

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: CUP-2015-11: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 19th day of August, 2015, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the “**CUP**”) for a 20 MW solar facility (the “**Application**”). Property is located in Sections 23 and 24, Township 1 South, Range 4 East, B.M. and is zoned Heavy Industrial (the “**Site**”). The Commission heard from the applicant in support of the Application. The Commission received additional written testimony and information for the Application. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Application is comprised of:

- A. Application form prepared and submitted by Simco Solar, LLC (the “**Applicant**”) for the CUP; and
- B. Those supplemental letters, email messages, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with the Application to the Commission.

II. The Commission finds that the Applicant is:

Simco Solar, LLC
179 Lincoln St, Suite 500
Boston, MA 02111

III. The Commission finds the following as to the procedural matters pertaining to the Application:

- A. The Applicant participated in a pre-application meeting with the Department on January 15, 2015.
- B. The Applicant conducted a neighborhood meeting on April 15, 2015 as required by Elmore County Zoning and Development Ordinance (the “**Zoning Ordinance**”) Section 6-4-3.
- C. The Applicant submitted the Application to the Department on June 26, 2015.
- D. The Department deemed the Application complete on July 7, 2015.
- E. The Department mailed notice of the public hearing to neighboring property owners within one (1) mile of the Site on July 23, 2015 pursuant to Zoning Ordinance Section 6-4-5.

F. The Department mailed notice of the public hearing to agencies on July 23, 2015 pursuant to Zoning Ordinance Section 6-4-4.

G. Notice of the public hearing was published in the Mountain Home News on July 29, 2015 pursuant to Zoning Ordinance Section 6-4-5 A.

H. Notice of the public hearing was posted on the Site on August 10, 2015 pursuant to Zoning Ordinance Section 6-4-5 B.

I. The Commission opened the public hearing on August 19, 2015 and received verbal and written information regarding the Application.

J. The Commission received verbal testimony in support regarding the Application.

K. The Commission moved to **approve** the Application with twelve (12) conditions of approval. The motion to **approve** the Application passed on a 5 -0 vote.

IV. The proposed use of the Application as follows:

A. The Commission finds the proposed use for a 20 MW solar electrical generating facility.

B. The Commission finds the Application's request for a 20 MW solar facility is consistent with information submitted by the Applicant.

C. The Commission finds that the submitted master site plan proposes a 20 MW solar facility and is in conformance with Elmore County Zoning and Development Ordinance Chapter 18.

V. The Commission finds the following pertaining to the Site:

A. Site Description: Sections 23 and 24, Township 1 South, Range 4 East, B.M. A common way of locating the property is from I-84, take exit 74, head south on Simco Road 1.3 miles, the site is on the east side of the road.

B. Parcel Number: RP 01S04E230050 A and RP 01S04E245410 A

C. The "Owner" of the Site is:

Simco Solar, LLC
179 Lincoln St, Suite 500
Boston, MA 02111

D. Applicant's Property Right in the Site is: Owner,

E. Site Characteristics:

Property Size: The site contains approximately 540 acres of which approximately 180 acres will be used for the solar energy facility.

Existing Structures: None.

Existing Vegetation: The vegetation consists mainly of a sage brush.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: FEMA defined Zone X located outside of all know flood zones.

Irrigation: None of the property is being irrigated utilizing surface or subsurface irrigation water rights.

VI. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site is Heavy Industrial pursuant to the adopted zoning map, Ordinance 2013-02.

VII. The Commission finds the surrounding land use and zoning as follows:

Land uses to the south are grazing. Land uses to the north are grazing/interstate. Land uses to the east are grazing/interstate. Land uses to the west are grazing.

VIII. The Commission finds the existing services as follows:

Access Roads: Nearest public road is Simco Road. New road(s) will need to be constructed.

Fire Protection District: None.

Sewage Disposal: None.

Water Service: None.

Highway District: Mountain Home Highway District (the "**Highway District**") and the Idaho Transportation Department (the "ITD").

IX. The Commission finds the following as the applicable law for consideration of the Application:

A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "**Comprehensive Plan**"); and

B. Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and

C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and

X. Comprehensive Plan.

A. **The Commission finds** that the Comprehensive Plan Future Land Use Map has the site classified as Heavy Industrial.

B. **The Commission finds** the Application is in conformance with the Comprehensive Plan as stated in the findings.

XI. Zoning Ordinance.

A. The Commission finds that the Elmore County Planning and Zoning Ordinance is the document governing the Site pursuant to Zoning Ordinance Chapter 27.

B. The Commission finds that in order to approve the CUP application, the following findings as set forth in Section 6-27-7 of the Zoning Ordinance shall be made.

1. The proposed use shall, in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance;
2. The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan and this Ordinance (Title 6);
3. The proposed use complies with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter;
4. The proposed use shall comply with all applicable County Ordinances;
5. The proposed use shall comply with all applicable State and Federal regulations;
6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;
7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;
8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;
9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;
10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
11. The proposed use shall have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways;
12. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.

C. The required findings of Section 6-27-7 of the Zoning Ordinance, stated as questions, follow in bold text, followed by the Commission's findings:

1. Does the proposed use in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance?

The Commission finds that a 20 MW solar electrical generating facility requires a conditional use permit in Table 6-8-11 (C).

The Commission finds in addition to a conditional use permit, additional requirements for the proposed use under the Application are found in the Zoning Ordinance, Section 6-8-97.

