



Crook County
Community Development Department
Planning Division
300 NE 3rd Street, Room 12
Prineville, OR 97754
(541)447-3211
plan@crookcountyor.gov

TO: Crook County Board of Commissioners

FROM: John Eisler, Community Development Director

DATE: May 15, 2025

SUBJECT: West Prineville Solar Farm Remand, Record Nos. Application 217-20-000375-PLNG (Modification Conditional Use) and 217-20-000546-PLNG (Appeal)

The Crook County Board of Commissioners (the “Board”) is convening on a remand by the Oregon Court of Appeals and Land Use Board of Appeals on a conditional use permit modification of an approved solar facility from 320 acres up to approximately 654 acres. The appeal and remand concerned the Applicant’s wildlife habitat mitigation plan and its consistency with ORS 215.446.

I. Procedural Background

The Planning Commission approved the CUP modification application on June 2, 2020. Att. A. That decision was appealed by ODFW regarding the wildlife habitat mitigation plan, which approved three separate mitigation options: juniper treatment by the applicant, payment to a third party for mitigation, or a yet to be decided third option. The Crook County Court modified the Planning Commission’s decision by removing the third option but otherwise affirming. Att. B. ODFW appealed the County Court’s decision to LUBA. LUBA remanded to the County but that decision was appealed to the Court of Appeals, who then remanded back to LUBA, who remanded back to the County. It is that remand before you now.

II. Substantive Background

That appellate journey helped clarify how the newly enacted ORS 215.446 is to be interpreted regarding wildlife habitat mitigation. In my prior role, I provided a thorough memo to the Planning Commission on this topic. Att. C. Please review it and let me know if you have any questions.

For the hearing before you, I am going to provide only a brief summary of the main issues. First, the wildlife habitat mitigation plan must be “consistent with” ODFW’s habitat mitigation rules. ORS 215.446(3). ODFW’s rules are found in OAR chapter 635 Division 415 (“ODFW’s Rules”). While the Court of Appeals agreed with both the County

and Applicant that being consistent with ODFW's Rules didn't mean strict adherence to *all* of ODFW's rules, particularly the requirements in OAR 635-415-0020(8), it *did* mean that certain elements were required in an ORS 215.446 wildlife habitat mitigation plan. Broadly, consistency with ODFW's Rules means that – once the proper habitat category is identified – a level of specificity and certainness is required to assure that the mitigation plan will properly offset the impacts of the solar development for the life of the project. That includes:

- A reliable method of mitigation that will meet the goal of the habitat category; and
- Durational standards that provide mechanisms to evaluate whether the wildlife habitat is successfully meeting its stated goals.

Following the guidance from the Court of Appeals, LUBA looked at the Mitigation Plan approved by the County and pointed out the following inadequacies:

- More specific information was needed on the location of the mitigation site and its quality to determine if the mitigation site is sufficient to offset the impacts from the development site;
- The Mitigation Plan needed to better demonstrate the reliability and durability of the plan to establish that the impacts from the development would be offset throughout the life of the project;
- The Mitigation Plan must include performance measures that a reasonable person could rely on to conclude that there would be “no net loss” in habitat quantity or quality over the life of the project.

III. Current Hearing

Since that LUBA remand, the Applicant and ODFW have been working to craft a mitigation plan for this modification application that *is* consistent with ODFW's Rules. The parties have come together and present to you a negotiated Settlement Agreement and Stipulated Findings.

The Settlement Agreement amends Conditions of Approval #9 and #24 from the original decision. Within the Settlement Agreement, the parties agree that if the County adopts these amended conditions, there will be no further appeals. The Settlement Agreement has a reservation of rights that is important to understand:

If the Crook County Board of Commissioners does not adopt the Amended Conditions of Approval in this Agreement, the Parties reserve all rights to appeal and do not waive any issues on appeal, *provided, however,* that the Crook County Board of Commissioners may impose additional requirements and conditions in excess of the Amended Conditions of Approval and Stipulated Findings that do not substantively alter the Amended Conditions of Approval or Stipulated Findings. Applicant reserves its rights to appeal a decision based on new or modified condition(s) or findings imposed by the Crook County Board of Commissioners unrelated to habitat mitigation.

(emphasis in original). The agreed-to new Condition of Approval #9 eliminates Option 1 as a possibility, leaving only Option 2.

Option 2 is detailed in the new agreed-to Condition of Approval #24, which is a one-time “Fee-in-lieu payment” utilizing an existing MOU between the County and Crook County Soil and Water District (CCSWD) whereby the County acts as the fiscal agent between the Applicant and CCSWD for a fully developed mitigation plan for durable mitigation at the Shotgun Ranch. Condition of Approval #24 applies a mitigation ratio of 1 acre of mitigation required per 1 acre of disturbance (above the previously approved 320 acres) plus a reasonable failure buffer. Documentation of the payment being made to the County (and of the Applicant’s satisfaction of a checklist of multiple other conditions of approval) is required before site clearing and grading. CCSWD’s Mitigation Plan is included in your materials.

The Settlement Agreement also provides for Stipulated Findings in the draft Final Decision also included in your materials. The existing findings regarding wildlife habitat mitigation were also deemed by LUBA to be insufficient. The new Stipulated Findings should resolve that issue.

Our code, at CCC 18.172.130 deals specifically with land use decisions remanded by LUBA. In relevant part, the section provides that the remand hearing is limited to staff, the applicant, and appellants from the prior LUBA appeal, with the hearing limited to evidence and testimony solely related to the issues remanded unless expanded by motion of the Board. CCC 18.172.130(2).

Please let me know if you have any questions.

Attachment A



Crook County

Community Development Department
Planning Division

300 NE 3rd Street, Room 12

Prineville, OR 97754

(541)447-3211 Ext 1. Planning

Fax (541)416-2139

Email: plan@co.crook.or.us

Website: www.co.crook.or.us

BEFORE THE CROOK COUNTY PLANNING COMMISSION CONDITIONAL USE REQUEST – WEST PRINEVILLE SOLAR ENERGY FACILITY

FINAL DECISION

April 9, 2019

APPLICATION: 217-19-000029-PLNG

APPLICANT: Jake Stephens
2033 E Speedway Blvd. Suite 200
Tucson, Arizona 85716

OWNER: Brian Sproat
P.O. Box 77
Powell Butte, Oregon 97753

PROPERTY: Township 15 South, Range 15 East WM, Tax lots 2900 and 3000

APPLICATION RECEIVED: February 4, 2019

PUBLIC NOTICE: March 8, 2019

PROPERTY OWNER NOTICES: March 6, 2019

PUBLIC HEARING: March 27, 2019

REQUEST: The Applicant requested conditional use approval to construct and operate a solar photovoltaic power generating facility on up to 320 acres. The facility will generate approximately 50 Megawatts (MW) and is located in the County's Exclusive Farm Use – Powell Butte Area (EFU-3) zone. The Applicant also sought approval for an associated transmission line, the gen-tie line from the solar facility to the utility substation.

THE ABOVE ENTITLED MATTER came before the Crook County Planning Commission at its regular meeting on March 27, 2019. After consideration of the staff report, application materials, findings, facts and testimony, the application received seven (7) votes in favor from the Planning Commission members.

FINAL DECISION: Approved subject to conditions:
 Denied

 X

The Applicant's request (217-19-000029-PLNG) to construct and operate a solar photovoltaic facility on up to 320 acres of the subject properties (T15 R15, tax lots 2900 and 3000) is APPROVED subject to the following conditions:

1. The Applicant shall sign and record in the deed records for Crook County a document binding the Project owner and the Project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming practices as defined in ORS 30.930(2). The Applicant shall submit this agreement to County Counsel for review and shall sign and record the agreement prior to site clearing and grading.
2. The Applicant shall acquire all necessary building permits prior to commencing construction.
3. The Applicant agrees to provide an annual report, upon request, to the County including:
 - a. A summary of changes to the facility that do not require amendments;
 - b. A summary of the wildlife monitoring plan;
 - c. Employment impacts during and after construction;
 - d. Success or failure of weed control practices; and
 - e. Status of decommissioning bond or other financial mechanisms.
4. The Applicant shall meet all requirements of Crook County Code 18.161.010(2)(d) regarding amendments to the facility including those changes that would:
 - a. Require an expansion of the established facility boundaries;
 - b. Increase the footprint of the photovoltaic energy system by more than 20%;
 - c. Increase generator output by more than 25% relative to the generation capacity authorized by the initial permit due to the repowering or upgrading of power generation capacity.

Notification by the facility owner/operator to the Crook County Planning Department of changes not requiring an amendment is encouraged, but not required.

5. The solar field and transmission line will be placed within the site boundary on the site plan submitted with the application. It is possible that the exact configuration of the solar field array and accessory structures (e.g., substation, operation and maintenance building) may change as the Project design is finalized. If these changes occur within the approved site footprint, the Applicant does not need to request an amendment. Otherwise, a revised site plan shall be filed with and approved by the Crook County Community Development Department.

6. If applicable, the Applicant will work with the County Road Department and Oregon Department of Transportation to determine the specific location of any proposed additional access points. Any new road approach permit will be approved prior to the start of clearing and grading.

7. The Applicant agrees that the Project materials selected will be in substantial conformance with those described in the Applicant's "burden of proof" statement.

8. The Applicant agrees to establish a bond, letter of credit or other financial assurance, as required by CCC 18.161.010(2)(xvi). Implementation of final decommissioning and financial assurance will be provided entirely at the cost of the Applicant/Project developer to Crook County. The financial assurance will be one of the following: an irrevocable letter of credit, a surety bond or a trust fund in accordance with the approved financial assurances to guarantee the project decommissioning work will be completed in accord with the decommissioning plan.

The decommissioning plan and financial assurance shall be submitted to the Crook County Counsel for review and approval. **County Counsel approval of the decommissioning plan, including the financial assurance, shall not be unreasonably withheld and shall be required prior to the start of clearing and grading on the Project site.** The financial assurance shall give consideration to the cost estimate and phasing schedule in the decommissioning plan, and shall provide adequate funding to restore the site, regardless of when construction or operation ends. A final decommissioning plan and financial assurance, acceptable to Crook County Counsel, shall be in place prior to project site clearing and grading.

9. The solar field enclosure will be completely fenced at a minimum height of 8 feet using a chain-link fence. Secured gates will be in place at the Project entrance(s).

10. The Applicant will continue survey work to assess natural resources (e.g., wetlands and waterways), wildlife issues (e.g., raptor nesting sites) and cultural and historic resources. The Applicant will submit survey reports to Crook County Community Development and the appropriate agencies (e.g., ODFW, USFWS, and the State Historic Preservation Office). If the project site layout changes to avoid identified resources, the Applicant shall submit a revised site plan to the Community Development Department.

11. The Applicant shall notify Crook County Community Development in writing of a change in ownership of the facility, including, but not limited to, a transfer of title or lease for a term of years.

12. The Applicant shall submit a final stormwater management/erosion control plan to Crook County Community Development prior to the start of clearing and grading the site.

13. The Applicant shall submit a letter from Crook County Fire and Rescue approving the final Emergency Management Plan prior to the start of clearing and grading the site.
14. Prior to commencement of any decommissioning work, all applicable permits shall be obtained, (e.g., Crook County Land Use Permits, road access and building permits from the Crook County Road master or other entities).
15. The Applicant shall provide a legal description of the Project Site, including the transmission corridor prior to issuance of building permits. Any necessary easements shall be acquired and recorded for the gen-tie line prior to any clearing and grading.
16. Cultural and Historic Resources. The Applicant will engage with Oregon's State Historic Preservation Office as part of the development process to ensure that requirements related to cultural and historic resources are met. This may require the Applicant to provide on-site surveys of the property. The Applicant agrees that procedures to address best management practices for cultural discoveries will be in place during construction. Information regarding historic resources will be shared with Crook County Community Development and the Crook County Museum.
17. The Applicant will implement the US Fish and Wildlife Service guidance regarding migratory bird avoidance and mitigation. Specifically, the Applicant will conduct vegetation pre-clearing activities prior to the onset of the nesting during the period from September 1 through March 31). If clearing is to occur during nesting season, the Applicant will ensure that pre-construction surveys for nesting migratory bird species occur in consultation with USFWS. The Applicant shall maintain disturbance buffers for active nests as recommended by USFWS.
18. The Applicant shall meet the requirements of the Oregon Department of Transportation (ODOT) outlined in a March 28, 2019 memo submitted to Crook County Community Development (Attachment D) regarding the access to the subject property from State Highway 126. The Applicant shall submit an ODOT "Application to Upgrade an Existing Highway Approach" and shall submit a drainage study prepared by an Oregon Registered Professional Engineer, if required by ODOT.

PROJECT BACKGROUND

NOTE: The Planning Commission staff report and attachments and the application and exhibits, are incorporated by references.

A. **Project Summary:** The Applicant has provided a complete project description in their burden of proof statement. The proposed facility will consist of photovoltaic panels, mounting infrastructure (using either a fixed tilt or single axis tracker system), an electrical collection system, inverters, a substation, an energy storage system, an operation and maintenance facility, private access roads, fencing, and associated transmission lines to connect to the utility facility. The Applicant has included a detailed description of the facility in their application. The Applicant is currently proposing an interconnection with the Bonneville Power Administration's (BPA's) Ponderosa substation. The substation is immediately adjacent to tax lot

2900 (Attachment B1 and B2– site plan). If the interconnection point changes, the Applicant shall notify Crook County Community Development and modify the site plan, if necessary.

According to the Applicant, the overall design and construction of the project will be carried out in accordance with all applicable building and engineering codes and standards, including consideration of any wildlife impact mitigation findings and recommendations, wetland and riparian area studies, and cultural surveys as required by Crook County and other state and local agencies.

The Applicant states that construction will be performed by licensed and qualified contractors and their subcontractors following an extensive vetting and bid process. Following construction, all on-site disturbances will be restored with native vegetation pursuant to applicable State stormwater management requirements and consultation with the Crook County Weedmaster.

B. **Zoning:** The property is zoned EFU-3 (Exclusive Farm Use, Powell Butte Area).

C. **Project Size:** The Project, in its entirety, including all components of the facility, will not occupy more than 320 acres.

D. **Site Description:** The subject properties (tax lots 2900 and 3000) are surrounded by properties zoned EFU-3. There are two existing residences on the subject property and accessory structures on the southern portion of the site that are currently used by the property owner. There is a small, spring-fed stock pond near the residences. There are fences along Highway 126, on the northeast border, and along the western and southern property lines. There is no evidence of irrigation water rights on either tax lot 2900 or tax lot 3000 and the properties have not been irrigated historically. The property has a current Oregon Department of Environmental Quality permit for use as an alkali stabilized domestic sewage disposal area.

The subject property is composed of two primary habitat types: sagebrush steppe and juniper steppe woodland. The property is traversed by existing 500kV electrical transmission lines and easements operated by BPA and PGE (Pacific Gas and Electric), as well as a 115kV line owned by PAC (PacifiCorp) crossing the northern edge of tax lot 3000 and running to the southeast and crossing the southern tip of tax lot 2900 where the Ponderosa substation is located on an adjoining property. There are existing easements for the energy transmission Right of Ways (ROWs). There is an additional 230kV BPA transmission line running southwest from the Ponderosa substation over the southern part of the subject property. Transmission line ROWs are identified on Attachment B.

