Valley County Planning and Zoning

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STAFF REPORT:	Appeal of PZ Commission Approval of C.U.P. 25-032 Solar Panels
MEETING DATE:	June 1, 2026
TO:	Planning and Zoning Commission
STAFF:	Cynda Herrick, AICP, CFM Planning and Zoning Director
APPELLANT:	Dr. Thomas Ronay, Ms. Lori Ronay, Mr. Todd Silvermann, Mr. Eric Pederson, and Ms. Kristi Pederson - Represented by Julia Thrower, Mountain Top Law, 614 Thomspon AVE, McCall, ID 83638
APPLICANT:	Katrina Spencer, Magic Valley Electric LLC kwilcox@thesolarteam.com
PROPERTY OWNER:	Kristen McClellen & Bruce Smith Family Trust 129 Alcove CT, Grand Junction CO 81507
LOCATION:	30 Flicker Road Parcel RP17N04E076605 located in the SESW Section 7, T.17N, R.4E, Boise Meridian, Valley County, Idaho
SIZE:	8.7-acre parcel
REQUEST:	Ground-Mounted Solar Panel Array
EXISTING LAND USE:	Single-family Residential Parcel

On April 9, 2026, the Valley County Planning and Zoning Commission approved CUP 25-032 McClellen/Smith Solar Panels on a 3-2 vote. This decision has been appealed.

BACKGROUND

Valley County Code 9-5G-1 states that conditional use permits are required for solar panels greater than eight (8) square-feet that are detached from the primary structure. This requirement was adopted in Ordinance 10-06 on August 23, 2010.

Magic Valley Electric LLC requested a conditional use permit for a ground-mounted solar panel array for residential use. The array was constructed prior to submittal of an application for a conditional use permit. The application states that the area for the residence and solar panels has been graded and cleared of vegetation. According to the contractor (from Jerome) the installation was started before they became aware that a conditional use permit was required. The applicant and the property owners understand they will need to submit a building permit. Access is from Flicker Road, a public road. The 8.7-acre parcel is addressed at 30 Flicker Road.

THE APPEAL

The appeal (attached) was received in a timely manner on April 20, 2026, with the appropriate $1,000 fee.

Valley County Code (VCC) 9-5H-12: APPEALS:
Each appeal must clearly state the name, address and phone number of the person or organization appealing a nd the specific issues, items or conditions that are being appealed, and state the nature of his or their interest and extent of damages.

- The appeal letter states the names and addresses of the appellants as well as the address and phone number of the legal representative. **It does not state the phone number(s) of the appellants.**

The appeal received from Mountain Top Law summarized the application and listed the following reasons for the appeal:

1) Approval was not supported by substantial evidence, was arbitrary and capricious, and failed to demonstrate that the CUP met the required criteria in Valley County Code.
2) Failure to meet the burden of proof regarding neighbor impact.
3) Failure to follow appropriate procedures for issuing a CUP.
4) The Board should not establish a precedent of ignoring the County's land use laws.

Mountain Top Law submitted a supplement to the appeal on May 26, 2026. This included:

- Clarification regarding representation of HOA support;
- Additional aerial photographs; and
- VCC states impact to neighbors is a determining factor.

APPLICANT'S RESPONSE TO THE APPEAL

The applicant submitted a response to the appeal. It asserts the following:

- The record contains substantial evidence supporting approval.
- The appeal overstates visual and topographic impacts.
- Drainage and erosion concerns are speculative.
- The Commission properly considered site selection.
- The record contains a complete impact Analysis consistent with VCC 9-5-3(D).
- After-the-fact permitting does not require denial.
- CC&R issues are not within the county's authority.
- Submitted photographs and figures

FINDINGS

1. Valley County Code (Title 9): In Table 9-3-1, this proposal is categorized under:
   - 7. Alternative Energy Uses (b) Solar panels – detached from primary structure

and > 8-feet in area

2. Valley County Code:

TITLE 9 LAND USE AND DEVELOPMENT

9-5G-1: SITE OR DEVELOPMENT STANDARDS

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.

