

STAFF REPORT

Planning Department File No. 2024-08-025

**CONDITIONAL USE APPLICATION
FOR
Solar Utility Farm**

Planning Commission Meeting Date: September 26, 2024

- 1. OWNER OF RECORD:** Fry Foods
602 Stanton Blvd
Ontario, OR 97914
- 2. APPLICANT:** Facility Innovations
515 Congress Ave. #2220
Austin, TX 78701
- 3. PROPOSED ACTION:** CUP approval proposing a solar photovoltaic energy system, designed to provide renewable electricity to the Fry Foods processing, production, and packaging plant.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 3300, T17S, 46E, Map 17S46E, Malheur County Reference Number 6810.
- 5. PROPERTY LOCATION AND DIRECTIONS:** From I-84 take exit 371 to Stanton Blvd, continue on Stanton Blvd for 2 miles. Destination will be on your right.
- 6. ZONING:** Exclusive Farm Use and Exclusive Range Use (C-A1 & C-A2).
- 7. PARCEL SIZE:** 265.90 acres.
- 8. PARCEL USE:** The parcel is exclusively used as farmland and a processing plant.
- 9. SURROUNDING USE:** The surrounding area is exclusively used as farm land.
- 10. ACCESS:** Access is a private access drive originating off of Stanton Blvd
- 11. SANITATION REQUIREMENTS:** No sanitation is required.
- 12. FIRE PROTECTION:** The proposed solar utility farm is not with a Fire District.
- 13. NATURAL HAZARDS:** None known.

14. WATER RIGHTS: 68.2 acres with Owyhee Irrigation – proposed solar panel currently has water rights. Fry foods is in the process of transferring water rights to a different location.

15. ZONING HISTORY: In 2001 there was a CUP for a business in conjunction with farming reviewed together with zoning permit #00-6-14 for an ag-exempt onion shed. File # 01-6-13 an additional ag-exempt onion shed was built. In 2007 (#2007-03-032) an addition to the facility was done. In 2008 (#2008-09-013) another addition to the onion shed was done. In 2010 (3/3/2010) a county court discussion was held about neighborhood complaint and DEQ violation. In 2013 (#2.26.13) a LUCS form for water resources dept. Again in 2013 (#2013-03-007) A CUP for commercial activity in conjunction with farm use. In 2015 (#7.6.15) a LUCS form for DEQ. Again in 2015 (#2015-09-013) an addition in EFU was done. (#2015-11-005) an accessory bldg. shop was added in the EFU zone. In 2016 (#09-22-2016) and LUCS for DEQ was filed. In 2020 (#1.22.20) a LUCS for DEQ was filed. In 2023 (5.24.23) a LUCS for DEQ was filed. In 2024 (#2024-03-023) a new freezer addition was added to the EFU zone. There is no other known zoning history.

I. GENERAL CONDITIONAL USE CRITERIA

Malheur County Code (MCC) 6-6-7, OAR 660-033-0130 – GENERAL CRITERIA TO EVALUATE SUITABILITY: In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

A. Comprehensive Plan goals and policies, as applicable.

Proposed finding: The county comprehensive plan and county zoning regulations provide the conditional use process for a solar farm. Additionally, the proposed Facility satisfies several of the applicable goals and policies of the Malheur County Comprehensive Plan including, but not limited to, Goal 3 “Agricultural Lands”, Goal 5 “Open Space, Scenic and Historic Areas, and Natural Resource” and Goal 11 “Public Facilities and Services”.

- **The proposed Facility forwards the intent of Goal 3 - Agricultural Lands: “To preserve and maintain the agricultural land in the county for agricultural purposes”. The proposed Facility will encompass 20 acres on a 265.90-acre parcel of vacant land. The Facility will not impact the remainder of the parcel to be used for agricultural purposes.**

- **The proposed Facility forwards the intent of Goal 11 - Public Facilities and Services: “To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development”. The proposed new Facility will provide renewable electricity to Fry Foods.**

- B. Existing development and viewpoints of property owners in the surrounding area.

Proposed finding: Letter notice was sent to adjoining landowners and published in the Argus Observer on September 4, 2024. No comments were received. A public hearing will be held on September 26, 2024.

- C. Availability of services and utilities.

Proposed finding: There is no burden to any of the services and utilities anticipated. ROADS: During construction, the burden on Stanton Blvd will be limited to material transport and light truck traffic.

POLICE & FIRE: There is no anticipated increase in protection requirements.

SEWER & WATER: A Solar Farm does not require sewer or water, therefore, no burden is anticipated.

ELECTRICAL & TELEPHONE: As necessary, improvements to the electrical service may be required for operational needs and will be the responsibility of the applicant.

SOLID WASTE: A Solar Farm does not produce solid waste, therefore, no burden is anticipated.

- D. The effect of the proposed use on the stability of the community's social and economic characteristics.

Proposed finding: The proposed solar farm will have no effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics.

- E. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

Proposed finding: The proposed site doesn't fall within the Low-Density Sage Grouse Habitat. This criteria is met.

- F. General Criteria

1. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

Proposed Finding: No landscape improvements at this time.

2. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

Proposed finding: Access to the solar panel area will be via an existing private access drive. The access drive will not be accessible to vehicular

pedestrians.

3. Visual screening of outdoor waste and storage areas.

Proposed Finding: This criterion is not applicable. The proposed solar panel will not produce outdoor waste or contain storage areas. The solar farm will be located within a fenced compound.

4. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

Proposed Finding: There is no lighting on the proposed solar panel. No lighting will provide glare onto adjacent properties.

Special criteria listed below, as applicable.

- G. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Proposed finding: No agricultural efforts are currently evident within 0.25 miles of the proposed solar farm. The proposed solar farm will not significantly increase the cost of, or force a significant change to, accepted farm or forest practices on surrounding lands, as the solar farm will occupy 20 acres on a 265.90 acre parcel.

II. SPECIFIC CONDITIONAL USE CRITERIA:

660-033-0130 (38)

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

(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.

FINDING: the subject tract is predominately cultivated and meets the definition of “arable land”.

- (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.

FINDING: the proposed site is predominately covered by soils of class III that meet the definition of “arable soils”.

(c) “Dual-use development” means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.

FINDING: the proposal is not for dual-use development at this time; however, there is an existing industrial and processing facility on the subject tract, approved by a previous action.

(d) “Nonarable land” means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

FINDING: the subject tract **is not** predominately cultivated and is not predominately comprised of nonarable soils, therefore it **does not** meet the definition of “nonarable land”.

(e) “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.

FINDING: the proposed site is predominately covered by soils of class III, therefore they don’t meet the definition of “nonarable soils”.

(f) “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.

FINDING: the proposal is to provide renewable electricity to the Fry Foods food processing, production, and packaging plant that meet the definition of a “photovoltaic solar power generation facility.”

CONCLUSION: the proposed site is on arable land, and criteria of OAR 660-033-0130(38)(i) must be met.

(g) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless:

(A) The provisions of paragraph (h)(H) are satisfied; or

(B) A county adopts, and an applicant satisfies, land use provisions authorizing projects subject to a dual-use development plan. Land use provisions adopted by a county pursuant to this paragraph may not allow a project in excess of 20 acres. Land use provisions adopted by the county must require sufficient assurances that the farm use element of the dual-use development plan is established and maintained so long as the photovoltaic solar power generation facility is operational or components of the facility remain on site. The provisions of this subsection are repealed on January 1, 2022.

FINDING: the proposed photovoltaic solar power generation facility will not be located on high-value farmland as described per ORS 195.300(10). **These criteria do not apply.**

(h) The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10).

(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;

(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. 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;

(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;

- (E) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);
- (F) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable 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
- (G) 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 facilities 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 power 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 power 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
- (H) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:
- (i) Is not located within the boundaries of an irrigation district;
 - (ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;
 - (iii) Is located within the service area of an electric utility described in ORS 469A.052(2);
 - (iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and
 - (v) Does not qualify as high-value farmland under any other provision of law; or

FINDING: the proposed photovoltaic solar power generation facility will not be located on high-value farmland as described per ORS 195.300(10). **These criteria do not apply.**

(i) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than **20 acres**. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:

(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

FINDING: the proposed site is located on soils of class III and class IV, which are not defined as high-value farmland per OAR 660-033-0020(8)(a). **This criterion is met.**

(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Nonarable soils are not available on the subject tract;

FINDING: the entire subject tract is comprised of soils of class III and class IV, and therefore, nonarable soils are not available on the subject tract. **This criterion is met.**

(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

FINDING: the entire subject tract is comprised of soils of class III and class IV. There are no nonarable soils on the subject tract and therefore, there is no ability to site the project on nonarable soils. **This criterion does not apply.**

(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 nonarable soils;

FINDING: the proposed site is better suited to allow continuation of Fry Foods' existing commercial farm operation, due to the fact that this land is not utilized otherwise and cannot be reasonably cultivated due to lack of water rights on the proposed site. In addition, the proposed site is geographically separated from the main operations site by Owyhee irrigation canal, which leaves the proposed site inaccessible and underutilized. There are no nonarable soils on the subject tract. **This criterion is met.**

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

FINDING: There are no high-valued farmland soils as described per ORS 195.300(10) on the subject tract. **This criterion does not apply.**

(D) 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 80 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.

FINDING: There are no photovoltaic solar power generation facilities that have been constructed or received land use approvals and obtained building permits within the study area. **This criterion is met.**

(ii) When at least 80 acres of photovoltaic solar power generation facilities 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 power 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 power 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

FINDING: There are no photovoltaic solar power generation facilities that have been constructed or received land use approvals and obtained building permits within the study area. **This criterion does not apply.**

(E) The requirements of OAR 660-033-0130(38)(h)(A), (B), (C) and (D) are satisfied:

(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;

FINDING: the proposed site is already geographically separated by Owyhee irrigation canal from the rest of the property. The proposed site has not been utilized for any agricultural practices due to the lack of water rights. The proposed access to the photovoltaic solar power generation facility will be off Plum Lane and across the existing bridge crossing north over Owyhee irrigation canal. 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. **This criterion is met.**

VII. PROPOSED CONDITIONS OF APPROVAL

1. All required road access permits must be obtained from the Oregon Department of Transportation. If necessary, all easements must be obtained along with a road maintenance agreement between all parties.

2. A ten (10) foot buffer must be maintained within the lease area and beyond the fence to decrease the chances of a wildfire.
3. After the county makes a determination of discontinued or nonuse, the property owner shall, within six (6) months, complete removal operations.
4. This approval is valid for two years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

II. EXHIBITS

1. Applicant's conditional use application with attachments.