E. **Surrounding Land Uses:** The proposed project will be developed on less than 320 acres. The main part of the project will be located on tax lot 3000. All adjacent properties are in private ownership and are zoned Exclusive Farm Use (EFU). Property directly north is a thirty-seven acre property without irrigation water rights. Property to the east and south of tax lots 3000 and 2900 is part of a large, active cattle ranch with two pivots and cattle grazing as the primary farm use. There is an existing residence on that property. Property south of tax lot 2900 and southeast of tax lot 3000

is the BPA Ponderosa substation. Property to the northeast of tax lot 3000 is an approximately 160-acre dryland parcel with an existing residence. Directly east of tax lot 3000 are two approximately 20-acre parcels, each with a dwelling. Property to the southeast of tax lot 3000 is approximately 127-acres with a dwelling.

F. Ownership: The owners of the subject property are Bryan and Shanna Sproat. The Applicant has provided copies of deeds for verification of property ownership. Jake Stephens is the owners' authorized agent. (See Exhibit C of the application).

G. Water Rights: There is no evidence of irrigation water rights on the subject property.

H. Wildlife – Sensitive Bird Habitat: The subject property has not been identified as big game habitat for pronghorn, mule deer or elk in the County's Goal 5 big game habitat inventory. The property is also not identified as Sage Grouse Habitat.

There is a spring on the subject property that may be used by wildlife. In addition, the existing BPA 500kV transmission line easement may operate as a migration corridor for deer, antelope and other wildlife. The applicant is proposing to avoid issues of concern (e.g., the spring fed pond) and will follow ODFW and USFWS guidance regarding raptor nests and migratory bird habitat. Ground clearing and construction activities will be scheduled to avoid nesting seasons or the Applicant will agree to monitor the site to minimize impacts to nesting birds.

I. Cultural Resources: The Applicant will engage with Oregon's State Historic Preservation Office as part of the development process to ensure that requirements related to cultural and historic resources are met. This may require the Applicant to provide on-site surveys of the property. The Applicant agrees that best management practices for cultural discoveries will be in place during construction. This will be a condition of approval.

J. Access: The proposed solar facility will be accessed by an existing driveway extending south from State Highway 126. The access has been permitted by the Oregon Department of Transportation (ODOT) (Permit number 10435306 issued in 1995). An alternate access is proposed via BPA's access to the Ponderosa substation (SW Three Springs Ranch Road). The Applicant will work with the County and ODOT to obtain additional road access permits, if necessary.

K. Domestic Water: The Applicant states that they will either purchase water for construction and operation from the City of Prineville or will procure water from a permitted, existing well on the subject property. The Applicant stated that they may rely on a combination of water sources. The Applicant or subcontractors will ensure that if water is procured from an existing or new well, that the well provider will have a limited water use license from the Oregon Water Resources Department allowing the use of groundwater from a well for construction (and dust control) purposes.

L. **Soils:** According to the National Resources Conservation Service (NRCS), soils on the subject property are generally classified as Class 6, with some soils classified as Class 4 and Class 7. Major soil types are summarized in Table 1.

Table 1

Map Unit	Soil Type	Classification Non-irrigated	Acres	Percent of acres
066	Ayres cobbly loam	7s	15.0	2.3%
104Am	Redmond ashy sandy loam	6s	28.9	4.4%
109	Meadowridge –Era Complex	4e	9.4	1.4%
143	Stukmond-Licksillet Redmond Complex	6e	40.6	62%
144	Redmond-Stukmond Complex	6e	309.9	46.9%
147	Ayresbutte-Ayres Complex	6s	171.8	26%
156	Ginserly-Hatrock Complex	4e	34.9	5.3%
157	Ginserly Cobbly Ashy Loam	6e	9.2	1.4%
162	Searles-Licksillet complex	6e-7s	10.8	1.6%
172	Licksillet-Bakeoven Complex	7s	29.6	4.5%

M. Fire Protection: The subject property is located inside the Crook County Fire and Rescue District. Provisions for wildfire prevention and control are included in the Emergency Management plan (Exhibit J of the application). The Emergency Management plan has been submitted to Crook County Fire and Rescue (CCF&R) for their review. CCF&R provided comments on the draft and the Applicant will finalize the plan to reflect the final design, layout and location of ingress and egress points.

N. Construction Office: The Applicant proposes establishing temporary construction facilities on the site in accordance with state and County regulations. Temporary buildings will house construction management and site personnel offices adjacent to a parking area and laydown yards. Two areas are proposed: one near the driveway off Highway 126 and one near an existing residence on Tax lot 3000.

O. Timeline and Construction: The Applicant states that they have commenced project development including conducting on-site studies and investigations, establishing interconnection agreements, and negotiating rights of way. The Applicant will be working on site design and engineering. Once a qualified EPC (Engineering, Procurement and Construction) firm is contracted and mobilized, construction may take approximately 4-8 months.

APPLICABLE CRITERIA: The Planning Commission considered the following criteria in evaluating the proposed project:

CCC Title 18, Chapter 18.24 EFU-3 zone
18.24.020 (Conditional uses permitted – ORS 215.283(2))
18.24.025 (Commercial and non-commercial energy)
18.24.040 (Limitations on specific conditional uses)

Oregon Revised Statutes
ORS 215.274 (Associated transmission lines)
ORS 215.283 (Uses authorized on agricultural lands)

Oregon Administrative Rules
OAR 660-033-0120
OAR 660-033-0130(5),(38) (Minimum standards for allowed uses)

CCC Title 18, Chapter 18.160 (Conditional Uses)
18.160.010 (Authorization to grant or deny a conditional use)
18.160.020 (General criteria)
18.160.030 (General conditions)
18.160.050 (Standards governing conditional uses)
18.160.050(19) (Commercial power generating facilities)

CC Title 18, Chapter 18.161 (Commercial power generating facilities)
18.161.010(2) (Commercial solar photovoltaic facilities)

Crook County Comprehensive Plan
Crook County Transportation System Plan

RESPONSE TO CRITERIA:

The criteria that apply to this request for conditional use approval to site a commercial photovoltaic energy facility in Crook County's Exclusive Farm Use Zone are shown in standard font. Information from the Applicant's burden of proof statement is shown in ***bold/italics***.

The following is a summary of the responses to applicable criteria. A more detailed analysis is found in the March 20, 2019 staff report prepared for the March 27, 2019 public hearing before the Crook County Planning Commission. The staff report and attachments and the application and exhibits are incorporated by reference into the Findings presented in this document.

Crook County Code 18.24 outlines requirements for development in the County's EFU-3 zone.

CCC 18.24.010 In an EFU-3 zone, the following uses and accessory uses thereof are permitted outright: all uses authorized by ORS 215.283(1), in conjunction with any other applicable provisions in this chapter.

ORS 215.283(1)(c) allows "Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

The proposed gen-tie line, the line connecting the project substation to the utility substation, meets the definition of "utility facilities necessary for public service" as an "associated transmission line." The project's transmission towers will be less than 200 feet tall (75 feet to 130 feet depending on topography).

ORS 215.274 Associated transmission lines necessary for public service; criteria; mitigating impact of facility. (1) As used in this section, "associated transmission line" has the meaning given that term in ORS 469.300.

ORS 469.300(3) states "Associated transmission lines" means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

The proposed gen-tie line will connect a commercial solar energy facility to an interconnected primary transmission system or distribution center and meets the definition of an associated transmission line necessary for public service.

(2) An associated transmission line is necessary for public service if an applicant for approval under ORS 215.213 (1)(c)(B) or 215.283 (1)(c)(B) demonstrates to the governing body of a county or its designee that the associated transmission line meets:

(a) At least one of the requirements listed in subsection (3) of this section; or

(b) The requirements described in subsection (4) of this section.

(3) The governing body of a county or its designee shall approve an application under this section if an applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

- (a) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;
- (b) The associated transmission line is co-located with an existing transmission line;
- (c) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or
- (d) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

The proposed gen-tie line meets the requirements of (3)(a). The line is not located on high-value farmland and is not located on arable lands (See discussion below). The Applicant submitted soils data from the Natural Resources Conservation Service (NRCS) (summarized in Table 1). A detailed analysis is found in Exhibit F of the application. The Gen-tie line will extend from the southeastern corner of the photovoltaic facility on tax lot 3000 across tax lot 2900 to BPA's Ponderosa substation. Soils on that part of the subject property are Class 6 if non-irrigated, according to the NRCS. Class 6 soils are non-arable by definition.

For purposes of ORS 215.274, the portion of the transmission line on property zoned EFU is a permitted use necessary for public service within the meaning of OFS 215.283(2).

CCC 18.24.020 In an E FU-3 zone, the following uses and their accessory uses are permitted when authorized in accordance with the requirements of Chapter 18.160 and in conjunction with any other applicable provisions of this chapter: all uses authorized by ORS 215.283(2) and (3). ***ORS 215.283(2) (g) allows a local government to approve commercial utility facilities for the purpose of generating power for public use by sale.***

CCC 18.24.025 In addition to the uses permitted under CCC 18.24.010 and 18.24.020, noncommercial and commercial wind and photovoltaic energy systems are permitted in the zone to the extent they are consistent with current state law and the applicable criteria in Chapters 18.160, 18.161 and 18.162 CCC. (CCC 18.162 applies to noncommercial energy systems and does not apply to this request.)

The Applicant has demonstrated that the Project will meet the requirements of state law and the applicable criteria in CCC 18.160 and 18.161 as demonstrated below.

CCC 18.24.040 Limitations of specific conditional uses. "...A use allowed under CCC 18.24.020 may be approved where the county finds 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 the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The Planning Commission found that the project will not significantly change accepted farming or forest practices on surrounding lands. All properties surrounding the proposed facility are in

agricultural use (primarily for grazing) with some dispersed farm dwellings. None of the surrounding lands are in forest use. Once construction is complete, there will be little activity associated with the facility. There will be minimal maintenance required. The subject property is part of a larger property and agricultural activities, such as grazing, may continue. Because the site has no irrigation water rights and will not require water during operation, the Project will not impact irrigated agricultural practices on nearby properties. The Applicant has submitted a vegetation management plan that includes noxious weed control management practices to help avoid the spread of noxious weeds to adjacent agricultural operations. Traffic impacts will be limited to construction traffic, which will be minimized because of the relatively compressed construction schedule.

The Planning Commission also found that the proposed solar facility will not have a significant impact on the cost of surrounding agricultural practices. The facility will be self-contained and will not limit access to surrounding farm lands. The proposed use of the property to generate solar energy will not compete for water rights or other equipment and services that support on-going agricultural uses of surrounding lands. Once construction is complete, the project will have little to no impact on surrounding lands.

OREGON ADMINISTRATIVE RULES (OAR) - USE OF AGRICULTURAL LAND

Commercial photovoltaic energy systems in EFU zones are subject to OAR 660-033-0120 and 660-033-0130.

OAR 660-033-0120 provides that a "photovoltaic solar power generation facility as a commercial utility facility for the purpose of generating power for public use by sale," is allowed on agricultural lands after required review by the governing body under ORS 215.296. The use requires notice and the opportunity for a hearing.

The Crook County Planning Commission reviewed the proposed project as a conditional use in an EFU zone. The County provided the requisite notice and opportunity for a hearing to the public and adjacent property owners.

OAR 660-033-130(38) provides that a proposal to site a photovoltaic energy system is subject to certain definitions and provisions. Only certain subsections apply to this project.

660-033-130(38)(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

The property where the solar array is proposed is vacant, uncultivated land. There has been limited grazing on the subject property but there is no evidence that the property has been cultivated in the past. The property does not have irrigation water rights.

660-033-130(38)(d) "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.

Based on information from the Natural Resources Conservation Service, approximately 93% of the soils on the subject property are classified as NRCS Class VI and VII soils (non-irrigated). These areas are non-arable by definition.

Approximately 7% of soils on the subject properties are class IV (Approximately 45 acres on the east and southeast side of the subject property – tax lot 3000). There are currently no irrigation water rights on the property and no evidence that the property has ever been irrigated or cultivated. . The Applicant is not proposing development on the southwestern area of tax lot 3000 with approximately 34 acres of class IV soils (156-Ginserly-Hatrock Complex). The Applicant is proposing to use an area of less than 9 acres of Class IV soils (109-Meadowridge era-complex). The facility will impact less than 20 acres of arable lands as required by OAR 660-033-0130(38).

OAR 660-033-130(38)(e) defines “Photovoltaic solar power generation facility.”

The Applicant provided a complete description of the project and the individual components. The Planning Commission finds that the project, as defined, meets the definition of a "photovoltaic solar power generation facility." The Applicant does not own or control any existing or proposed facility within 1,320 feet of the subject tract. This is a stand-alone solar generation facility and will be operating independently from other approved or existing projects' in this area of the County.

The proposed use is within Crook County's jurisdiction. The project area and transmission line facility will not permanently occupy more than 320-acres of nonarable land. Less than 20 acres of arable land will be disturbed by the Project. This rule provision has been met.

OAR 660-033-0130(38)(f) requires that for high value farmland, as defined in ORS 195.300(10), a photovoltaic energy system shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

The Project site does not meet the definition of high value farmland in ORS 195.300. Soils on the project site are class IV, VI and VII. The soils are not prime or unique.

OAR 660-033-0130(38)(h) states, for nonarable lands, a photovoltaic energy system shall not preclude more than 320 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

The photovoltaic system, including the solar array and all related and supporting facilities, will permanently impact less than 320 acres of nonarable land. The project will not be located on high-value soils or arable soils so provisions of OAR 660-033-0130(38)(h)(A)-(C) do not apply. As stated above, soils on the Project site are class IV, VI and VII. The Applicant is not proposing to develop the part of the property with Class IV Ginserly-Hatrock soils (approximately 35 acres). At most, 9 acres or less of Class VI Meadowridge-Era Complex soils will be impacted. Based on the lack of water rights and no history of cultivation, the County has determined that the Class IV Meadowridge-Era Complex soils are non-arable based on the evidence in the record. There is no history of use of the subject property as a commercial agricultural enterprise. No exception is required.

(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;

The requirements of OAR 660-033-0130(38)(f)(D) have been satisfied. The Applicant consulted with the Crook County Weed Master and prepared a Weed Control Plan (Exhibit H of the application).

(E) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and (continue to (F))

There are no Goal 5 resources that have been identified and protected under the Crook County Comprehensive Plan located on the subject property.

(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

The proposed solar power generation facility is not located on land that the Oregon Department of Fish and Wildlife (ODFW) or US Fish and Wildlife (USFWS) have determined has the potential for adverse effects to state or federal special status species. ODFW has identified the BPA transmission line easement as a corridor for wildlife migration. The Applicant will engage a consultant to complete a detailed wildlife survey prior to the start of

clearing and grading the subject property. A representative of the US Fish and Wildlife Service met on site with the Applicant. The Applicant will conduct nesting surveys for raptors, including great horned owls. The Applicant will also avoid migratory bird nesting season or will conduct site monitoring during site clearing. ODFW has submitted comments recommending that the BPA transmission line corridor be left for wildlife passage and that access to the on-site spring/pond be maintained for wildlife, including pronghorn. The Applicant agrees to enclose the project area with "wildlife friendly" fence to a height of 8 feet.

(I) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS30.930(2) and (4).

The Applicant agrees to sign and record an agreement not to pursue relief or actions related to farm use surrounding the subject property substantially similar to current farm uses. This is included as a condition of approval.

(J) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

The Applicant addresses the County financial security and project obligations in the discussion of Crook County Code 18.161.010.

CONDITIONAL USE STANDARDS CCC 18.160

CCC 18.160.020 General criteria. In judging whether or not a conditional use proposal shall be approved or denied, the planning director or planning commission shall weigh the proposal's appropriateness and desirability or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable:

(1) The proposal will be consistent with the comprehensive plan and the objectives of the zoning ordinance and other applicable policies and regulations of the county.