3. Other Submittals by the applicant and/or Property Owners were as follows:

   - Application submitted November 17, 2026.
   - A copy of the letter the applicants sent to neighbors dated January 23, 2026, regarding screening options. (Received February 2, 2026)
   - Joey Richardson, representing the applicant, submitted additional photos of the array and site. (Exhibit 6, January 8, 2026)
   - Email correspondence between the property owners and Clay Wright (260 Finn Church Lane) regarding the panel's orientation, tilt, and reflection. (January 30, 2026; February 13, 2026)
   - A letter sent to neighbors regarding CCRs, timeline of solar panel construction, and why the specific site was chosen. (Received February 26, 2026)
   - Timeline, pictures of the site, and pictures of screening options.(Received March 9, 2026)
   - An email with two attachments: 1) Site plan with aerial view and topography, and 2) vegetation and topography plan. New ponderosa pines and spruce trees proposed. (March 22, 2026)
   - Landscaping / Site Plan (Received April 1, 2026)
   - Slide Presentation for April 9, 2026 (Received April 1, 2026)
   - Landscaping / Site Plan and Photos of Existing Conditions and Proposed Rendering (Sent by Property Owner on April 1, 2026)
   - Email dated April 2, 2026, from property owner regarding proposed screening, landscaping, and berm. (Exhibit 1, April 9, 2026)
   - Response to Appeal (Received May 22, 2026)
   - Expanded Impact Report (Received May 22, 2026)

4. The Planning and Zoning Commission held a properly noticed public hearing on January 8, 2026. The matter was tabled to April 9, 2026, at 6:00 p.m.

5. Since a specific date and time was included in the approved motion to table C.U.P. 25-032, additional notice was not required. However, the applicant was notified by letter sent March 9, 2026. Legal notice was posted in the *Star News* on March 19, 2026, and March 26, 2026.

6. A public hearing was held on April 9, 2026.

7. People in attendance commented as proponents, undecided, and opponents during public testimony on the proposal. Written comments were received from agencies and the public. See the PZ Commission staff reports and minutes for each hearing.

8. All Agency comments received:

   Brent Copes, Central District Health, stated an accessory application and fee are required to verify the solar panels will not impact the septic tank, drainfield, or drainfield replacement area. (December 10, 2025) A CDH Accessory Use Authorization permit was approved on March 26, 2026. (Exhibit 2, April 9, 2026)

   Jerry Holenbeck, Donnelly Fire Marshal, has no comments, concerns, or requirements at this time. (December 16, 2025)

   Brandon Flack, Idaho Fish and Game, had no comments. (December 29, 2025)

   Emily Hart, McCall Airport Manager, had no comments. (December 31, 2025)

   Parametrix (Valley County Engineer) had no comments. (March 31, 2026)

9. All Public comment received:

   Clay Wright, 260 Finn Church Lane, is strongly opposed. The scale of the proposed project will be a blight on the landscape and a perpetual visual insult to the surrounding neighbors. The Wright home is located directly to the southwest of the proposed location of the solar panels. During the winer, the panels would have to be aligned directly to the southwest to maximize solar exposure, resulting in glare and reflection off the panels directed at his residence. The location is behind the applicant's home and would not affect their view or expose them to solar reflection and glare. Excerpts from published studies and a map are attached. (December 14, 2025)

   Thomas and Lori Ronay owners of 40 Flicker RD:
   - Asked for a stay in the County's decision until the CCR violations have been addressed and adequately mitigated. The solar panels are large, unsightly, and would likely infringe on their view and use of the property. Solar reflection is a concern for the nearby properties and aircraft. (December 28, 2025)
   - Responded to the applicant's letter to neighbors dated January 23, 2026. The proposed remediation is unacceptable. The solar panel is a violation of the CCRs (attached). The structure should be removed. Acceptable options include a panel on the roof or relocation to the property's east side and where it would not be visible to other property owners. (February 8, 2026)
   - Responded to the applicant's letter dated February 17, 2026. A building permit was required and the panel and lack of notice is in violation of CCRs. Neighbors do have their views interrupted. Adding visual barriers will not fix this; the array should be relocated. (March 2, 2026)

Todd Silverman, 15 Flicker RD, stated the panels need to be removed or relocated. (March 3, 2026)

Ferne Krumm stated acceptable alternatives include:

- Relocation to a location that is not visible from the public road;
- Excavate and lower the panels; or
- Split up the panels to reduce overall height to a level low enough to allow shrubbery, trees, etc. to adequately hide the panels. (Received March 9, 2026)

10. The Commissioners deliberated and discussed the six "Standards of Approval" from VCC 9-5.

11. A motion to approve the conditional use permit for CUP 25-032 McClellen/Smith Solar Panels, with additional conditions of approval, was made and seconded. Commissioner Mabe, Commissioner Potter, and Commissioner Schneider voted in favor of the motion; Commission Oyarzo and Chairman Roberts voted in opposition. The motion was approved.

