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VIA ELECTRONIC MAIL AND HAND DELIVERY

**Re: Appeal of Approval of Conditional Use Permit
30 Flicker Road Solar Array CUP 25-032**

To the Valley County Board of Commissioners:

Pursuant to Valley County Code (“VCC”) § 9-5H-12-B, by and through their undersigned counsel, Dr. Thomas and Ms. Lori Ronay, Mr. Todd Silverman, and Mr. Eric and Ms. Kristi Pedersen (the “Affected Persons”) respectfully appeal the Valley County Planning and Zoning Commission’s (the “Commission”) decision approving the Conditional Use Permit (“CUP”) 25-032 for an already-installed large, free-standing solar array located at 30 Flicker Road, McCall, Idaho.

The Commission’s approval of the CUP was not supported by substantial evidence and was arbitrary and capricious, and failed to demonstrate that the CUP met the required criteria in Valley County code. For the reasons discussed further below, the Affected Persons respectfully request that this appeal be granted, and the CUP be denied.

BACKGROUND

CUP 25-032 seeks authorization for an already-installed ground-mount solar array for residential use at 30 Flicker Road, McCall, Idaho.¹ The solar array measures approximately 45’ x 16’ and is mounted on three 8-inch diameter, 10-foot tall steel pipes with a maximum height of over 17.5

¹ Application at p. 1. Pages indicate the PDF page number of the document.

feet when the solar array is angled at 50° from vertical.² The solar array has the ability to be positioned to be “steeper,” which may occur in the winter,³ and thus the maximum height could extend further.



Photo by Kristi Pedersen

² Application at pp. 15, 16. Note that the April 9, 2026 Staff Report incorrectly states that the solar array measures 45' x 10'. Staff Report at pg. 1.

³ Applicant Testimony, Jan. 8, 2026 Planning and Zoning Commission Meeting at 19:24:55.



Photo by Thomas Ronay



Photo by Thomas Ronay

The property owners of 30 Flicker Road initiated the project with Magic Valley Electric LLC (“Magic Valley”), the applicant and professional installer, in August 2025, after the Trump administration signed the One Big Beautiful Bill Act in July 2025, that terminated residential clean energy tax credits on December 31, 2025. In October, Magic Valley obtained a state electrical permit, and Idaho Power approved an Interconnection Application. On November 6, 2025, Magic Valley submitted building permit applications and plans to Valley County, at which point it was informed that a conditional use permit was required for the solar array.⁴ Magic Valley submitted its application for a CUP on November 17, 2025.⁵ Not having enough time to properly notify the public and have a public hearing before the Commission before the end of the year so that the property owners could take advantage of the expiring tax credits, Magic Valley decided to install the solar array in December 2025, without obtaining a CUP first.⁶

⁴ Applicant’s slide show at pg. 2.

⁵ Application at pg. 1.

⁶ Applicant’s Slide Presentation at 2.

LEGAL STANDARDS

I. STANDARDS OF REVIEW

In reviewing the decision of the Commission, the Board of Commissioners (the “Board”) operates under a *de novo* standard. VCC § 9-5H-12-B-8. This means the Board has the authority to sustain, deny, amend, or modify the Commission's decision without deference to the Commission's findings. The Board's decision is final and does not require referral back to the Commission, unless the Board elects to do so with specific instructions. This standard ensures that the Board independently evaluates the matter, providing a comprehensive review of the issues presented.

II. VALLEY COUNTY CODE

VCC § 9-3-1 provides for which land uses are permitted or conditionally permitted under the County’s multiple use zoning scheme. Table 3-A states that solar panels that are attached as part of the design of a structure are permitted, but solar panels that are detached from the primary structure that are greater than 8 square feet require a conditional use permit.

Section § 9-5-3, subsection D mandates that an impact report “shall be required for *all* proposed conditional uses. (emphasis added). This report must address potential environmental, economic, and social impacts, detailing how these impacts are to be minimized, and covers 21 criteria, including: (d) heat and glare; (f) potential changes to surface water drainage; (j) soil suitability for supporting proposed landscaping; site improvements, including sound and sight buffers; (l) impacts to visibility from public roads and adjoining property; and (m) site selection, including topographic features and adjoining land ownership or use to illustrate compatibility.

Furthermore, VCC § 9-5G-1 provides additional standards for specific conditional uses, including solar panels:

Alternative energy uses requiring a conditional use permit shall meet the following site or development standards:

A. Solar Panels Greater Than Eight Square Feet In Accumulated Area And Detached From Primary Structure:

1. Must be a minimum of fifteen feet (15') from property lines.
2. Glare shall not create a hazard to vehicular traffic.
3. Cannot be over thirty feet (30') in height.
4. Impact to neighbors will be a determining factor.