The proposed Project is consistent with the comprehensive plan and objectives of the zoning ordinance. Specifically, Crook County's Comprehensive plan includes the following policies:

***Air, Water and Land Resource Policies:** Encourage non-pollutant industries to locate in Crook County.*

***Economic Policies:** To diversify, stabilize and improve the economy of the County.*

***Energy -** The comprehensive plan includes the following statement regarding solar energy production: "Prineville and Crook County receive about 300 days of sunshine per year. Solar energy will be a very feasible source of energy."*

"To encourage renewable and/or efficient energy systems design, siting and construction materials in all new development and improvements in the County."

The Project is allowed as a conditional use in the County's exclusive farm use (EFU) zones. In addition, the Crook County Court adopted specific standards in the zoning code (Chapter 18.161) for commercial wind and photovoltaic energy systems in June 16, 2010 to help promote development of renewable energy systems in the County and to address potential impacts associated with such developments. CCC 18.161 requires that an applicant evaluate potential adverse impacts to accepted farming practices, natural environments, and residential development, and that the development avoid, minimize, and mitigate impacts to the extent necessary. The Applicant states that the proposed Project will comply with all applicable criteria and standards, and in doing so, will further promote the development of renewable energy in the County. As such, the County may find that the Project is consistent with the applicable comprehensive plan goals and policies. The proposed location of the solar PV facility adjacent to existing transmission and interconnect facilities, such as the Ponderosa substations, support the County's goals to maximize use of existing infrastructure.

(2) Taking into account location, size, design and operation characteristics, the proposal will have minimal adverse impact on the (a) livability, (b) value and (c) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright.

The Applicant considered the abutting and surrounding properties when siting the proposed Project. Most of the surrounding lands are marginally used rangeland and many are vacant. The Applicant states that solar facilities, once constructed, are quiet and will have little to no impact on neighboring properties. Sound may come from inverter cooling system fans that may activate during warm days at peak generation. These sounds are typically undetectable from more than 100 feet away. Road noise from highway 126 traffic will far exceed noise from the facility. The Applicant states that setback requirements will be maintained and that they will work to reasonably address concerns of nearby residents. They will work to maintain existing natural vegetation (juniper and sagebrush) where possible in the setback areas consistent with existing vegetation on adjacent properties. The Applicant states that views for neighbors to the north and west are already impacted by the presence of the three BPA 500 kV lines that cut through the subject properties. These lines have been in place for several years. The Applicant states that the solar facility should have a minimal impact on views due to the low elevation profile of the panels and racking systems. The project construction schedule is relatively condensed, minimizing the duration of potential impacts due to construction (e.g., noise, dust...). The Applicant will work to minimize construction impacts by controlling dust and by adjusting hours of construction.

The Applicant states that the impact of the proposed solar facility on surrounding property values will be minimal relative to impacts of certain permitted uses (e.g., intensive agricultural practices). The proposed use will have minimal, if any, adverse impact on the livability, value, or appropriate development of abutting properties and the surrounding area, given

the general remoteness of this area, the limited number of residences, the setbacks and existing vegetation surrounding the project, and the low level of potential adverse impacts from the proposed use.

(3) The location and design of the site and structures for the proposal will be as attractive as the nature of the use and its setting warrant.

The Project area will be visible from Highway 126. The property is already host to large transmission lines that traverse the property, three of which cross the highway and continue north. These transmission lines and poles dominate the current view and will likewise dominate the ground-mounted racking systems and panels. The Applicant notes that the amount of time one actually sees the facility from the road while travelling at about 55 miles per hour will be about 12-15 seconds, much less time than the transmission towers are in the view shed.

The tallest structures closest to the highway will be the safety and security fencing (about 8 feet tall) and the PV module equipment, also about 8 feet tall – depending on the type of tracking equipment. The project is designed so the tallest structures (gen-tie line poles) and largest structure (the project substation) will be located at the southeast end of the project, farthest away from Highway 126 and from residential development.

While fencing is necessary for safety and security purposes, there may be other concerns such as roadside views and wildlife ingress and egress. The Applicant will work to balance these concerns in its choice of fencing materials and any landscaping in areas close to the highway. The Planning Commission included a condition of approval requiring that an eight (8) foot tall chain link fence enclose the project.

According to the Applicant, issues of glare and misdirection of light are not a concern with current solar panel technologies. The panels are black and designed to absorb sunlight, not reflect it.

(4) The proposal will preserve assets of particular interest to the county.

The project will further the County's interest in renewable energy development, and will not have adverse impacts on other County interests, such as big game habitat or important farm land. The Applicant will consult with the State Historic Preservation Office to ensure protection of any historic and cultural resources found on the site.

(5) The applicant has a bona fide intent and capability to develop and use the land as proposed and has some appropriate purpose for submitting the proposal, and is not motivated solely by such purposes as the alteration of property values for speculative purposes.

The Applicant, Jake Stephens, states that he has extensive experience in solar development in Arizona and California and has successfully permitted projects in Harney and Lake County, in Oregon. These projects are progressing to the construction phase in 2019-2020. The Applicant has sufficient expertise and capitalization to ensure the ability of the project to be developed, constructed, and operated.

18.160.030 General conditions. In addition to the standards and conditions set forth in a specific zone, this chapter, and other applicable regulations, in permitting a new conditional use or the alteration of an existing conditional use, the planning director or planning commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the county as a whole. These conditions may include the following:

(1) Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.

As discussed previously, the proposed use will not cause negative environmental impacts from noise, vibration, air pollution, glare or odor. Restoration and revegetation of temporary disturbance areas and corridors will commence once construction and installations are completed. Environmental effects that may occur during construction will be avoided or mitigated by limiting the hours of construction and controlling airborne dust with use of watering trucks in order to protect surrounding land uses and interests.

(2) Establishing a special yard or other open space or lot area or dimension.

No special setback, yard or open space is required. The Applicant has identified locations on the site plan for construction laydown areas.

(3) Limiting the height, size or location of a building or other structure.

The panels will generally be about 8 feet tall with the tallest possible panel configuration. The operation and maintenance building will be limited to one story in height. The transmission line pole structures will range from 75 feet to 130 feet tall, depending on topography.

(4) Designating the size, number, location and nature of vehicle access points.

The proposed solar facility will be accessed by an existing driveway extending south from State Highway 126. The access has been permitted by the Oregon Department of Transportation (ODOT) (Permit number 10435306 issued in 1995). The Applicant may explore a secondary access.

(5) Increasing the amount of street dedication, roadway width or improvements within the street right-of-way.

No new street or public right-of-way dedication is required for the Project. The access road(s) will be entirely on private lands.

(6) Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or loading area.

An area adequate for construction parking, materials delivery and unloading will be provided within the solar project footprint. Once operational, parking spaces will be provided for employees engaged in facility inspection and maintenance near the existing residences.

(7) Limiting or otherwise designating the number, size, location, height and lighting of signs.

The Applicant says that there will be signage along Highway 126 for construction traffic. Once

the project is operational, there will be a small, permanent sign at the entry point to the facility. The sign will not be lighted.

(8) Limiting the location and intensity of outdoor lighting and requiring its shielding.

The Applicant anticipates limiting the amount of lighting at the Project site and agrees to shield lighting and direct lighting downward (unless these requirements conflict with safety requirements).

(9) Requiring diking, screening, landscaping or another facility to protect adjacent or nearby property and designating standards for its installation and maintenance.

The Applicant states that the proposed solar power generating facility will be set back from Highway 126. The Applicant will work to retain existing natural vegetation to screen residences to the west and other neighboring properties.

(10) Designating the size, height, location and materials for a fence.

The Applicant will fence the Project site for security and will incorporate recommendations from the County, ODFW and USFW regarding fence design that minimizes impacts to wildlife and provides site security. The Applicant is anticipating a fence around the property perimeter and is proposing to enclose the project area with chain link fencing to a height of 8 feet.

(11) Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

The Applicant has chosen a site to minimize impacts to trees, vegetation, water resources and wildlife habitat. There is an existing spring on the property. This is a water source for pronghorn and other wildlife that use the subject property. It is recommended that this area not be disturbed or fenced so that wildlife can continue to access this water source.

Vegetation will be removed for the solar arrays but temporary impacts will be restored through revegetation following best management practices (e.g., use of native seed mix) and by noxious weed control practices.

12) Other conditions necessary to permit the development of the county in conformity with the intent and purpose of this title and the policies of the comprehensive plan.

The Planning Commission can consider other conditions as necessary.

18.160.050(19) Commercial Power Generating Facilities. A commercial power generating facility that is a conditional use in the applicable zone is governed by the general criteria and conditions in CCC 18.160.020 and 18.160.030 and the provisions of Chapter 18.161 CCC.

Crook County Code, Chapter 18.161 Commercial Power Generating Facilities,

18.161.010 (2) Commercial Photovoltaic Energy Systems

(a) In addition to the requirements of this chapter, Commercial Photovoltaic Energy Systems in EFU zones are subject to OAR 660-033-0120 & 0130.

As discussed earlier in the staff report, the subject property and proposed energy facility meet or exceed the requirements of OAR 660-033-0120 and 0130.

(b) Application Requirements. An application for a Commercial Photovoltaic Energy System shall include the following unless waived by the Director in writing.

(i) A description of the proposed Photovoltaic Energy System, a tentative construction schedule, the legal description of the property on which the facility will be located, and identification of the general area for all components of the Photovoltaic Energy System, including a map showing the location of components and including:

(A) Evidence of an active utility transmission interconnect request and/or process and description of same; and

(B) A route and permitting plan for transmission lines connecting the project to the grid.
The Applicant provided a description of the proposed solar facility and its components in the application. A legal description is included in the Applicant's Exhibit C. The Applicant also provided evidence of an active utility transmission interconnection request.

(ii) identification of potential conflicts, if any, with:

(A) Accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm uses;

(B) Other resource operations and practices on adjacent lands including photovoltaic energy system facilities on such adjacent lands,

The Applicant states that the construction and operation of the Project would not affect accepted farming and practices on adjacent lands. These findings are discussed under CCC 18.24.040 above and provisions of OAR 660-033. There are no photovoltaic energy facilities or other resource operations within one-mile of the subject property.

(iii) A Transportation Impact Analysis (TIA) or Traffic Assessment Letter (TAL) with proposed recommendations, if any, reflecting the requirements in Section 7.1.7 of the Crook County Transportation System Plan (TSP) and the transportation impacts of the Photovoltaic Energy System upon the local and regional road system during and after - construction, after consultation with the Crook County Road master. The TIA OR TAL will designate the size, number, location and nature of vehicle access points and shall include a construction and vehicle access plan and appropriate road access permits if needed.

The Applicant has submitted an informal traffic assessment letter (Exhibit L). (The Exhibit was corrected to remove the reference to "Gunsmoke Solar"). A formal transportation assessment was submitted on April 5, 2019 by Joe Bessman, PE, Transight Consulting (Attachment E). The letter outlines anticipated construction traffic and estimates that during peak construction, approximately 3-5 truck per day for material delivery and 40 to 80 passenger car trips per day for site laborers. Once operational, the facility will generate approximately 4 trips per day. The access will be from an existing approved Oregon Department of Transportation (ODOT) access from Highway 126. ODOT submitted a letter dated March 28, 2019 that outlined requirements for an upgraded ODOT road approach and requirements for a drainage plan. The Applicant agrees to work with ODOT to provide appropriate signage on Highway 126 alerting traffic to construction vehicles.

(iv) A wildlife impact and monitoring plan. A wildlife impact and monitoring plan shall be required for photovoltaic energy systems impacting inventoried wildlife resources identified

within the County Comprehensive Plan. The wildlife impact and monitoring plan shall be designed and administered by the applicant's wildlife professionals. Contents and duration of the study shall be recommended by a technical advisory committee. At the request of applicant, this committee requirement may be waived or discontinued by the County Planning Commission. If applicant has completed a wildlife impact study, it can be submitted for review to the Planning Commission. Projects that do not impact inventoried wildlife resources identified within the County Comprehensive Plan shall provide sufficient information to address the application requirement and criteria relating to wildlife in 18.161.010(2)(b)(8) and 18.161.010(2)(c)(4).

The Project is not located in an area identified in the County Comprehensive Plan's Goal 5 inventory of big game habitat. The Applicant conferred with Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service to address their concerns. The Applicant discussed concerns with USFWS regarding owl/raptor nesting sites and migratory bird nesting. They agreed to adopt proper procedures to avoid nesting periods or to monitor for nest sites if construction occurs during normal nesting period. The Applicant will provide a more detailed wildlife study prior to property clearing and grading. This information will be provided to the County, ODFW and USFWS. Additional avoidance, mitigation or monitoring provisions may be adopted.

Representatives from ODFW noted that the BPA transmission line corridor that crosses the site and continues to the north and south, is used as a corridor for larger wildlife (e.g., deer and pronghorn) (See correspondence in Exhibit E). The transmission line corridor will remain open after constructions because the project will not encroach on existing transmission line easements and ROW already in place. The Applicant discussed fencing options to allow wildlife passage.

(v) An Emergency Management plan for all phases of the life of the facility. The plan shall address the major concerns associated with the terrain, dry conditions, limited access, and water quality. The plan shall identify the fire district and verify that the district has the appropriate equipment, training and personnel to respond to fires. If the local fire department or district does not have adequate rescue capability, the applicant shall provide a plan for providing such in case of an emergency.

The Project is within the jurisdiction of the Crook County Fire & Rescue Department (CCF&R). CCF&R responds to structural and natural vegetation fires in Crook County Rural Fire Protection District No. 1. The Emergency Management Plan is included as Exhibit J to the application. The plan discusses the procedures that may be implemented in the event of an emergency during the construction and long-term operation of the facility. It includes a fire prevention plan as well as other emergency response measures and addresses concerns the CCFRD may have including design for fire prevention, access, internal roads, and potential hazards specific to solar facility projects and high voltage equipment concerns. Crook County Fire and Rescue requires a final Emergency Management and Response plan for this facility and will assess an impact fee consistent with their Board Policies for projects of this nature. The impact fee is due to CCF&R prior to clearing and grading. The final plan will be reviewed under the Oregon Fire Code and shall include a full site plan and information on MW capacity.

(vi) An erosion control plan, developed in consultation with the Crook County Soil and Water Conservation District, the Crook County Watershed Council, the Oregon Agricultural Water Quality Management Program (administered by the Oregon Department of Agriculture and Department of Environmental Quality). At a minimum, the plan should include the seeding of all road cuts or related bare road areas as a result of all construction, demolition and rehabilitation with an appropriate mix of native vegetation or vegetation suited to the area. The plan should also address monitoring during post construction.

Erosion control and mitigation during construction are addressed in Exhibit G of the application. The Applicant states that erosion control shall be addressed during facility development, including civil engineering for the Project's final site plan. A Construction, Mitigation and Decommissioning document will be developed that will discuss erosion control and other mitigation measures to be undertaken by the EPC contractor chosen for site design and construction. The Applicant agrees to have appropriate state and local agencies (Oregon Department of Agriculture and Oregon Department of Environmental Quality and Crook County Soil and Water Conservation District or the Crook County Watershed Council) review aspects of the plan, or the facility engineering design, as part of ongoing site development.

(vii) A weed control plan addressing prevention and control of all Crook County identified noxious weeds.