12. An appeal from the applicant's representative and the required $1000 fee was received on April 20, 2026.

13. Legal notice for the Appeal was completed, as follows:

    - Posted in the *Star News* on May 14, 2026.
    - Potentially affected agencies were notified on April 29, 2026.
    - The applicant, property owners, legal representative, and appellants were notified by fact sheet sent April 29, 2026.
    - Property owners within 300 feet of the property line were notified by fact sheet sent April 29, 2026.
    - The fact sheet was also sent on April 29, 2026, to people who previously comment on this matter.
    - The appeal letter and public hearing notice were posted online at www.co.valley.id.us on April 29, 2026.
    - The site was posted on April 30, 2026.

14. The Minutes of the P&Z Commission Hearings and the Facts and Conclusions are attached, along with information submitted by the applicant and public.

15. On May 22, 2026, the applicant submitted additional information in response to the appeal letter. See attached.

Planning and Zoning CONCLUSIONS

The Valley County Planning and Zoning Commission made the following conclusions:

1) Valley County must follow the laws of the State of Idaho and those identified in the Valley County Code.

2) Valley County has opted to substitute traditional zoning with a multiple use concept in which there is no separation of land uses.

3) Valley County has one mixed use zone that is a performance-based ordinance which promotes mitigation of impacts.

4) That the proposed use is in harmony with the general purpose of Valley County ordinances and policies and will not be otherwise detrimental to the public health, safety, and welfare.

5) The proposed use is compatible with surrounding land uses. This application had a positive compatibility rating in accordance with Valley County Code Appendices 9-11-1.

6) The use will result in an increase of the applicant's private property value.

7) The proposed use will not have an undue adverse impact on the environment as long as building permit requirements are met. Reflection of panels could be an environmental impact. However, the applicant did state coating has been done to mitigate the reflection. When the solar arrays become damaged, replaced, or obsolete, all materials must be properly disposed of as required by federal and state laws and regulations

8) The proposed use will not have an undue adverse impact on adjoining private property as mitigation in the form of landscape screening will occur and must be maintained.

9) The proposed use will not have an undue adverse impact on government services.

10) That the proposed use is consistent with the Valley County Comprehensive Plan. The Comprehensive Plan promotes the use of alternative energy.

11) Conditional use permits are required for solar panel arrays to allow consideration of impacts to neighbors. The solar panel array fits as long as the applicant mitigates for the impacts to the neighbor's viewsheds.

12) The parcel is almost nine acres in size; this solar array would not fit on a 1-acre lot.

13) This is the best site for the array due to topography. Moving the array would elevate it so that it would be more visible.

14) Although the applicant and property owners did not obtain the proper County permits prior to installation, there has been adequate testimony and review. Obtaining the conditional use permit and building permit will remedy the violations.

RECOMMENDATIONS / COMMENTS BY STAFF

Staff clarification on appeal. The Ronay property is addressed at 27 Flicker RD, not 40 Flicker RD as stated in the appeal.

The Ronay building permit was issued April 14, 2026, when the solar panel was already in place.

Photo 13 in the Response to the Appeal shows a rendering of the screening.

The roof of the existing residential structure does not slant towards the sun.

Board of County Commissioner's Decision

1) Part of the Valley County Board of Commissioners deliberation and decision should be a "**reasoned statement** that explains the criteria and standards considered relevant; state

the relevant **facts relied upon**, and **explain the rationale for the decision based on applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record**, 'all of which' should be part of the motion to approve or deny, or should be developed with staff assistance for action at a subsequent meeting." (VCC 9-5H-11.8)

2) **Formulate the reasoned decision and rationale for the finding as follows…**
   I. List Issues
   II. Develop Reasoned Statements on the issues.
   III. Base decisions on evidence in the record.
   IV. Base decisions on applicable ordinances, etc.

3) **Idaho Code 67-6519**. APPLICATION GRANTING PROCESS.

   (5) **Whenever a governing board or zoning or planning and zoning commission grants or denies an application**, it shall specify:
   (a) The ordinance and standards used in evaluating the application;
   (b) The reasons for approval or denial; and
   (c) **The actions, if any, that the applicant could take to obtain approval.**

4) **Facts and Conclusions** will be prepared for Board of County Commissioner's decision final decision for approval at a later date.

ATTACHMENTS

1) Conditions of Approval included in motion to approve CUP 25-032.