These standards do not replace or substitute the requirements set forth in section 9-5-3, but are in addition to those.

III. ISSUES BEING APPEALED

A. Failure to Meet the Burden of Proof Regarding Neighbor Impact

VCC § 9-5G-1 expressly identifies impacts on neighboring properties as a determinative approval criterion (“Impact to neighbors will be a determining factor.”). Under section 9-5G-1, the Commission is required to give substantial weight to demonstrable neighborhood effects and to deny the application where adverse impacts remained. Where, as here, the record demonstrates that the Commission never considered section 9-5G-1’s directive; that visual impacts have not been credibly analyzed and effectively mitigated with enforceable measures; and that the mitigation measures themselves may cause different adverse visual impacts, approval is inconsistent with the Code’s directive.

First, the scale and siting of the solar array imposes a substantial and adverse visual impact on adjacent residences. The array, as already installed, is very large in overall footprint and panel height, and would be plainly and continuously visible from multiple vantage points on the neighboring parcels, including primary living areas and outdoor recreational spaces. Hiding the industrial look of the back of the array with military-style camouflage netting, as the property owner has done, does little to act as a concealment tool in the natural environment of this neighborhood. The netting, as currently installed, sags on the solar array making it look unnatural, shoddy, and garish. Such netting also is prone to tearing, fading over time, trapping dead leaves/pine needles and dust, and can quickly transition from a concealment tool to looking like weathered construction debris. There is no guarantee that Ms. McClellan or successors to the property will appropriately maintain such netting.

Moreover, the CUP’s condition of approval to create a large berm with some trees planted on top to screen the solar array from the neighbors’ properties also does little to mitigate the solar array’s visual dominance and creates more problems than it solves. A large berm would be aesthetically incompatible with the topography. The open, natural rolling hill topography of the area is a protected characteristic of the local landscape. A man-made, artificially steep mound of dirt is an unnatural intrusion that violates the spirit of the site development standards.

The associated tree plantings do not resolve these adverse impacts of installing a large mound of dirt in an open topography. The earthwork and vegetative screening would substantially alter the area’s open, natural rolling hill landscape that defines the neighborhood’s visual character and open viewsheds. Artificially constructed berms and regimented screening trees would replace the existing, organic topography with a man-made barrier, resulting in a long-term visual intrusion that is itself incompatible with the surrounding landscape.

Additionally, there are no AI-generated photos or renderings in the record that could potentially demonstrate that this berm would not be a visual blight on the landscape. There has been no visual impact assessment to measure the “potential visual exposure” of this proposed berm and how high it or vegetation on top of it would have to be to effectively screen the solar panel from,

for example, the Ronay’s two-story home, which is currently under construction. Moreover, even if the CUP requires continued maintenance of the berm and trees, enforcement of the conditions is left to the discretion of the County, without any further recourse available to the neighbors if those conditions are not met.

Of greater concern is the alteration of natural drainage patterns and potential erosion from a large berm located uphill from the Ronay’s property. Re-grading to create a berm can rechannel surface runoff, concentrate flows, and increase velocities, which may exacerbate erosion on- and off-site and adversely affect adjacent properties and shared drainage features. The proposed condition of approval in the CUP does not provide assurances, backed by site-specific hydrologic analysis and engineered plans, that the berm would avoid negative drainage impacts, prevent erosion, and protect downstream properties and resources. It does not require a specific design other than the height requirement. In the absence of such demonstrated protections, the risk of drainage and erosion problems is a further incompatibility with neighboring uses and the environment.

Criterion 4 of Section 9-5G-1 serves as a “catch-all” to protect property rights and the quiet enjoyment of neighbors. The subject solar array, by virtue of its massive scale and industrial appearance, is inherently discordant with the surrounding residential/rural aesthetic. The sheer visibility of the structure, combined with a mitigation plan that threatens the area’s drainage and topography and viewshed leads to one conclusion: the impact is too great.

B. Failure to Follow Appropriate Procedures for Issuing a CUP.

Moreover, the Staff Report and Commission’s analysis of the application focused on compliance with what it called “six standards” that were reproduced in question form in the Staff Report, stating that “[t]hese six standards should be a significant focus of attention during . . . deliberations”⁷ But these are not standards; they are policy statements. The standards that a CUP must be evaluated against are in VCC 9-5-3(D)--the requirement to submit an Impact Report, which the Staff Report and Commission completely ignored.