The Applicant has submitted a Noxious Weed Control Plan for the Project that has been reviewed by the County Weedmaster. (See Exhibit H of the application).

(viii) Information pertaining to the impacts of the Photovoltaic Energy System on:

(A) Wetlands and Streams;

(B) Wildlife (all wildlife listed as identified Goal 5 resources in the Comprehensive Plan, state and federal listed endangered, threatened sensitive and special status species, bats and raptors and species of local sport and economic importance) .

(C) Wildlife Habitat;

These criteria relate to resources identified as significant natural resources on the County's Goal 5 inventory, required by the State's land use planning laws.

The proposed solar power generation facility is not located on land that is inventoried as wetland or as wildlife habitat in the Crook County Comprehensive Plan. See also Applicant's response to OAR 660-033-0160(38)(h)(F). Prior to clearing and grading, the Applicant will conduct site-surveys that may include a Phase I ESA, wetlands delineation, wildlife and cultural resources surveys. Based on findings of these reports, the facility layout may be modified to avoid impacts to any natural or cultural resources.

(D) Criminal Activity (vandalism, theft, trespass, etc.) . Include a plan and proposed actions to avoid, minimize or mitigate impacts.

According to the Applicant, access to the facilities will be restricted by perimeter fencing and the facility entrances will be gated and locked. The fence will be an eight foot tall chain link fence. There will be secured, gated entry points at each access point. During construction and prior to perimeter fencing being installed, lay down yards will be secured with temporary fencing to minimize potential for criminal activity. It is possible that 24/7 on-site security may be employed during construction and prior to fencing

installation. Public safety is also addressed as part of the Emergency Management plan.

(ix) A dismantling and decommissioning plan of all components of the Photovoltaic Energy System, as provided in 18.161.010(2)(e).

The Applicant has provided a decommissioning plan. A final plan shall be provided prior to clearing and grading and shall reflect the final site layout. The plan will address the anticipated schedule and cost of dismantling Project components and restoring the site. The decommissioning plan will be subject to review and approval by the Crook County Counsel, prior to ground breaking. The Applicant will provide a decommissioning surety (a bond, letter or credit, cash deposit, or other financial mechanism acceptable to the County).

(x) A socioeconomic impact assessment of the Photovoltaic Energy System, evaluating such factors as, but not limited to, the project's effects upon the social, economic, public service, cultural, visual, and recreational aspects of affected communities and/or individuals. These effects can be viewed as either positive or negative. The purpose of this information is to provide decision makers with information in order to maximize potential benefits and to mitigate outcomes that are viewed as problematic. The applicant may submit information provided by the Economic Development of Central Oregon or similar entity to meet this requirement.

The Applicant states that facilities shall be designed to minimize adverse socioeconomic impacts to the County, including but not limited to not causing an increase in demand for governmental services or capital expenditures. Facilities are generally expected to result in net positive socioeconomic impacts in the communities that they locate in. The Applicant identified several socioeconomic impacts to the County and listed several positive local economic benefits.

During Project Development: Frequent trips to Crook County by the developers and project consultants will generate visits to local hotels, eateries, retail and other businesses as well as occasional support from local service providers.

During Construction: Construction will take place over a 4-8 month period, with peak activity during 2-4 months. Dozens of workers will be required though general and subcontractors using various skilled and unskilled labor including manual labor, equipment operators, electricians and apprentices, management and supervisors. It is expected that labor will be a mix of local and non-local workers depending on the types, and availability of contractors. Local food and lodging support will be needed and will result in positive economic impacts to local businesses.

During Operation: Routine maintenance will occur from time-to-time for the facilities. The facilities are generally low maintenance but will require routine visits and minor repairs and property maintenance. There may be limited personnel needed to perform these functions. In addition, local property tax revenues will increase when the facility is operational. The facility is not likely to require any public services or capital support with the exception of services provided by Crook County Fire & Rescue.

As discussed earlier, the project should not negatively impact adjacent property values and will not increase costs associated with area farm practices. The Applicant will survey the site for cultural and historical resources to minimize potential negative impacts. Neither the subject property nor

adjacent properties are used for public recreation so there will be minimal impacts to recreational activities.

CCC 18.161.010 (2)(c) Commercial Photovoltaic Energy Systems Criteria. The following requirements and restrictions apply to the siting of a photovoltaic energy system facility:

(i) Setbacks. No portion of the facility shall be within one hundred feet of properties zoned residential use or designated on a Comprehensive Plan as residential. If the facility is located in a residential zone then this restriction does not apply to the lot or parcel that the facility is located on, or any adjacent property in common ownership. Structures shall not be constructed closer than one hundred feet of an existing residence unless a written waiver is obtained from the landowner, which shall become a part of the deed to that property. New electrical transmission lines shall not be constructed closer than 500 feet to an existing residence without prior written approval of the owner, said written approval to be made a part of the deed to that property.

No facilities will be located within 100 feet of any property zoned for residential use. Property surrounding the facility is zoned for Exclusive Farm Use. While some of these properties include residential structures that are close to the property line, the Applicant agrees that facility equipment will be setback to meet 100 foot setback requirements. The facility substation is proposed to be in the southeast corner of the site and there are no residences anywhere near that portion of the subject property. The transmission lines are located in the southeast corner of the subject property, away from residential development. No transmission lines will be located closer than 500 feet of an existing residence without prior written consent of the owner.

(II) A plan shall identify how the development and operation of the facility will, to the extent practicable, protect and preserve existing trees, vegetation, water resources, wildlife habitat and other significant natural resources.

The Applicant commits to providing a 25 to 100 foot buffer around any waterway, wetland, or natural resources on the subject property. The Applicant will conduct a more complete survey to assess waterways and wetlands and will provide the survey to the Crook County Community Development Department prior to clearing and grading the site. There is an existing pond on the southwest side of the subject property (tax lot 3000). The Applicant proposes avoiding this area. The Applicant will work with ODFW and USFW to protect and preserve trees and native vegetation as well as wildlife habitat and other natural resources.

(iii) Ground Leveling: The proposed photovoltaic energy system shall be designed and constructed so that ground leveling is limited to those areas needed for effective solar energy collection and so that the natural ground contour is preserved to the greatest extent practical.

According to the Applicant, any earthwork or grading will be minimized to just what is necessary for the PV racking to function as designed, and to provide access roads into the array areas. The site is relatively level so minimal ground leveling will be needed.

(iv) Wildlife Resources: The proposed photovoltaic energy system shall be designed to reduce the likelihood of significant adverse effects on wildlife and wildlife habitat. Measures to

reduce significant impact may include, but are not limited to, the following:

(a) Designing foundations and support structures for solar equipment to avoid creation of artificial habitat or shelter for raptor prey.

(b) Using anti-perching protection devices on transmission line support structures and appropriate spacing of conductors.

(c) Avoiding construction activities near raptor nesting locations during sensitive breeding periods and using appropriate no construction buffers around known nest sites.

(d) Using suitable methods such as coloration or sound producing devices to discourage birds from entering areas of concentrated solar energy.

(e) Fencing as appropriate to limit access by people or wildlife.

Although the proposed use is outside designated Goal 5 wildlife habitat, the Applicant has agreed to consult with ODFW on fence design. The Applicant proposes enclosing the project area with 8 feet tall fences and will design a fence that provides both project security and safety to big game animals.

Based on additional survey work, the Applicant will work with ODFW and USFWS to ensure that any existing raptor nest sites be avoided during nesting season and that facilities do not enhance raptor prey habitat. The Applicant will implement best management practices to reduce the likelihood of significant impacts to wildlife and wildlife habitat.

(v) A finding by the Energy Facility Siting Council that a proposed energy facility meets the Council's Fish and Wildlife Habitat standard, OAR 345-022-0060, satisfies the requirements of paragraph (4).

Not applicable. The Applicant will meet the requirements of the standards in (4).

(vi) Misdirection of Solar Radiation: The proposed solar energy facility shall be designed and be operated to prevent the misdirection of solar radiation onto nearby property, public roads or other areas accessible to the public.

The Applicant states that the proposed facility shall be designed, constructed and operated to prevent the misdirection of solar radiation to nearby properties, roads or other areas accessible to the public. Fixed tilt and single axis tracking systems with reflection absorbent PV modules neither concentrate nor misdirect solar radiation when properly installed.

(vii) Public Safety: The proposed photovoltaic energy system shall be designed and will be operated to protect public safety, including development and implementation of a plan of operating procedures to prevent public access to hazardous areas.

Gates and fencing will be installed to prevent the public from accessing the site during construction and for the life of the solar facility. All possible hazards (e.g., high voltage components) within the facility shall be appropriately signed according to NEC safety standards and other appropriate high voltage guidelines. The Emergency Management Plan discusses public safety issues in detail.

(viii) Airport Proximity: The proposed photovoltaic energy system is not located adjacent to, or within, the control zone of any airport.

The subject property is not located adjacent to, or within, the control zone of any airport. The

facility is not near or located within the portion of the Redmond Airport Control Zone located in Crook County. The Prineville Airport does not have a Control Zone. The project and associated transmission lines are outside the Prineville Airport approach zones. The Applicant received an email from Kelly Coffelt, Prineville airport manager dated March 25, 2019 stating that he didn't see any issues. He requested additional information on the height of the structures, including associated transmission line poles and the Applicant provided that information to the airport manager.

(ix) Cleaning Chemicals and Solvents: During operation of the proposed solar energy project, all chemicals or solvents used to clean photovoltaic panels or heliostats should be low in volatile organic compounds and the operator should use recyclable or biodegradable products to the extent possible.

According to Applicant, the panels will be washed only as needed, no more than once per year, using materials that are low in volatile organic compounds. Biodegradable products will be used to the extent possible. The Applicant states that water alone is often sufficient to clean panels and is preferred. During construction and operation, site personnel and their subcontractors will be required to conform to site safety plans, including plans for spill prevention and containment of commonly used chemicals.

(x) Private access roads established and controlled by the Photovoltaic Energy System shall be gated to protect the facility and property owners from illegal or unwarranted trespass, illegal dumping, and hunting.

According to the Applicant, the property would be fenced and gated during construction and operation to protect the facility from illegal activities.

(xi) Where practicable the electrical cable collector system shall be installed underground, at a minimum depth of 3 feet; elsewhere the cable collector system shall be installed to prevent adverse impacts on agriculture operations.

The Applicant states that all electrical cables within the solar array area that will be underground will be at a depth of three feet minimum, where possible. Several stations shall be located above ground and will be used for AC breakers, transformers and other required energy collection. Above ground stations will be appropriately signed and secured.

(xii) In EFU zones any required permanent maintenance/operations buildings shall be located off-site in one of Crook County's appropriately zoned areas.

There will be a project office/maintenance office on site. If the structures are permanent, they will be consistent with the character of other farm buildings on the site and will be removed or converted to farm use upon project decommissioning.

(xiii) If the photovoltaic energy system is located in or adjacent to an EFU zone, a Covenant Not to Sue with regard to generally accepted farming practices shall be recorded with the County. "Generally accepted farming practices" shall be consistent with the definition of Farming Practices under ORS 30.930. The applicant shall covenant not to sue owners, operators, contractors, employees, or invitees of property zoned for farm use for generally accepted farming practices.

The Applicant agrees to sign and record a covenant not to sue. The Applicant and County Counsel will review and approve the document prior to the Applicant signing and reviewing the document.

(xiv) A Road Use Agreement with Crook County regarding the impacts and mitigation on county roads during and after construction shall be required as a condition of approval.

The Applicant plans to access the project from Highway 126 under an approved access permit from Oregon Department of Transportation (ODOT). The Applicant will consult with the County Roadmaster and ODOT regarding any secondary access. The Applicant will meet the requirements of ODOT outlined in a March 28, 2019 memo submitted to Crook County Community Development. The memo requires the Applicant to submit an ODOT "Application to Upgrade an Existing Highway Approach" and to submit a drainage study prepared by an Oregon Registered Professional Engineer, if required by ODOT.

(xv) A plan for dismantling of uncompleted construction and/or decommissioning of the Photovoltaic Energy System shall be required. Contents of the Plan are as set forth in 18.161.010(2)(e).

The Applicant states that a decommissioning plan per CCC and OAR standards will be provided to Crook County for review and shall be implemented as part of project development. The Applicant states that, in general, compared to industrial facilities, decommissioning of a solar PV project is relatively simple, does not require specialized labor and does not result in the generation of hazardous waste. In addition, the Applicant notes that many of the system components can be sold for scrap value (e.g., aluminum frames, racking...) and such residual value is typically estimated to exceed the cost of decommissioning. In addition, the ground lease between the Applicant and property owners includes requirements for removal of system components at the end of the lease term and requires site restoration and reseeding.

(xvi) A Bond or other financial mechanism acceptable to the County shall be established to cover the cost of dismantling of uncompleted construction and/or decommissioning of the facility, and site rehabilitation; see 18.161.010(2)(e). A Bond or other financial mechanism may be phased throughout the proposed project. If phasing is proposed the applicant shall submit a phasing schedule. For projects being sited by the State of Oregon's Energy Facility Siting Council (EFSC), the bond or letter of credit required by EFSC will be deemed to meet this requirement. For non-EFSC projects the EFSC requirements on bonds shall serve as a guideline for the amount of the bond or other financial mechanism.

The Applicant will provide financial security or credit in a form acceptable to the County to cover the cost of dismantling any uncompleted construction and/or decommissioning the facility. The financial security shall be reviewed and accepted by Crook County prior to facility ground breaking.

(xvii) A summary of as built changes in the facility from the original plan, if any, shall be provided by the owner/operator.

The Applicant will provide a summary of "as-built" changes from the original plan, if any, to the County upon completion of construction.

(xviii) Upon request of the County after the end of each calendar year the facility owner/operator shall provide Crook County an annual report.

The Applicant agrees to provide an annual report to the County, upon reasonable request. The Applicant may in the future request that certain informational requirements and/ or scheduling of reporting be altered (or discontinued) once the facility is fully operational.

(d) Amendments. The requirements are facility specific, but can be amended as long as the facility does not exceed to boundaries of the Crook County land use permit where the original facility was constructed. An amendment shall be required if the facility changes would:

- (i) require an expansion of the established facility boundaries;
- (ii) increase the foot print of the photovoltaic energy system by more than 20 percent;
- (iii) increase generator output by more than 25 percent relative to the generation capacity authorized by the initial permit due to repowering or upgrading of power generation capacity;
- (iv) any changes to roads or access points to be established at or inside the project boundaries.

Notification by the facility owner/operator to the Crook County planning department of changes not requiring an amendment is encouraged but not required.

The Applicant may seek an amendment to the approved conditional use permit if a facility change would be to expand the facility, increase the footprint and/ or output, or change access pursuant to these requirements.

(e) Decommissioning. Plan elements shall include:

(1) A plan for dismantling and/ or decommissioning that provides for completion of dismantling or decommissioning of the facility without significant delay and protects public health, safety and the environment in compliance with the restoration requirements this section.

(2) A description of actions the facility owner proposes to take to restore the site to a useful, non-hazardous condition, including options for post-dismantle or decommission land use, information on how impacts on wildlife populations and the environment would be minimized during the dismantling or decommissioning process, and measures to protect the public against risk or danger resulting from post-decommissioning site conditions in compliance with the requirements of this section.

(3) A current detailed cost estimate, a comparison of that estimate with present funds of the bond or other financial mechanism for dismantling or decommissioning, and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning. The cost estimate will be reviewed and be updated by the facility owner/operator on a 5 year basis, unless material changes have been made in the overall facility that would materially increase these costs. If so, the report must be revised within 120 days of completion of such changes.