2) Appeal
   - Appeal letter received April 20, 2026
   - Supplement received May 26, 2026

3) Applicant's / Property Owners Submittals, Including Exhibits
   - Application submitted November 17, 2026.
   - A copy of the letter the applicants sent to neighbors dated January 23, 2026, regarding screening options. (Received February 2, 2026)
   - Joey Richardson, representing the applicant, submitted additional photos of the array and site. (Exhibit 6, January 8, 2026)
   - Email correspondence between the property owners and Clay Wright (260 Finn Church Lane) regarding the panel's orientation, tilt, and reflection. (January 30, 2026; February 13, 2026)
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- Expanded Impact Report (Received May 22, 2026)

4) PZ Commission
   - Proposed Conditions of Approval per motion made April 9, 2026
   - PZ Commission Facts and Conclusions
   - PZ Commission Minutes and Staff Reports – January 8, 2026, and April 9, 2026

5) Maps / Pictures
   - Location Map
   - Aerial Map
   - Photos taken December 16, 2025, and April 30, 2026
   - Assessor Plat – T.17N R.4E Section 7

6) Idaho Code
   - Idaho Code 67-6519 Application Granting Process

7) List of Exhibits

8) All Agency Responses, Including Exhibits

9) All Public Comments, Including Exhibits

10) Compatibility Rating
    - Blank Compatibility Rating with Instructions
    - Staff's Compatibility Rating
    - Commissioner Potter's Compatibility Rating

Conditions of Approval

1. The application, the staff report, and the provisions of the Land Use and Development Ordinance are all made a part of this permit as if written in full herein. Any violation of any portion of the permit will be subject to enforcement and penalties in accordance with Title 9-2-5; and, may include revocation or suspension of the conditional use permit.
2. Any change in the nature or scope of land use activities shall require an additional Conditional Use Permit.
3. The issuance of this permit and these conditions will not relieve the applicant from complying with applicable County, State, or Federal laws or regulations or be construed as permission to operate in violation of any statute or regulations. Violation of these laws, regulations or rules may be grounds for revocation of the Conditional Use Permit or grounds for suspension of the Conditional Use Permit.

4. Shall obtain a building permit for the solar panel structure prior to installation; if already installed, it must be obtained within 2 months.
5. Shall meet requirements of Donnelly Fire Department.
6. All noxious weeds on the property must be controlled.
7. All lighting on-site must be dark sky compliant.
8. When the solar array becomes damaged, replaced, or obsolete, all materials must be properly disposed of as required by federal and state laws and regulations.
9. A new conditional use permit will be required to enlarge or move the solar array location.
10. If there is any new site grading required, a site grading/stormwater management plan will have to be approved by the Valley County Engineer.
11. Shall require a 3-ft rise in elevation topped with minimum 6-ft tall native evergreens staggered to conceal the array.
12. If a tree dies, it must be replaced.
13. Full concealment is required at time of planting trees.

END OF STAFF REPORT

MOUNTAIN TOP
LAW
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April 20, 2026

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 direct 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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May 26, 2026

VIA ELECTRONIC MAIL

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

To the Valley County Board of Commissioners:

This letter supplements the appeal submitted on April 20, 2026 by Dr. Thomas and Ms. Lori Ronay, Mr. Todd Silverman, and Mr. Eric and Ms. Kristi Pedersen (the "Affected Persons"), challenging the Valley County Planning and Zoning Commission's (the "Commission") approval of Conditional Use Permit ("CUP") 25-032 for the ground-mount solar array located at 30 Flicker Road, McCall, Idaho. The Affected Persons respectfully submit the following additional information for the Board of Commissioners' (the "Board") consideration in its *de novo* review of the application. This submission supplements, and does not replace, the arguments and authorities set forth in the April 20, 2026 appeal letter, which the Affected Persons continue to rely upon in full.

I. Clarification Regarding Representations of Homeowners' Association Support.

At the public hearing before the Commission on April 9. 2026, Mr. Dave Kennedy, who was identified as a board member of the Jughandle Estates Homeowners' Association (the "HOA"), addressed the Commission and represented that the Jughandle Estates HOA supported the solar array at 30 Flicker Road. The Affected Persons are concerned that this representation of HOA support may have influenced the Commission's decision to approve the project.

The Affected Persons respectfully wish to clarify the record. It is the Affected Persons' understanding that Mr. Kennedy was speaking on his own behalf and not in any official capacity on behalf of the HOA, and that the Jughandle Estates HOA has taken no position on the solar array

because the matter falls outside the HOA's jurisdiction. *See* **Attachment 1** (May 12, 2026 email from HOA Secretary Janet Reis clarifying HOA's position). To the extent any participant, the Staff Report, or the Commission understood the project to carry the endorsement of the Jughandle Estates HOA, that understanding was mistaken.