The Commission’s approval of the CUP is procedurally and legally deficient because the underlying Impact Report failed to provide a meaningful discussion of site selection, as expressly required by VCC 9-5-3-D(m). For example, Section 9-5-3-D mandates an evaluation of 21 distinct criteria, specifically requiring an analysis of site selection—including topography and adjoining land use—to ensure compatibility with the surrounding neighborhood. In this instance, the Commission’s analysis was erroneously narrow, focusing solely on the current location of the unauthorized solar array rather than exploring whether that location was the most compatible site on the property. Although the Commission asked whether the solar array can be moved (and the Applicant said yes), there was no analysis of placing the solar array on the east side of 30 Flicker Road, which has a large flat section with no trees, but still allows the solar array to face south. There was also no discussion of placing the solar array on the roof of the house.

⁷ Staff report at pg. 3 (citing to VCC 9-5-2(A), (B)(3)).

By failing to inquire into, or require the applicant to justify, the rejection of superior alternative sites—most notably the roof of the primary residence, which would have mitigated visual impacts and potentially bypassed the need for a CUP altogether—the Commission reached a conclusion unsupported by the record. An adequate “site selection” discussion requires more than a mere description of the chosen spot; it necessitates a good-faith comparison of alternatives to ensure that the granted use is the least impactful option available. Consequently, the Commissions’ failure to consider these feasible alternatives renders its compatibility finding arbitrary and capricious.

Moreover, the Commissions’ reliance on a proposed berm as a visual mitigation measure is legally insufficient because it is not supported by substantial evidence in the record. To satisfy the substantial evidence standard, a decision must be based on more than mere speculation or conjecture. Here, the record is devoid of any visual renderings or topographic simulations illustrating the berm’s scale or height, or placement in relation to the affected viewsheds. Without these critical data points, the Commission could not have meaningfully determined whether the berm would actually achieve its intended purpose of hiding the solar array, or if the berm itself would constitute a secondary visual blight that further destroys the existing viewshed. It’s conclusion that a berm would sufficiently mitigate the impact, and not create another one, is purely speculative and lacks a rational basis in the evidence.

C. The Board should not establish a precedent of ignoring the County’s land use laws.

Approving a CUP after-the-fact for work undertaken in violation of required permitting processes would reward noncompliance and set a negative precedent for the County. This is not the situation of the unaware landowner that learned of the requirements after that fact. Here, the evidence demonstrates that Magic Valley—a license operator—knew of the requirements for a CUP and, instead of stopping work, installed the solar array anyway. Approving a CUP after the fact, on this record, would reward a *willful disregard* of the County’s land use procedures and would set a negative precedent that undermines the integrity of the permitting regime.

Separately, the installation violates the subdivision’s Covenants, Conditions, and Restrictions (“CC&Rs”). The intent of the CC&Rs is to prohibit installation of free-standing structures, such as this solar array, without approval of the other lot owners first, which has not been obtained. The CC&Rs clearly establish that “private electrical generating systems shall not be permitted, except as a backup system in case of primary electrical service failure.” CC&Rs Section 4.09(A). By the size and admission of the landowner,⁸ this solar array is not a backup system, but is a private electrical generating system prohibited under the CC&Rs without advance approval of the other landowners.

⁸ April 9, 2026 Planning & Zoning Commission Meeting at 19:02:29.

Although the County’s CUP process does not displace or cure private land use restrictions in the CC&Rs, granting the CUP despite an ongoing CC&R violation would create conflict, invite further private disputes, and signal indifference to well-established deed restrictions that are central to the community’s expectations and property values.

IV. AFFECTED PERSONS

Dr. Thomas and Ms. Lori Ronay own property in the Jug-78 parcels (40 Flicker Road), which are governed by CC&Rs that are recorded with the County. The Ronay’s property is directly south of 30 Flicker Road and the solar array. The Ronays are actively constructing their house this season. They plan on retiring soon after the house is built and living in it full-time. The Ronays enjoy the wide expansive views of the rolling hills as the topography cascades down to the valley floor. Currently, from the ground level of the knoll where their house will be located, the Ronays can see the top of the house and solar array on 30 Flicker Road. The Ronays plan on building a two-story house where it is likely that the solar array would be visible, even with mitigation.

Mr. Eric and Ms. Kristi Pedersen live in the Jug Mountain Ranch subdivision at 16 Flicker Road, and is the second house down directly north of the solar array. Although there is a house between the Pedersen’s property and 30 Flicker Road, the house does not block the line of sight to the solar array. Moreover, even with the willow trees on Ms. Pedersen’s property, the solar array is more visible in the winter when the trees go dormant.

Mr. Todd Silverman lives in the Jug Mountain Ranch subdivision at 15 Flicker Road. Mr. Silverman’s home is north of the solar array, across the street from the Pedersens. He can also see the solar array’s large structure that raises up from the ground and obstructs the open viewshed.

CONCLUSION

For the reasons set forth above, the Affected Persons respectfully request that the Board grant the appeal and reverse the Commission’s approval of the CUP.

Date: April 20, 2026

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