(4) Restoration of the site shall consist of the following:

- (A) Dismantling and removal of all photovoltaic energy system structures. Concrete pads

shall be removed to a depth of at least four feet below the surface grade.

(B) The underground collection and communication cables need not be removed if at a depth of three feet or greater. Cables at a depth of three feet or greater can be abandoned in place if they are deemed not a hazard or interfering with agricultural use or other consistent resource uses of the land.

(C) Access roads in EFU zones shall be removed by removing gravel and restoring the surface grade and soil.

(D) In EFU zones after removal of the structures and roads, the area shall be graded as close as is reasonably possible to a condition compatible with farm uses or consistent with other resource uses. Re-vegetation shall include planting by applicant of native plant seed mixes, planting by applicant of plant species suited to the area, or planting by landowner of agricultural crops, as appropriate, and shall be consistent with the weed control plan approved by Crook County.

(E) Roads, fences, gates, and improvements may be left in place if a letter from the land owner is submitted to Crook County indicating said land owner will be responsible for, and will maintain said roads and/or facilities for farm or other purposes as permitted under applicable zoning.

(F) The applicant shall submit to Crook County a bond or other financial mechanism to the County in form and amount and naming Crook County and the landowner as beneficiary or payee. Specific requirements are found in subsections (A) – (G).

The Applicant has submitted a decommissioning plan to address the County's requirements. The plan describes the decommissioning process, and addresses the anticipated schedule and cost of dismantling project components and restoring the site. The decommissioning plan and financial security are subject to review by Crook County Counsel. The plan and security must be approved prior to Project ground breaking. The Applicant will receive all necessary permits including building permits, prior to commencing any decommissioning work.

Public Comments

The Crook County Planning Commission held a public hearing on March 27, 2019. Several Planning Commissioners visited the site prior to the hearing to get a perspective of the site characteristics and adjacent land uses. Jake Stephens, the Applicant, provided testimony in support of the Project. He described his experience with solar development and answered questions regarding the site. He discussed how the specific gen-tie route is not yet fixed and would depend on the final interconnection location.

No federal, state or local agencies provided testimony at the hearing. The Applicant provided emails from Russ Deboodt, Crook County Fire and Rescue regarding the need for CCF&R review of the final emergency management plan and comments from Kelly Coffelt, Prineville Airport, stating that he had no comments on the proposal because it was not located in the airport approach zone. Greg Jackle of Oregon Department of Fish and Wildlife provided comments on the application that are discussed above.

Ron Raasch offered testimony in support of the project. Mr. Raasch owns property to the east and south of the subject property. He stated that he had no problems with the proposed use of the property.

Kristy Cooper testified in opposition to the proposed solar facility. She raised concerns about the reflectivity impact of the solar panels, specifically the impact to planes using the Prineville Airport. She stated that the County needed to get input from the Federal Aviation Administration (FAA) and the Prineville Airport to demonstrate that there would be no impact to pilots using the Airport. The Applicant contacted Kelly Coffelt, Prineville Airport Manager, to get comments on the proposed solar facility. Mr. Coffelt responded by asking about the location and height of transmission lines. He raised no concerns regarding reflectivity. The Crook County Code and State law have no requirements regarding input from the Federal Aviation Administration.

Mrs. Cooper asked why the County would approve facilities prior to final plans being submitted. She specifically requested the opportunity to review the final emergency management plan. Staff responded that the final emergency plan would not be required until the Applicant had a final site layout and location of all facility components. The plan would be subject to review by Crook County Fire and Rescue; not the Planning Commission. Approval of the emergency management plan would be required prior to site clearing and grading. Mrs. Cooper requested that the record be kept open.

Russ Cooper also offered opposition testimony. He mentioned that other pilots who use the Prineville Airport had not been notified of the proposed use. He mentioned concerns about reflectivity of the solar panels and impacts from glare to pilots using the Prineville Airport. Staff confirmed that Prineville Airport does not have an approach zone and that the proposed facility is not located in the approach zone to the Airport. Mr. Cooper requested that the record be kept open.

John Aniello testified on behalf of PacifiCorp. PacifiCorp is neutral concerning the application but wanted to work with the Applicant and Bonneville Power regarding the interconnect location for the proposed solar facility. He requested an extension to allow PacifiCorp's land use team to review the project.

Mr. Stephens offered rebuttal testimony regarding the reflectivity of solar panels. He stated that panels have an anti-reflective coating and are designed to absorb light, not to reflect light. He mentioned that several large airports have solar facilities located on their properties.

Mrs. Cooper responded to the rebuttal testimony. She stated that if the Prineville Airport had a control zone, the proposed site would be within it. She said that she had a right to testify about other issues and that residents who were affected by the proposed use were not notified.

In addition to testimony at the hearing, the Planning Department received a memo from the Oregon Department of Transportation dated March 28, 2019. They also received a formal transportation assessment on April 5, 2019. Although this correspondence was received after the hearing was

closed, it does address ODOT requirements for the road approach from the facility in response to criteria related to facility access and transportation impacts and the information is attached to this decision.

FINDINGS AND SUPPORTING EVIDENCE

The Applicant provided a burden of proof statement describing the proposed use of the property. Exhibits attached to the application showed the site location, property zoning, soils, a noxious weed control plan, a draft emergency management plan, and a traffic assessment. Additional survey work will be conducted for wildlife, cultural and historic resources prior to site clearing and grading. The Planning Commission finds that based on information provided by the Applicant, the staff report and findings, demonstrate that the applicable criteria of the Crook County Comprehensive Plan, the Crook County Code, the Oregon Revised Statutes and the Oregon Administrative Rules have been met.

DATED THIS 10th DAY OF APRIL, 2019.


Michael Warren II, Planning Commission Chair


Ann Beier, Planning Director

NOTICE TO PERSONS PROVIDING TESTIMONY

The above approval may be appealed in writing to the Crook County court no later than 4:00 p.m. on April 23, 2019 (twelve working days from the effective date of this approval) on payment of an appeal fee of \$2000.00 plus 20% of the initial application fee. The appellant must also provide written transcripts of the relevant meeting tapes at the appellant's expense.

Appeals must be submitted to the Crook County planning Department, 300 NE Third Street, Prineville, Oregon, and must be received together with the appeal fee by the Planning Department no later than the above time and date.

Attachment A – Site Location

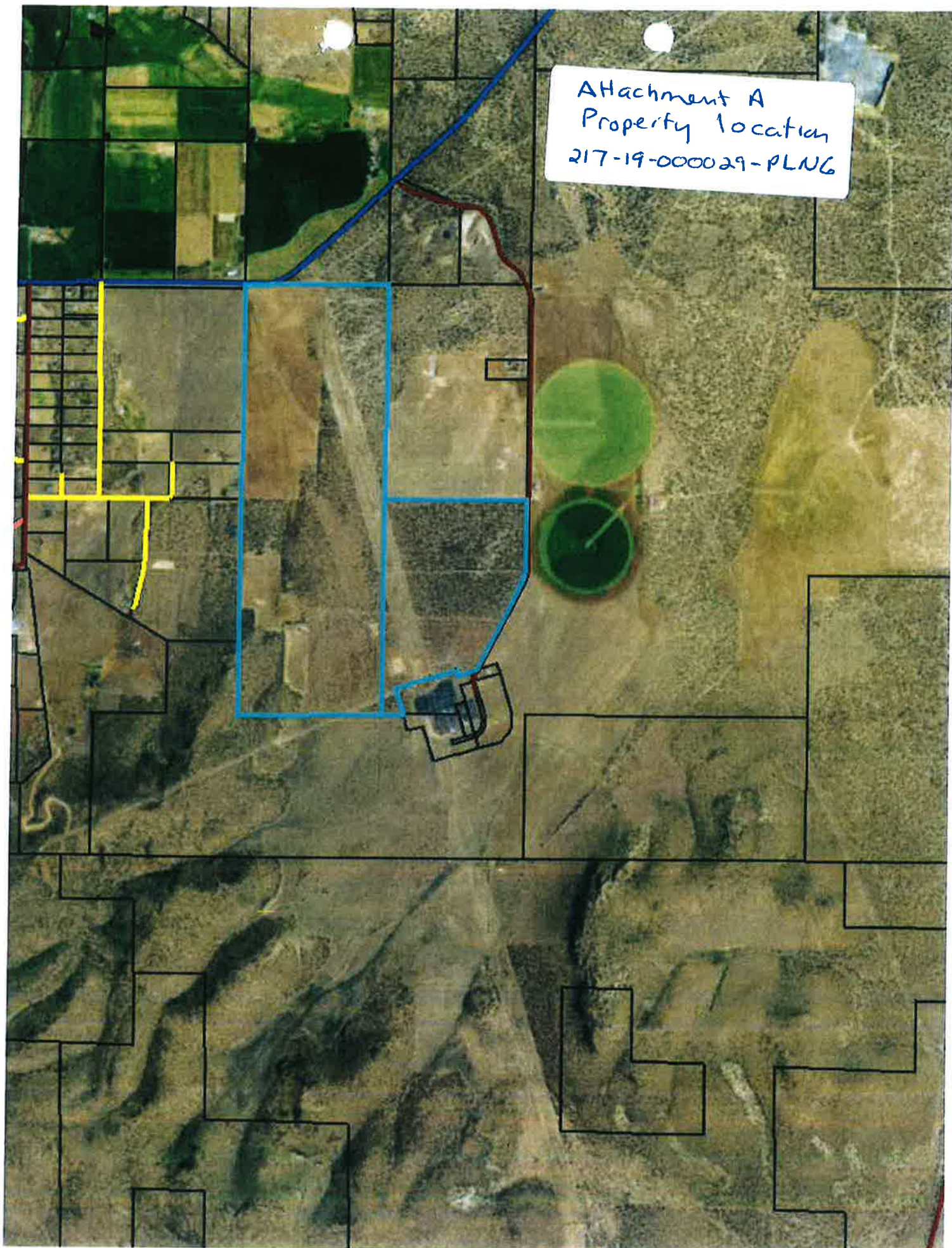
Attachment B-1 and B-2 – Facility layout

Attachment C – Soils

Attachment D – March 28, 2019 memo from Oregon Department of Transportation

Attachment E – April 5, 2019 memo from Joe Bessman, Transight Consulting

Attachment A
Property location
217-19-000029-PLNG

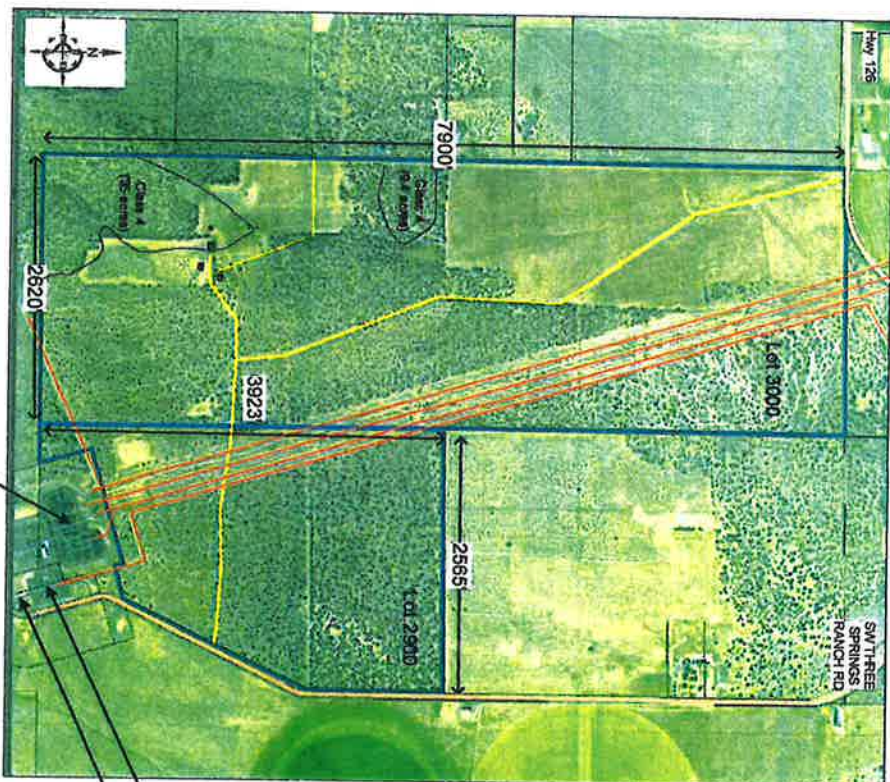




Site Plan: Present Overview TL 2900 & 3000

Attachment B-1
217-19-000029-PLNG
GENERAL NOTES

- Legend**
- Tax Lot Boundaries
 - Existing Access/Driveways
 - Existing State and County Roads
 - Existing BPA/PGE and PAC 115 and 500kV Transmission lines and associated easements
 - Existing residential power line
 - Existing Buildings



Existing BPA Ponderosa Substation

Existing PAC Ponderosa Substation
New PAC Corral Substation
(under construction)

1. DISTANCES, LOCATIONS, AND ROUTING OF ASSOCIATED TRANSMISSION LINES AND ACCESS ARE APPROXIMATE AND SUBJECT TO APPLICANT'S FINAL DESIGN.
2. SOLAR PV FACILITIES SUBJECT TO APPLICABLE ACREAGE RESTRICTIONS, SOIL RECLASSIFICATION STUDIES UNDERWAY WITH APPROVED SOIL SCIENTIST.
3. TOTAL FACILITIES SITING AREA CONSIDERED IS LESS THAN 320 ACRES. TOTAL ARABLE LANDS CONSIDERED ELIGIBLE LESS THAN 20 ACRES. NO HIGH VALUE FARMLAND.
4. SETBACK REQUIREMENTS SHALL CONFORM TO CROOK COUNTY STANDARDS FOR PARCELS ZONED EFU-3 INCLUDING TAX LOT BOUNDARIES.
5. LOT 3000 CONTAINS EXISTING RESIDENCE AND BUILDINGS USED IN SUPPORT OF EXISTING PERMITTED USES.