Accordingly, the Board should give no weight to any suggestion that the solar array enjoys the support or approval of the Jughandle Estates HOA. Because the Board reviews this matter *de novo*, it should evaluate the application solely on its own merits under the applicable criteria of the Valley County Code ("VCC"), and not on any perceived—but inaccurate—endorsement by the HOA.

II. Additional Aerial Photographs Illustrating the Relationship of the Affected Persons' Properties to the Solar Array.

To provide the Board with further context regarding the visual and spatial relationship between the Affected Persons' properties and the solar array at 30 Flicker Road, the Affected Persons submit the two aerial photographs below. These images depict the open, rolling-hill topography that defines the visual character of the neighborhood, and they illustrate the degree to which the solar array sits within an open viewshed shared by the surrounding parcels. As shown, the surrounding landscape is characterized by expansive, undeveloped meadow and rolling terrain—precisely the protected visual character the appeal identifies as incompatible with the array's industrial scale and appearance, and with the proposed berm and screening.

Figure 1. Aerial view of the vicinity of 30 Flicker Road, McCall, Idaho, showing the open, rolling-hill topography of the neighborhood. [Annotate to identify 30 Flicker Road and the parcels of the Affected Persons.] Photo by Thomas Ronay.

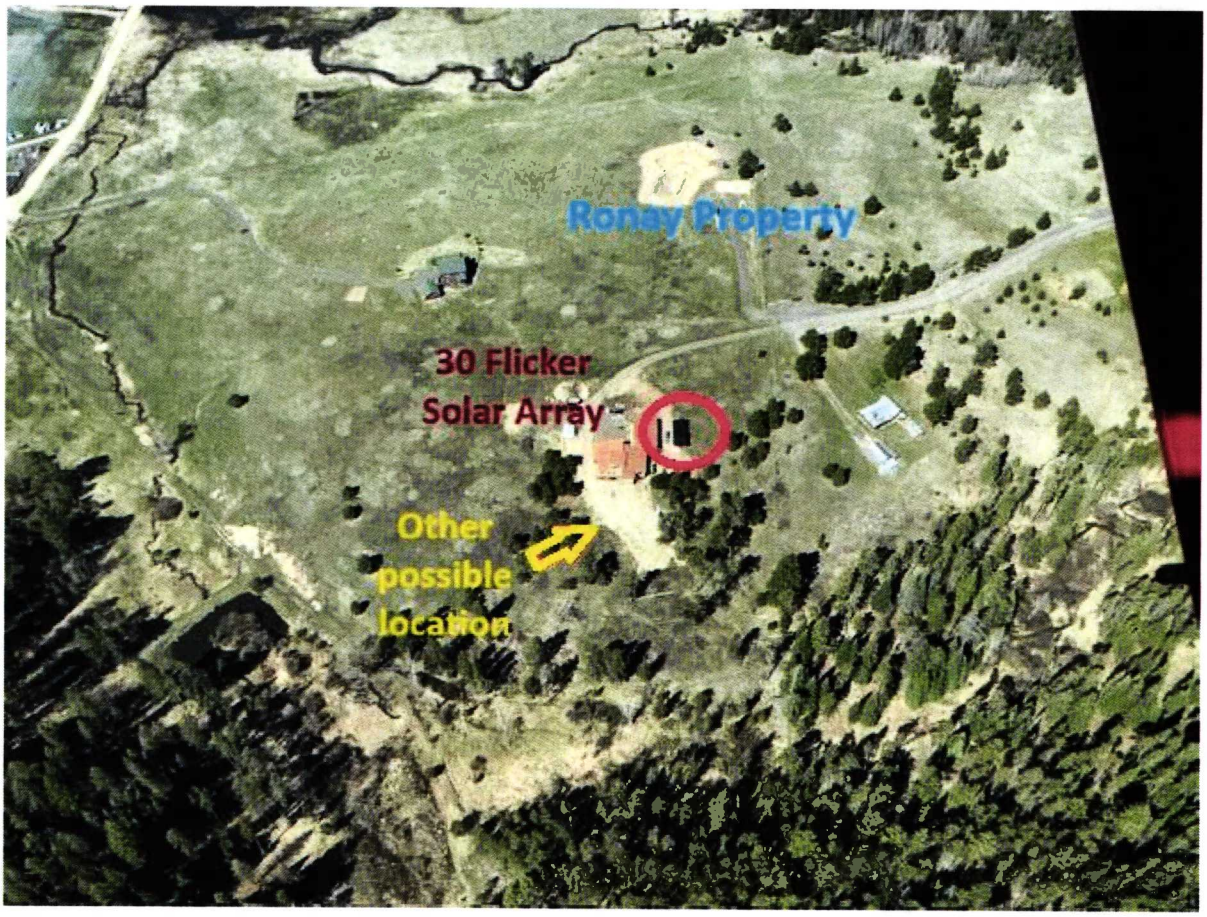

Figure 2. Aerial view showing the relationship of the surrounding parcels to 30 Flicker Road. [Annotate to identify 30 Flicker Road and the parcels of the Affected Persons.] Photo by Thomas Ronay.

These photographs reinforce the points raised in the appeal: the array is plainly visible across an open landscape from multiple vantage points on the neighboring parcels, and the neighborhood's defining feature is its open, natural rolling-hill viewshed. The images underscore why the proposed mitigation—an artificially steep, man-made berm with regimented screening trees—would itself be incompatible with this topography and would constitute a long-term visual intrusion rather than a cure.

III. The Valley County Code Makes Impact to Neighbors a Determining Factor.

Finally, the Affected Persons respectfully reiterate the central importance of the County's solar-specific standards, which place express emphasis on the concerns of neighboring property owners. VCC § 9-5G-1 provides that, for solar panels greater than eight square feet and detached from the primary structure, "Impact to neighbors will be a determining factor." This is not boilerplate. By its plain terms, the Section 9-5G-1 singles out neighbor impact not as merely one consideration among many, but as a determinative criterion for approval—reflecting a deliberate policy choice by the County to protect the property rights and quiet enjoyment of adjacent owners.

That directive operates in addition to, and not in place of, the impact report required for all conditional uses under VCC § 9-5-3(D), which mandates analysis of heat and glare, surface-water

