road, a road design which includes quantified grade measurements and an erosion control plan addressing all ground disturbance activities must be reviewed and recommended to the review authority by the Wallowa County Natural Resources Technical Advisory Committee and may be submitted to the public hearing review process at the sole discretion of the Planning Director.

Roads constructed for the purpose of forest practices must comply with the provisions of the State Forest Practices Act (May 1998). Upon notification from the Oregon Department of Forestry, Wallowa County intends to contact the owner and/or individual forest manager for the purpose of informing the land owner about the county's desire to maintain the scenic and geologic integrity of the Moraines. Under the county's scenic management program, the county is willing to work with individual land owners or forest managers to prepare a voluntary plan that achieves a mutually beneficial result.

FINDING 6.20: See Finding 6.5, the array will use existing access.

j. Vegetation for landscaping shall correspond with the surrounding flora and shall only consist of species native to the immediate area or non-native species substantially similar to existing vegetation. Parking, gardens, orchards and other development in conflict with the original landscape shall be visually subordinate if visible from sensitive view areas (Map G5-2).

[.....]

FINDING 6.21: The Planning Commission has determined that the revised landscape plan (dated November 22, 2011), which was revised by the Planning Commission on November 29th, meets the above criteria. The WCNRTAC has approved the landscaping plan.

l. Wildlife Habitat--3C Protection Area (less restrictive). Dwellings or other structures may not be sited within 200 yards (ground distance) east of the crest of the East Moraine, unless the development meets the criteria of section d above. Development beyond the 200 yard boundary should be clustered per ODF&W request to maximize available open space as mitigation of adverse effect on wildlife habitat.

m. The review authority may consider a development of clustered dwellings provided that

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all other applicable requirements of this article are met, the average density of dwellings within the development is no more than one per 160 acres, and the resulting open space within the development is preserved by a conservation easement. The conservation easement shall be recorded with the county clerk.

FINDING 6.22: The Commission finds that the proposed array is not within 200 yards east of the crest of the east moraine and that the location of the array preserves farm land and as conditioned, protects the Goal 5 resource.

07. CONCLUSION:

All applicable criteria have been met, and the Planning Commission finds that the solar array, subject to the Conditions of Approval, is in compliance. Failure to meet these conditions in the time frames specified, shall result in the review and possible revocation of this permit by the review authority.

The Conditional Use Permit # 11-02 for a solar array will expire four years from the Date of Decision on the original Findings.

The expiration date may be extended if the applicant submits a written request to the Wallowa County Planning Department for a two-year extension prior to the expiration date of the permit; or

The permit is “perfected” by initiation of the approved use as evidenced by, in the case of new construction, completion of any substantial development actions. Validation of completion of substantial development action shall be accomplished by delivery of written evidence acceptable to the Wallowa County Planning Department that the approved action has been initiated and a finding by the department that the permit has been exercised and perfected.

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08. CONDITIONS OF APPROVAL:

The Planning Commission finds that all of the following conditions are able to be met as imposed since the applicant is willing and the Commission further finds reasonable evidence to support the conclusion that each is feasible.

The following conditions replace the conditions of approval from findings signed on June 28th, 2011.

1. The applicant shall employ all reasonable effort to minimize the presence and spread of noxious weeds.
2. As the installed height of the array is approximately 12 to 13 feet, the applicant shall, no later than July 31, 2012, complete the installation of all of the elements of the Landscape Plan dated November 22nd, 2011 which shows the spacing of the plants to be used. The submitted plan has been altered to show Austrian Pines of 3 - 4 feet and Colorado Blue Spruce of a minimum of 36 inches tall. Additionally, trees and shrubs will be grouped to provide more cover for poles and visual shielding for Prairie Creek Estates. The Planning Commission will review the installed landscaping by the end of April both 2012 and 2013.
3. The applicant shall, no later than June 15th, 2012, implement option #1, drawn up by Doug Triebelhorn of PP&L, dated November 17, 2011, regarding the placement of poles, underground wiring, and pad mounted equipment.
4. To ensure the completion of conditions 2 and 3, within 30 days of the date of decision, January 24th, 2012, the applicant shall, per Article 40, obtain a performance bond, or place in an escrow account, written in favor of Wallowa County, equal to 120% of the cost of implementing conditions 2 and 3.

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09. DECISION:

Based upon the information submitted, the comments of interested parties and the findings, the review authority finds this solar installation satisfies all review criteria and is found to be in compliance with such criteria.

The vote on the motion is _____ in favor and _____ opposed with _____ abstaining.

January 24th, 2012

DATE OF ACTION

KEN WICK, CHAIRMAN

WALLOWA COUNTY PLANNING COMMISSION

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeal. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 p.m. February 6th, 2012.

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