Address:
Revision History

Prepared for: West Piverville Solar
Farm LLC

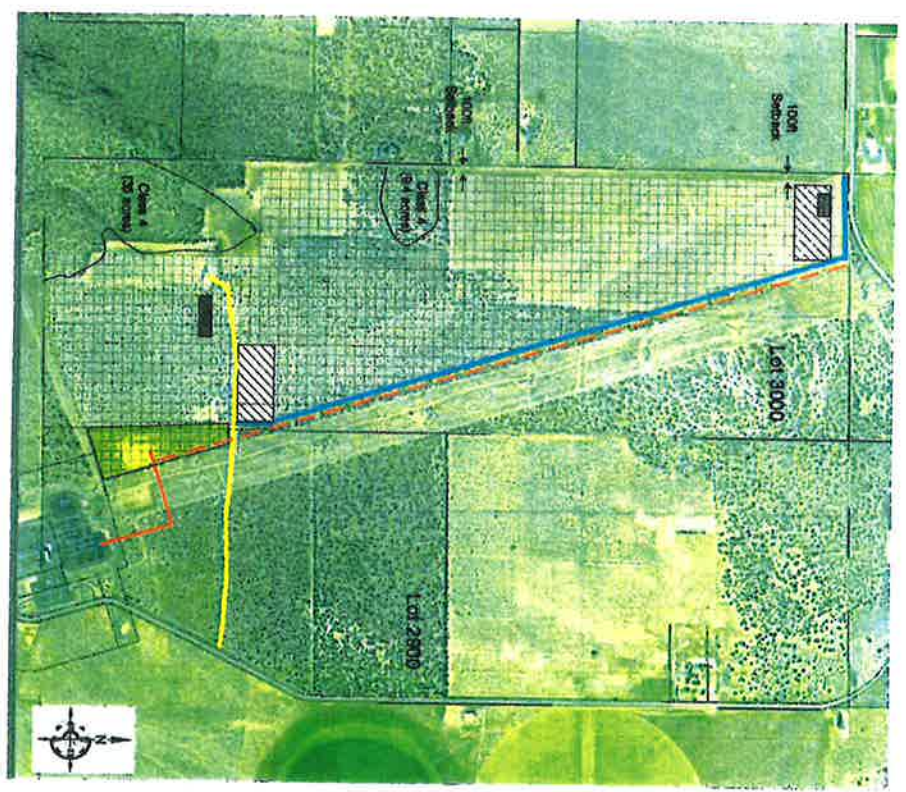
TITLE:	
DESIGN BY:	WEST PIVERVILLE SOLAR
REV:	DATE
1	11/13/2023



Legend

- Modified Access Road
- Existing Access Road
- PV Facility Siting Area
- Temporary Laydown Yard(s)
- Temporary Construction Trailer Options
- Substation Facility Transmission Line
- Future Gen-Tie Routing
- Substation Facilities Siting Area

Site Plan: PV Facility Siting Area



Attachment B-2
217-19-00629-PLUG
GENERAL NOTES

1. DISTANCES, LOCATIONS, AND ROUTING OF ASSOCIATED TRANSMISSION LINES AND ACCESS ARE APPROXIMATE AND SUBJECT TO APPLICANT'S FINAL DESIGN.
2. SOLAR PV FACILITIES SUBJECT TO APPLICABLE ACREAGE RESTRICTIONS. TOTAL PV FACILITIES SITING AREA CONSIDERED IS LESS THAN 320 ACRES AFTER SETBACK RESTRICTIONS APPLIED. TOTAL ARABLE LANDS CONSIDERED ELIGIBLE LESS THAN 20 ACRES. NO HIGH VALUE FARMLAND.
3. SETBACK REQUIREMENTS SHALL CONFORM TO CROOK COUNTY STANDARDS FOR PARCELS ZONED EFU-3.

Notes:
Revision History

Prepared for: West Privateville Solar Farm, LLC		TITLE: SITE PLAN OVERALL	
REV:	DATE:	DRAWN BY:	DATE:
MA		MA	
PAGE:		PAGE:	
P. 4 of 8		P. 4 of 8	

217-19-00029-PLNG



BUILDING

ON-SITE

[illegible]



Oregon

Kate Brown, Governor

Oregon Department of Transportation
 Region 4 Headquarters
 63055 N. Highway 97
 Bend, OR 97703
 (541) 388-6180
 FAX (541) 388-6231

DATE: 3/28/19

ANN BEIER, COMMUNITY DEVELOPMENT DIRECTOR
 CROOK COUNTY COURTHOUSE
 300 NE 3RD STREET, ROOM 12
 PRINEVILLE, OR 97754

Project Name: West Prineville Solar Farm	Applicant: West Prineville Solar Farm, LLC
Jurisdiction: Crook County	Jurisdiction Case #: 217-19-000029-PLNG
Site Address: N/A	Legal Description: 15S-15EWM Tax Lot(s): 2900 and 3000
State Highway: Adjacent to US 126	Milepost(s): 11.85

ODOT Response

Thank you for sending agency notice of a conditional use permit to construct and operate the West Prineville Solar Farm, LLC, a photovoltaic (PV) solar power generation facility on up to 320 acres. Commercial energy facilities are allowed as conditional uses under Crook County Code 18.24.020 and Oregon revised Statutes (ORS 215.283) and are subject to review under Crook County Code 18.160 (Conditional Uses) and 18.161 (Commercial Power Generating Facilities). The property is identified as 15S-15EWM, TLs 2900 and 3000.

Permits and Agreements to Work in State Right of Way

- ☒ An ODOT Application to Upgrade an Existing Highway Approach must be submitted for the approach located at Mile Point 11.85 along OR 126. Please contact either Permit Specialist, Aaron Smith, at 541-388-6054 or Permit Specialist, Tyler Swanson, at 541-388-6426 to obtain this.
- ☒ A drainage study prepared by an Oregon Registered Professional Engineer is usually required by ODOT if the development has the potential to impact ODOT highway drainage, to assure life, safety and that Oregon Drainage Law is being upheld. The applicant must provide ODOT District 10 with a preliminary drainage plan showing impacts (or lack of impacts) to the highway right of way. If it can be determined from preliminary drawings there will be no impacts to the highway drainage system then a drainage study will not be required. If a drainage study is required, all requirements for drainage studies can be found in the ODOT Hydraulics Manual.

An ODOT Miscellaneous Permit is required for connection to state highway drainage facilities. Connection will only be considered if the site's drainage naturally enters ODOT right of way.

You may contact me at 541-388-6046 if you have any further questions or require additional information on our response to this proposal.

Thank you,


Don Morehouse
Senior Transportation Planner, Development Review

Please send any further project related correspondence to:

ODOT Region 4 Planning
Development Review
63055 N. Highway 97, Bldg M
Bend, OR 97703

Donald.Morehouse@odot.state.or.us

Development Review Planner: Don Morehouse	541.388.6046
District Contact: Aaron Smith	541.388.6054
District Contact: Tyler Swanson	541.388.6426



Attachment E

Date: April 5, 2019
To: Mark Boissevain, EASE LLC
From: Joe Bessman, PE
Project Reference No.: 1305
Project Name: West Prineville Solar Facility



This letter provides an assessment of the transportation impacts anticipated with the proposed 320-acre solar farm located at 8140 SW Highway 126 in Powell Butte, Oregon (tax lot 1515000003000). The proposed solar facility will be located near the Bonneville Power Administration route and will be able to produce over 50 MW of power. Access to the project is provided directly from OR 126 at a permitted access at highway milepost 11.857. Figure 1 provides a photo of the property.



Figure 1. View of BPA alignment through subject property as viewed from OR 126.

PROJECT DESCRIPTION

The proposed solar farm site is on the south side of OR 126 with the property bisected by the western BPA transmission alignment. The property is located near the intersection of OR 126 and Three Springs Ranch Road near the horizontal curve in OR 126, as shown in Figure 2. The property is zoned for Exclusive Farm Use (EFU-3), which per CCC 18.24.025 allows commercial photovoltaic energy systems to the extent permitted by State law. The specific location of the property is illustrated in Figure 2.

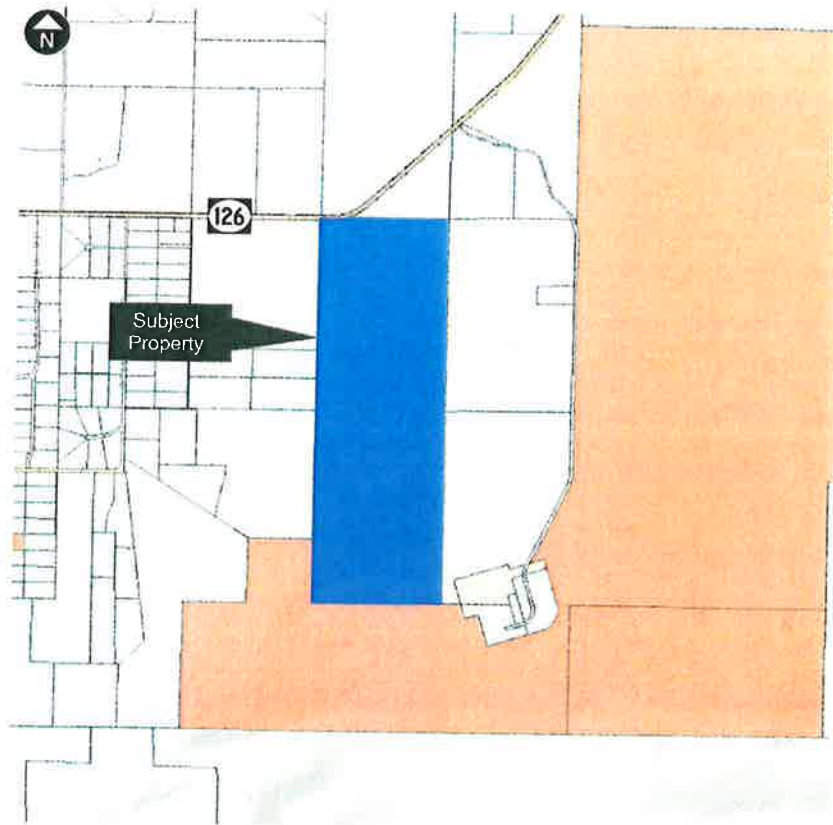


Figure 2. Site Vicinity Map. *Image Source: Crook County GIS*

The proposed site currently supports a residence and various outbuildings in support of existing permitted EFU land uses.

Access to the property is proposed from the permitted access onto OR 126. Secondary access onto Three Springs Road is desirable, but as this is a private road it will require that access easements be obtained to allow use of this facility for construction trips. Figure 3 illustrates the proposed site layout.

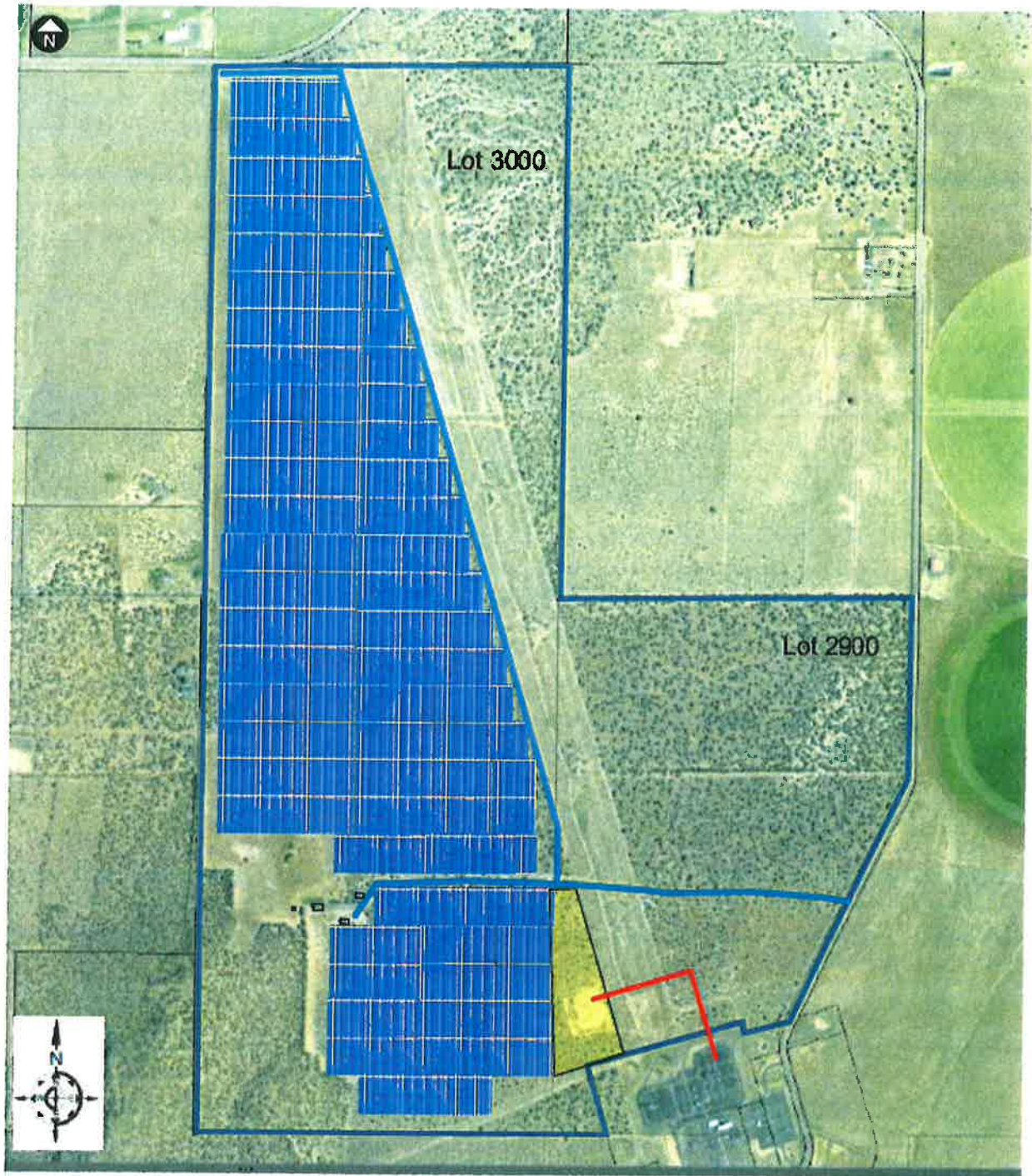


Figure 3 illustrates the proposed site layout.

TRIP GENERATION

Trip generation estimates are typically prepared using the standard reference Trip Generation, 10th Edition, published by the Institute of Transportation Engineers (ITE). However, this manual generally contains information applicable only in suburban and urban areas. Trip generation data for solar facilities is not available, and so in most jurisdictions is based on estimates of employee/maintenance trips once fully built-out.

Based on information from other solar facilities, only nominal trip generation occurs with full build-out. These trips are typically associated with security, on-site maintenance of equipment, and inspections. Inspections and maintenance occur throughout the year on both a scheduled and an as-needed basis. Accounting for both inbound and outbound trips, a solar facility will typically generate about four trips per day (one to two vehicles per day both in and out), with average weekday daily trip generation likely closer to a single trip per day (one inbound and outbound trip).

Crook County Code 18.180 identifies the thresholds for when a formal Transportation Impact Analysis is required. This identifies the following conditions:

- The development generates 25 or more peak hour trips (or more than 250 daily trips)
- An access spacing exception is required for the site access driveway and the development generates 10 or more peak hour trips (or 100 or more daily trips)
- The development is expected to impact intersections that are currently operating at the upper limits of the acceptable range of level of service during the peak operating hour.
- The development is expected to significantly impact adjacent roadways and intersections that have previously been identified as high crash locations or areas that contain a high concentration of pedestrians or bicyclists (such as school zones)
- A change in zoning or a plan amendment designation.
- ODOT requirements.

The proposed solar facility generates less than the County trip thresholds, is allowed outright in the zoning, and is proposing access in conformance with an approved deeded access onto OR 126. None of the County thresholds are met to require a Transportation Impact Analysis, and with the limited trip generation of the site conduct of a study would not identify capacity needs. Accordingly, this transportation assessment focuses on construction needs to maintain safety at the access for the development of the site. This will conform with the County's Transportation Assessment Letter (TAL) requirements.

CRASH HISTORY REVIEW

Intersection crash records were obtained from the ODOT crash database for all of Crook County for the period between January 1, 2012 and December 31, 2016. This reflects the most recent (complete) five-year period available. Crashes that are required to be reported to ODOT during this period includes any collision that involves one or more motor vehicle, results in more than \$1,500 in property damage, or results in any level of personal injury.

There were 10 crashes near the property access along OR 126 during this analysis period, one of which was associated with the OSU research facility entrance and eight were related to the OR 126 curve. Further review of the crashes showed the following characteristics:

- Three crashes were associated with animals on the highway;
- One crash occurred as a result of a lost or shifted load;
- Three crashes occurred during icy conditions;
- Excess speed, reckless or otherwise improper driving were cited in eight of the reported collisions.