drainage, visibility from public roads and adjoining property, and site selection in relation to topography and adjoining land use, among other criteria. As the appeal explains, the record does not demonstrate that these requirements were satisfied, and the Commission's analysis did not meaningfully engage with Section 9-5G-1's directive that neighbor impact be treated as determinative.

Because the Board reviews this matter *de novo*, it has both the authority and the obligation to independently weigh the demonstrable impacts on the Affected Persons' properties—including the array's visual dominance within an open viewshed, the aesthetic and drainage concerns associated with the proposed berm, and the absence of any visual impact assessment or rendering in the record. Where, as here, those adverse impacts remain substantial and unmitigated by enforceable, evidence-based measures, the Code's directive compels denial of the CUP.

The difficulty of assessing the impacts is compounded by the shifting and unclear manner in which the applicant has described the solar array itself. The record reflects material inconsistencies and unresolved questions regarding the array's basic characteristics—including its dimensions (the application describes a 45' × 16' array, while the Staff Report states 45' × 10'), the angle or angles at which it would be positioned, the resulting maximum height (which increases as the array is tilted "steeper," as the applicant testified may occur in winter), and, critically, whether the array incorporates a motorized or tracking component capable of changing its orientation (and potentially height) over time. Where the very configuration of the structure remains a moving target, the Commission could not have meaningfully evaluated its visual impact, height, glare, or compatibility with neighboring properties, as VCC §§ 9-5-3(D) and 9-5G-1 require. These uncertainties are a direct consequence of the after-the-fact posture of this application. Because the array was installed before any public hearing or impact analysis, the County and the Affected Persons have been left to analyze a completed, evolving installation rather than a defined proposal—precisely the backwards sequence the permitting process is designed to prevent. The applicant's failure to fix and clearly represent the array's final configuration deprives the record of the substantial evidence necessary to support approval and independently warrants denial.

IV. Conclusion.

For the reasons set forth above and in the April 20, 2026 appeal letter, the Affected Persons respectfully request that the Board grant the appeal and reverse the Commission's approval of CUP 25-032.

Date: May 26, 2026

MOUNTAIN TOP LAW PLLC

Julia S. Thrower

Attorney for Affected Persons

Attachment

Attachment 1

J

Janet Reis May 12

to me, duffner, Warren, Janet

Good afternoon Kristi,

Thank you for the follow up and clarification. Our summary is below.

Considering that Jughandle Corporation has no jurisdiction in these matters, the opinion of your HOA Board has no relevance. We therefore have no further comment.

Thank you.

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