The Commission finds that the Zoning Ordinance defines electrical generating facilities as “any facility generating electrical power through the use of natural gas, solar cells, water or wind power. The use of diesel fuel is allowed only for emergency generation of electricity for fire suppression or the winding down of turbines.”

2. Is the proposed use in harmony with and in accordance with the Elmore County Comprehensive Plan (“Plan”) and this Ordinance (Title 6)?

The Commission finds that the application is in harmony and accordance with the following objectives and goals of the 2014 Elmore County Comprehensive Plan:

Land Use Objective 5: *Encourage and support commercial and industrial development if it complies with County Ordinances and guidelines to create jobs and expand the tax base. Maintain two industrial zones: heavy and light.*

Land Use Objective 8: *Review all commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.*

Simco Road District - 4. Economic Development: *Continue to support and solicit new business industries to locate in Simco Road District to provide economic development opportunities for the County.*

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Ordinance Section 6-27-7.

3. Does the proposed use comply with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter?

The Commission finds that the Application complies with the purpose statement of the Heavy Industrial zone in Zoning Ordinance Section 6-8-5 G in that “the purpose of the M2 district is to manage the development and location of heavy industry. All industrial development will be subject to conditional use permits, design review requirements, and detailed engineering and technical studies conducted by independent technical authorities.”

The Commission finds neighboring agriculture and industrial uses are limited on site and the immediate vicinity and therefore negative impacts on existing agriculture and industrial operations is limited.

The Commission finds the Site has existing neighboring residential (1) land uses that are located in the heavy industrial zone.

4. Does the proposed use comply with all applicable County Ordinances?

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Zoning Ordinance Section 6-27-7.

5. Does the proposed use comply with all applicable State and Federal regulations?

The Commission finds that conditions of approval were proposed to ensure the Application met all State and Federal regulations, namely meeting all requests by ITD.

6. Is the proposed use designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and will such use not change the essential character of said area?

The Commission finds that the majority of the vicinity is heavy industrial/grazing. Therefore, the **Commission further finds** that the Application as proposed is harmonious and appropriate with the general vicinity as electrical generating facility/solar farm are appropriate in heavy industrial areas and the location of this use is a benefit because of there are very few private landowners and limited residential homes (1) in the vicinity.

7. Will the proposed use be hazardous or disturbing to existing neighboring uses or impede their normal development?

The Commission finds that the addition of an electrical generating facility/solar farm will not be hazardous to existing neighboring uses and is unaware of potential hazards to existing private land owners (3) neighboring this project.

8. Is the proposed use served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services?

The Commission finds the following public services shall be provided as follows:

Highways: Mountain Home Highway District requires an approach permit, project borders I-84.

Streets: Private roads will be constructed onsite at applicant's expense.

Police and Fire Protection: No fire district, State Fire Marshall may have comments.

Drainage Structures: Condition of approval is provided for drainage.

Refuse Disposal: not applicable.

Potable, Non-Potable Water, Fire Suppression Water Supplies: State Fire Marshal will approve at time of building permit.

Sewer: not applicable.

9. Will the proposed use create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County?

The Commission finds that the Application proposed all improvements, required to be built be funded by the Applicant and therefore not be detrimental to the economic welfare of the County. No additional public funding is anticipated.

10. Will the proposed use involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

The Commission finds that the Application will not create any excessive production of noise, smoke, fumes, glare or odors. The glare from sunlight is not expected to be a concern. Testimony stated PV modules that will be installed absorb over 90 percent of the light received.

The Commission finds that the Highway District did not require a traffic impact study and therefore no excessive production of traffic is anticipated by the Highway District.

11. Will the proposed use have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways?

The Commission finds that the Application proposed a new vehicular approach off of Simco Road and will apply for an approach permit through Mountain Home Highway District.

The Commission finds that the Highway District did not required a traffic impact study and therefore no interference with traffic on public roads is anticipated by the Highway District for the Application.

12. Does the proposed use result in the destruction, loss or damage of a natural or scenic feature of major importance?

The Commission finds that the Site is not identified as a natural or scenic feature of major importance.

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.

2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.

3. The Commission concludes that the Application complies with the required findings set forth in Section 6-27-7 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, the Commission voted and hereby **approves** the Application with the following conditions:

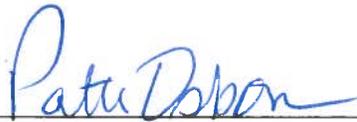
1. The proposed use will comply with all the requirements of section 6-8-97 of the Elmore County Zoning and Development Ordinance.
2. All outstanding fees, if any, must be paid prior to the issuance of an Elmore County building permit.
3. Failure to comply with any of the conditions will result in revocation of the Conditional Use Permit.
4. The proposed use will be constructed in substantial conformance with the master site plan.
5. Prior to issuance of building permit, an overall site plan, stamped and signed by Applicant's engineer, must be approved by the County Engineer to ensure drainage and storm water management is adequate.
6. All roads shall meet Zoning and Development Ordinance Chapter 17 requirements.
7. The proposed use shall comply with all recommendations of the State Fire Marshal.
8. Landscaping to be mitigated with Idaho Transportation Department along the Interstate 84 property boundary and a security fence around the entire project area.

Dated this 16th day of September, 2015.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN
VICE CHAIRMAN K.C. DUERIG
SUSAN FISH
ED OPPEDEYK
JEFF BLANKSMA
SHANE ZENNER

VOTED AYE
VOTED AYE
ABSENT
VOTED AYE
VOTED AYE
VOTED AYE



Patti Osborn, Chairperson

ATTEST:



Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT ZONING ORDINANCE SECTION 6-3-2 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.