Review of the crash patterns and crash types indicates that drivers may not be anticipated the surface or curve conditions while traveling along OR 126. Potential safety mitigations to address the curve could include widened shoulders that increase the available recovery space, additional roadway centerline

widening to further separate eastbound and westbound travel directions, and review of curve warning/animal crossing signage. None of the crash patterns appear to be associated with the existing property access, but along this two-lane expressway facility temporary construction signage will be required to warn drivers on either approach of the new conflicts while the facility is being constructed. Any signage along OR 126 will need to be coordinated with and approved by ODOT.

ACCESS CHARACTERISTICS

Access to the property will be provided from the permitted access location that is located west of the BPA powerline easement, as shown in Figure 4. This access occurs at an approximately 75-degree angle from the highway and contains a wide turning radius to support the turning maneuvers. These radii will need to be reviewed to ensure that the trucks bringing in materials and supplies can safely maneuver through the access, or if additional widening near the entrance will need to occur.



Figure 4. Existing OR 126 permitted access.

TEMPORARY CONSTRUCTION CONDITIONS

While build-out trip generation is very low for a solar facility, construction impacts of solar facilities are much more intense than operational conditions. To address construction traffic needs, information was also obtained and summarized to provide trip estimates throughout the construction process.

Construction on the property is anticipated to begin during the 3rd quarter of 2019, with completion anticipated by the end of the year. Construction will be initiated with on-site grading and access improvements. Following site preparation, the majority of trucks will be standard tractor trailers with 40-foot long shipping containers.

The peak of the construction activity spans 12 weeks from September 2019, of which eight weeks from mid-October through mid-November will see the highest amount of construction related traffic both in terms of larger trucks (for materials) and passenger vehicles for commuting laborers. During this eight-week span is when the actual installation of the solar photovoltaic (PV) modules will occur. During this eight-week installation period the facility site is conservatively estimated to generate 3 to 5 truck trips per day for material transport and 40 to 80 passenger car trips per day for commuting laborers (assuming very little carpooling and no shuttle/bus usage).

Construction traffic (both material and labor) will arrive from major population centers surrounding this site. This includes the City of Prineville to the east and Bend-Redmond area to the west. Laborers will not be permitted to remain on the premises overnight.

To maintain the safety of the highway connection to OR 126 and to increase visibility and awareness for laborers that are unfamiliar with the area, the following summarizes recommended construction mitigation measures:

- “Trucks Entering Highway” temporary construction signage should be installed on either side of the access throughout the construction period to warn motorists of construction activity. Similar advance warning signs should also be located 1,000 feet from the intersection to warn following drivers of the otherwise unexpected deceleration near the horizontal curve. Advance coordination and approval from ODOT will be required to place signs in the highway right-of-way.
- The applicant should coordinate with the Crook County road master and ODOT to ensure a plan is in place to prevent rocks and debris from entering OR 126. This may require extending the asphalt apron into the property.
- Separate on-site areas should be designated for passenger vehicle parking and truck staging. No parking should be permitted along OR 126 shoulders.
- The applicant should coordinate with the Crook County road master on any permits required to support the solar facility along internal site roadways and secondary access roads.
- If access from Three Springs Ranch Road is needed easements will be required from the property owner along this private facility. The design and location on a tangent highway section makes this a more ideal access location for construction trips.

We trust this letter provides a general understanding of the long-term build-out and construction needs of the proposed Solar Facility. The operations of the facility will not trigger the County’s formal Transportation Impact Analysis requirements. If you have any questions or need any additional

information on this traffic letter please contact me at (503) 997-4473 or via email at joe@transightconsulting.com.

Attachments:

- Approved ODOT Approach Permit
- Preliminary Site Layout Maps

Attachment B

BEFORE THE CROOK COUNTY COURT

**IN THE MATTER OF THE APPEAL OF
APPLICATION 217-20-000375-PLNG FOR
CONDITIONAL USE APPROVAL OF A
COMMERCIAL SOLAR FACILITY**

**FINAL DECISION
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

FINAL DECISION

After a hearing on Wednesday, October 21, 2020, and having decided to modify the June 2, 2020 decision of the Crook County Planning Commission, affirming its decision as to Options 1 and 2 of the Applicant's mitigation plan, the Crook County Court adopts this Final Decision with supporting Findings of Fact and Conclusions of Law on this 10th day of November, 2020.

This Final Land Use Decision may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) within twenty-one (21) days from the date of this Decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. FACTS

The subject property is identified on the County Assessor's Tax Map as Township 15S Range 15E Willamette Meridian, Tax lots 2900 and 3000. The Applicant, New Sun Energy (Jacob Stephens, Manager) and property owner, Bryan Sproat.

The Applicant applied for a modification of an approved conditional use for a commercial solar facility 9217-29-000029-PLNG) to increase the project acreage from approximately 320 acres to approximately 654 acres.

II. PROCEDURAL STATUS

A. Planning Commission. The Applicant filed an application for a conditional use permit. The application was heard by the Planning Commission on May 13, 2020. The hearing was continued by the Planning Commission for deliberation only until a date and time certain (May 27, 2020 at 6 p.m.). No additional testimony was taken at that meeting. The Planning Commission approved the modification to the conditional use permit for the

commercial solar facility through a June 2, 2020 decision. The Appellants filed a timely appeal of the decision to the County Court on June 15, 2020 (217-20-000546-PLNG).

B. Crook County Court. The Crook County Court scheduled an on-the-record public hearing for August 5, 2020. The Applicant requested a continuance and the County Court rescheduled the hearing until September 16, 2020. The Applicant requested another continuance and the Appellants agreed to the request. The County Court rescheduled the hearing to October 6, 2020.

The County Court held a public hearing on the record on October 6, 2020. The County Court opened the public hearing by making the announcements required by ORS 197.763(5). No party objected to the procedural status of the hearing or the Court's jurisdiction, nor were any ex-parte contacts or conflicts of interest announced. The hearing was continued for deliberation only until October 21, 2020. The Court provided the Appellants one week (October 14) to respond to the Applicant's supplemental findings and granted the Applicant until October 16 to prepare a final reply. The County Court reconvened on October 21 to deliberate on the appeal.

III. APPLICABLE APPROVAL CRITERIA

A. Standard of Review. The standard of review by the County Court of the Planning Commission's decision requires that the Appellant show that the Planning Commission's decision was in error and for the Applicant to show that the relevant criteria were met. Crook County Code Section 18.172.110(12)(b). Following the hearing on the appeal, the County Court may affirm, overrule, or modify the Planning Commission's decision. Crook County Code Section 18.172.110(13).

B. General Conditional Use Criteria. The Planning Commission applied the following in reaching its decision:

Crook County Comprehensive Plan

Title 18 – Crook County Code

- Section 18.16 – Exclusive Farm Zones.
- Section 18.16.060(3) – Commercial Facilities for Generating Power -Photovoltaic Solar Power
- Section 18.161 Commercial Power Generating Facilities
Section 18.161.010(2) Commercial solar photovoltaic facilities
- Section 18.180 – Transportation Impact Analysis

Oregon Revised Statutes

- ORS 215.274 (associated transmission lines)
- ORS 215.283 (uses authorized on agricultural lands)
- ORS 215.446 (Oregon Enrolled House Bill 2329 – 2019 Session)

Oregon Administrative Rules

- OAR 660-033-120 (allowed uses in EFU zones)and 660-033-0130(5) and (38)
Minimum standards for allowed uses
- OAR 660-004 Interpretation of Goal 2 Exception Process

III. APPEAL

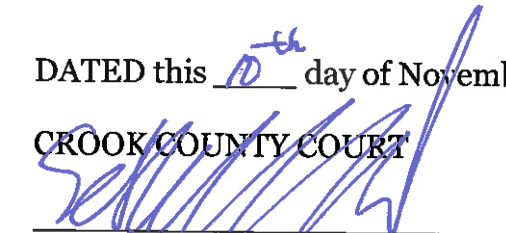
The Appellants challenged the specificity of the three options in Applicant's mitigation plan. The record demonstrates that the value and quality of habitat on the subject property are not in dispute and Appellants and Applicant agreed on the appropriate mitigation ratio. The Planning Commission approved the mitigation plan in its entirety and approved all three mitigation option.

The County Court agreed with the Planning Commission's assessment that Options 1 and 2, as presented in the Applicant's mitigation plan and buttressed by other requirements of the conditional use permit, provided enough specificity to ensure appropriate mitigation for the site. The County Court did not agree that Option 3 provided appropriate mitigation, because as presented, significant details of Option 3 would necessarily be decided by Applicant and ODFW outside the land use process and without offering an opportunity for public participation. Additionally, Option 3 as presented, does not enable the County to determine, based on substantial evidence, that the selected mitigation project is appropriate to address habitat impacts associated with the solar project.

Based upon the attached findings of fact and conclusions of law incorporated herein, the Crook County Court hereby modifies the Planning Commission's decision, affirming as to Options 1 and 2 of the mitigation plan and removing Option 3.

DATED this 10th day of November 2020

CROOK COUNTY COURT


Seth Crawford, County Judge


Brian Barney, County Commissioner


Jerry Brummer, County Commissioner

**Outside Counsel's Proposed Findings of Fact and Conclusions of Law for West Prineville
Solar Appeal No. 217-20-000546-PLNG**

The Crook County Court adopts the following Findings of Fact and Conclusions of Law in Crook County Appeal No. 217-20-000546-PLNG (West Prineville Solar):

1. On June 2, 2020, the Crook County Planning Commission issued Conditional Use Permit No. 217-20-000375-PLNG, authorizing development by NewSun Energy and its agents ("Applicant") of the West Prineville photovoltaic solar facility and associated transmission lines (the "Project") on up to 654 acres of nonarable land, including a 654-acre property at Township 15S Range 15E, Tax Lots 2900 and 3000 (the "subject property"). This was a modification of 217-19-000029-PLNG a conditional use permit for a commercial photovoltaic solar facility on up to 320 acres.
2. On June 15, 2020, the Oregon Department of Fish and Wildlife ("ODFW") and Department of Land Conservation and Development ("DLCD") submitted a notice of appeal to Crook County, challenging aspects of the Applicant's habitat mitigation plan (Appeal No. 217-20-000546-PLNG, or the "Appeal").
3. On October 6, 2020, the Crook County Court held a public hearing, heard arguments on the Appeal, and considered all relevant evidence in the Planning Commission record.
4. The record demonstrates that the value and quality of habitat at the subject property is not in dispute. The Applicant and ODFW agreed that the appropriate level of mitigation is 1:1. Under this standard Applicant would be responsible for mitigating 1 acre for every acre occupied by permanent facility components and temporary construction components.
5. The Applicant presented the County with a final habitat mitigation plan, which the Planning Commission considered during a public hearing on the Application. The Applicant's habitat mitigation plan includes three well-defined alternatives to implement the mitigation plan, to achieve the "no net loss" mitigation standard. Under this standard Applicant would be responsible for mitigating 1 acre for every acre occupied by permanent facility components and temporary construction components. ODFW agreed to the proposed ratio.
6. Additionally, the Applicant also agreed to provide additional mitigation requested by the Planning Commission—specifically, constructing corner gates at the Project site for easier exit of big game in the event that they inadvertently enter the Project area.
7. The Court finds that, although ODFW and the Applicant arrived at substantial agreement on most elements of the habitat mitigation plan and final mitigation approach, they were unable to reach final agreement on a cooperative mitigation strategy. Therefore, pursuant to OAR 660-033-0130(38)(j)(G), as implemented by CCC 18.16.060(3)(h)(vi), the County is responsible for determining "appropriate mitigation," as the County interprets that standard. The Court finds that 1:1 is an appropriate ratio to achieve the "no net loss" mitigation standard.

8. Because of the size of this project and pursuant to the provisions found in HB 2329 (ORS 215.446) the Applicant must consult with ODFW and the Court must make certain findings. The Court finds that there is substantial evidence in the record that the Applicant's mitigation plan will "address significant fish and wildlife habitat impacts" and is "consistent with the administrative rules adopted by the State Fish and Wildlife Commission for the purposes of implementing ORS 496.012." Those administrative rules refer to ODFW's habitat mitigation policy at OAR Chapter 635, Division 415. ODFW's habitat mitigation rules set forth a scheme for classifying habitat based on its relative quality and provide certain mitigation goals for each class of habitat. In this case Applicant and ODFW agree on the habitat classification and mitigation ratio.
9. The Court concludes that the Applicant's final habitat mitigation plan is within the legally acceptable range of mitigation approaches to provide "appropriate" mitigation, as the County interprets that term. Specifically, the Court recognizes that the County has historically allowed a variety of mitigation approaches for solar projects in Crook County, with input from ODFW, and that "appropriate mitigation" differs from project to project. The Planning Commission engaged in a robust discussion of possible mitigation options for this project, including considering approaches taken at other solar projects on nearby properties, and determined that the Applicant's final mitigation proposal was consistent with the County's previous decisions.
10. Further, the Court finds that of the three mitigation implementation alternatives detailed in the final habitat mitigation plan Options 1 and 2 provide the most appropriate mitigation.
11. The Court believes that the modified conditions of approval proposed by the Applicant, which require the Applicant to demonstrate compliance with the final conditional use permit before beginning construction, are sufficient to ensure that, if the project is ultimately developed, the Applicant will actually implement one of the two mitigation alternatives that this Court has determined provide appropriate mitigation. The Applicant is not authorized to construct the project without performing the approved mitigation, and the County has ongoing authority to initiate appropriate enforcement against the Applicant in the event of any noncompliance.
12. The Court concludes that it is appropriate to modify the findings of the Crook County Planning Commission and associated conditions of approval in Conditional Use Permit 217-20-00375-PLNG (issued June 2, 2020), to document that Options 1 and 2 constitute an appropriate mitigation plan. The Court makes no findings related to Option 3.

Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 267 NE 2nd St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



MEMO

TO: Crook County Planning Commission

FROM: John Eisler, Asst. County Counsel

DATE: September 7, 2022

RE: State of the Law: Habitat Mitigation for Solar Projects

On July 13, 2022, during the public hearing for Record No. 217-21-000438-PLNG, I gave a brief presentation regarding the state of the law for habitat mitigation plans in commercial solar conditional use applications. Near the end of the hearing, the Planning Commission asked that I submit an outline of my presentation to assist the Planning Commission in this and future commercial solar applications. Please accept this memo as my current understanding of how reviewing authorities are interpreting the requirements of mitigation plans as part of the commercial solar conditional use application review.

I. BACKGROUND

Oregon counties have traditionally been able to site solar facilities up to 320 acres; those larger facilities were permitted by EFSC. In 2019, Oregon passed HB 2329, which grants counties the authority to site medium-sized solar projects up to 1,920 acres on non-cultivated land. The primary language is codified at ORS 215.446. Regarding wildlife mitigation, the relevant provision is:

(3) In order to issue a permit, the county shall require that the applicant:

(a)(A) Consult with the State Department of Fish and Wildlife, prior to submitting a final application to the county, regarding fish and wildlife habitat impacts and any mitigation plan that is necessary;

(B) Conduct a habitat assessment of the proposed development site;

(C) Develop a mitigation plan to address significant fish and wildlife habitat impacts consistent with the administrative rules adopted by the State Fish and Wildlife Commission for the purposes of implementing ORS 496.012.

ORS 215.446(c)(3). I will refer to this section hereafter as the “2329 Mitigation Rule.”

The meaning of the 2329 Mitigation Rule was challenged by ODFW in the County's approval of the West Prineville application. LUBA sided with ODFW. Both the applicant and County appealed LUBA's decision to the court of appeals. The County's only argument was that the informational requirements within ODFW's Habitat Mitigation Policy (the "HM Policy") in OAR 635-415-0020(8) were not approval criteria, as those provisions only applied where ODFW was the permitting authority. The court of appeals agreed with the County and remanded the matter back to LUBA. But in its opinion, the court offered some guidance on how to interpret the new habitat mitigation statute, and LUBA applied that guidance to West Prineville's application on remand. The remainder of this memorandum will break down my current understanding of how the 2329 Mitigation Rule should be applied.

II. THE HABITAT MITIGATION POLICY AND JUDICIAL INTERPRETATION

The 2329 Mitigation Rule requires that an applicant "[d]evelop a mitigation plan to address significant fish and wildlife habitat impacts *consistent with* the administrative rules adopted by the State Fish and Wildlife Commission for the purposes of implementing ORS 496.012." The administrative rules referenced are ODFW's Fish and Wildlife Habitat Mitigation Policy rules found in OAR chapter 635 Division 415 or the HM Policy. The HM Policy was written well before HB 2329 and directs ODFW staff on how to approach wildlife habitat mitigation opportunities in any circumstance, i.e. where ODFW is the permitting authority for state projects and where ODFW instead wears a consulting hat as it provides recommendations to a local government permitting authority.

A. What Does "Consistent with" Mean?

When presented with the question of what exactly the 2329 Mitigation Rule means when it says that the mitigation plan an applicant prepares must be "consistent with" the HM Policy, the court of appeals said:

[W]e return to the meaning of "consistent with." A mitigation plan prepared for ORS 215.446 approval must be concordant with the Mitigation Policy and not show any substantive conflicting elements. Although a mitigation plan need not follow the submittal requirements set out in OAR 635-415-0020(8), there are other requirements of the Mitigation Policy that a mitigation plan must satisfy, including the ones that we have highlighted above. On remand, LUBA will consider those in the first instance.

Or. Dep't of Fish & Wildlife v. Crook Cty., 315 Or. App. 625, 645-46 (2021) (ODFW II). While not exceedingly helpful, the court did clarify that "consistent with" means something less than absolute conformance—instead the plan "must be concordant" and show no "substantive conflicting elements" with the HM Policy. The greater takeaway here is that the HM Policy, its rules, and definitions are the key against which the substance of a mitigation policy should be measured. Certain provisions of the HM Policy should be treated like applicable approval sub-criteria. I will address each of those next.

B. What Is a Mitigation Plan?

The core of the dispute in the West Prineville case centered around how detailed and specific a mitigation plan must be to be consistent with the HM Policy. The applicant presented a "mitigation plan" with three distinct options, the third of which was not yet fleshed out, and the

other two with certain details to be figured out at a later time. ODFW recommended we require a mitigation plan with every detail already planned out.

The court of appeals went straight to the definition for mitigation plan in the HM Policy:

"a written plan or statement that *thoroughly describes the manner* in which the impact of a development action *will be* reduced or eliminated over time, avoided, and/or minimized; and the affected environment, including fish and wildlife habitat, monitored, restored, rehabilitated, repaired and/or replaced or otherwise compensated for in accordance with OAR 635-415-0010 of these rules."

OAR 635-415-0005(18) (emphases added). The court paraphrased the definition as:

The emphasized terms—"thoroughly describes the manner" and "will be"—indicates that specificity and definiteness are required for a mitigation plan to be consistent with the Mitigation Policy. That is, the term "will be" connotes a definiteness of future action and the term "thorough" connotes that the mitigation plan requires completeness and attention to detail. When a county assesses whether a mitigation plan is "consistent with" the Mitigation Policy, it must determine whether the plan has those qualities.

ODFW II at 644.

C. What Is the Habitat Category?

The first step in assessing the sufficiency of a habitat mitigation plan under the 2329 Mitigation Rule is to determine the proper Habitat Category (HC). The categories range from HC1 to HC6, with HC1 being "irreplaceable" habitat and HC6 having a "low potential to become essential or important habitat." The HC will inform what the proper goals and standards should be for the mitigation plan. The State supplies a flowchart to determine the HC, but ODFW's internal position is that any area mapped as big game or pronghorn winter range should automatically be considered HC2. This has been a topic of dispute in recent 2329 Mitigation Rule applications.

D. What Are the Goals for the Habitat Category?

As discussed above, the goals vary depending on the HC. HC1's goal is "no loss," meaning that development should not occur on the subject property regardless of mitigation opportunities. HC2's goal is "no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality." HCs 3 and 4 have a goal of "no net loss of either habitat quantity or quality" and HC5's goal is simply to provide a net benefit of habitat quantity or quality. Much of the remainder of HM Policy is filled with defined terms. Applying the definitions of the terms appropriately should enable a County review of a mitigation plan under the 2329 Mitigation Rule that will withstand judicial scrutiny. Let's begin:

- **"Net Loss"** means a loss of habitat quantity and/or habitat quality resulting from a development action despite mitigation measures having been taken.

- **“Net Benefit”** means an increase in overall in-proximity habitat quality or quantity after a development action and any subsequent mitigation measures have been completed and monitored.
- **“Habitat”** means the physical and biological conditions within the geographic range of occurrence of a species, extending over time, that affect the welfare of the species or any sub-population or members of the species.
- **“Habitat Type”** means the classification of a site or area based on its dominant plant, soil, and water associations or other salient features (e.g. tidal influence, salinity, substrate, alkalinity, etc.) of value to the support and use by fish and wildlife.
- **“Habitat Quantity”** means the amount of a given habitat type.
- **“Habitat Quality”** means the relative importance of a habitat with regard to its ability to influence species presence and support the life-cycle requirements of the fish and wildlife species that use it.

Thus, for a hypothetical HC2 site, there should be no net loss of either habitat quantity or quality and a net benefit of either habitat quantity or quality. The “habitat” means the physical and biological conditions of the site that affect the welfare of the species of concern. The “type” of habitat is classified by the site’s dominant plant, soil, water, and other features that support the species of concern. Habitat quantity can be expressed as a simple acreage ratio (i.e., for every one acre disturbed, x acres will be preserved). Habitat quality is trickier. A proposed mitigation site must match or exceed the “relative importance” of a habitat regarding its ability to influence species presence and support life-cycle requirements of the species of concern. Of note, a “net benefit” means only an increase and does not dictate the magnitude of the increase.

E. What Are the Standards?

Each of the HCs have standards by which the mitigation plan should achieve its goals, with the sites of greater importance having stricter standards. These too are defined terms. HCs 2 and 3 require reliable in-kind and in-proximity mitigation; HC4 mitigation can be either in or out of kind and in or off proximity.

i. Reliable

The HM Policy defines “Reliable Method” to mean “a mitigation method that has been tested in areas with site factors similar to those affected by a development action and the area in which the mitigation action is being proposed and that has been found (e.g., through field trials, demonstration projects or scientific studies) to produce the habitat effects required to meet the mitigation goal for that action.” The court of appeals drew attention to the requirement that the mitigation method must be “reliable,” but instead of citing the definition stated “[t]he [HM Policy] therefore calls for reliable ‘no net loss’ mitigation, *i.e.*, a mitigation measure ‘*fit to be relied on.*’” *ODFW II* at 645 (emphasis added).

ii. In-Kind and Out-of-Kind

In-Kind and Out-of-Kind are standards addressing habitat quality. The definitions are as follows:

- **“In-kind Habitat Mitigation”** means habitat mitigation measures which recreate similar habitat structure and function to that existing prior to the development action.

- **“Out-of-kind Habitat Mitigation”** means habitat mitigation measures which result in different habitat structure and function that may benefit fish and wildlife species other than those existing at the site prior to the development action.

Neither habitat “structure” nor “function” are defined in the HM Policy. Thus, for those, it would be appropriate to apply definitions as those terms are commonly understood. “In-kind” habitat mitigation should therefore aim to recreate the structure and function of the development site (i.e., a mixture of high canopy and low growth areas would be the structure; foraging would be the function). Whereas “Out-of-Kind” mitigation can be at a site with any combination of structure and function, as long as it benefits the species of concern.

iii. In-Proximity and Off-Proximity

The definitions for these terms are, in my opinion, more complicated than their actual application.

- **“In-proximity Habitat Mitigation”** means habitat mitigation measures undertaken within or in proximity to areas affected by a development action. For the purposes of this policy, “in proximity to” means within the same home range, or watershed (depending on the species or population being considered) whichever will have the highest likelihood of benefiting fish and wildlife populations directly affected by the development.
- **“Off-proximity Habitat Mitigation”** means habitat mitigation measures undertaken outside the area that would constitute “in-proximity mitigation” but within the same physiographic province as the development action.
- **“Home Range”** means the area that a species traverses in the scope of normal life-cycle activities.
- **“Physiographic Province”** means any one of ten major geographical areas within the State of Oregon based on differences in topography, climate, and vegetation as defined in the Oregon Wildlife Diversity Plan (OAR 635-100-0001 through 0040).

Thus for HCs 2 and 3 to meet the “in-proximity” requirement, any proposed mitigation sites must be in the same “home range” or “watershed” of the affected species as the project site. “Home range” includes any area that the species traverses in the scope of its normal life-cycle activities. Thus, a location recommendation that a mitigation site be in the same winter range as an affected species would go beyond the in-proximity requirement, but it could arguably come into play for other factors such as the site’s habitat function. For HC4 projects, my understanding is that the entire County is in one Physiographic Province, meaning that any site in Crook County should qualify as off-proximity.

iv. Durational Standards

The “no net loss” requirement applies during the entire life of the development project. The mitigation measures are to “be implemented and completed either prior to or concurrent with the development action” and be maintained “during the life of the development action.” HM Policy at -0025(3)(b)(B) and -0005(16)(d). The “progress towards achieving the mitigation goals and

standards shall be reported on a schedule agreed to in the mitigation plan performance measures.” HM Policy at -0025(3)(b)(B). The durational requirements are expressed again in section -0020(4), as explained by the court of appeals:

Finally, we observe that OAR 635-415-0020(4) provides that ODFW's recommendations for mitigation of a development action's impact must be based, among other things, on the "location, physical and operational characteristics, and duration of the proposed development action" and the "nature, extent, and duration of impacts expected to result from the proposed development action." OAR 635-415-0020(4)(a), (d). The OAR 635-415-0020(4) considerations illustrate that the Mitigation Policy includes, regardless of ODFW's particular role, durational considerations as to the development action and the mitigation efforts. Ignoring those considerations would allow for mitigation measures that fail to accommodate the impact on habitat for the full life of a renewable energy facility.

ODFW II at 645. It is clear that for a mitigation plan to be consistent with the HM Policy, there must be mechanisms in place to evaluate whether the mitigation project offsets the impact from the development action for the full life of the facility. The HM Policy asks that the mitigation policy include plan performance measures that track the progress towards achieving the goals (i.e., no net loss) on an agreed-to schedule.

III. WEST PRINEVILLE’S MITIGATION PLAN THROUGH LUBA’S EYES

ODFW argued on remand that there was not substantial evidence in the record for the County to conclude that West Prineville’s mitigation plan was consistent with the HM Policy in that the plan would achieve no net loss in habitat quantity or quality.

A. Specificity and Definiteness

LUBA described this as the “central issue” on remand. *ODFW v. Crook County*, ___ Or LUBA ___ (slip op at 9) (LUBA No 2020-114, May 9, 2022) (*ODFW III*). LUBA began by evaluating the “specificity and definiteness” of the mitigation plan as it related to habitat quantity and quality.

i. Habitat Quantity

ODFW argued that the text of the mitigation plan and the County’s approval suggested that the maximum acreage that would be mitigated for would be 200 acres out of a possible 354-acre development action. LUBA disagreed in that it was clear that the plan envisioned a one-to-one ratio with a buffer, which obligates West Prineville to “replace each acre developed with an acre of mitigation plus a buffer depending on the quality of mitigation.” LUBA found that “complete and detailed enough for the county to conclude that there will be no net loss of habitat quantity.” *ODFW III* at 14.

ii. Habitat Quality

ODFW argued that finding the habitat quality standard could be met without knowledge of the characteristics of the ultimate mitigation site was not possible. West Prineville countered that under Option 1, it was committed to selecting a site “with at least the same habitat quality” as the project site and under Option 2, the formula would account for habitat quality.

LUBA sided with ODFW. It pointed out that Option 1 addressed the *type* of replacement habitat but lacked sufficient information about the *location* of the replacement habitat. *ODFW III* at 17. While that information was to be provided to the planning director before construction, it meant “important details” of the plan would “be hashed out in private between intervenor and the county, and possibly ODFW” which “comes exceedingly close to the approach the court rejected in *Gould v. Deschutes County*.” *Id.* at 19. Option 2 lacked any detail for how the cash payment would ultimately enhance any habitat. *Id.* LUBA summarized the plan as

a promise by [West Prineville] to achieve the no net loss standard in some unspecified location by pursuing one of two options. However, neither option is specific enough to allow any interested party to evaluate the quality of the replacement acreage ultimately chosen. Rather, the evaluation is left to county planning staff and intervenor, in a non-public manner.

Id. at 19-20. Under this opinion, for a mitigation plan to meet the 2329 Mitigation Rule, there must be greater evidence in the record or conditions of approval to establish that the mitigation site will be of sufficient quality to offset the impacts from the development action.

B. Reliability and Durability

ODFW also argued that the mitigation plan did not propose reliable mitigation, suffering from the same specificity and definiteness flaws that prevented the habitat quality finding. The plan there proposed retreatment actions, extra buffering, and other measures in Option 1 and no specifics in Option 2. LUBA sided with ODFW:

[A]bsent any sample or example instrument that evidences reliability (such as an instrument that runs with the land and is binding on future owners), we agree with petitioner that the [mitigation plan] is not evidence of a mitigation plan that is “reliable.” We also agree with [ODFW] that the treatment options are too vague to be relied on to conclude that the mitigation will last for the duration of the project, especially in the absence of defined performance measures.

Id. at 22. Under this opinion, for a mitigation plan to meet the 2329 Mitigation Rule, there must be at least an example instrument demonstrating it will run with the land and defined performance measures.

C. Schedule of Performance Measures

ODFW argued here that it was not proper to only provide performance measures following County approval in a later, “final” mitigation plan. LUBA was short and sweet in agreeing with ODFW on this, stating that an applicant providing “performance measures prior to construction in ‘the final mitigation plan’ is not evidence a reasonable person would rely on to conclude that the no net loss standard is met.” *Id.* at 23. Under this opinion, for a mitigation plan to meet the 2329 Mitigation Rule, there must be performance measures included in the mitigation plan that is reviewed by the County prior to land use approval.

D. Deferring Compliance/Public Participation

Finally, ODFW argued that the mitigation plan's allowance of alternative options impermissibly deferred compliance to a future proceeding that lacks the required public process. Here, LUBA disagreed with ODFW. While the mitigation plan itself did not contain substantial evidence, Condition of Approval 9, reasonably read, simply required West Prineville to notify the County which of the two mitigation options it selected, which does not equate to a deferred finding. Under this opinion, for a mitigation plan to meet the 2329 Mitigation Rule, if there is substantial evidence in the record that multiple mitigation options are each consistent with the HM Policy on their own, it is appropriate for the County to approve multiple options and allow the applicant to inform the County at a later date which option it has selected.

IV. CONCLUSION

There is no simple way to summarize the requirements of the 2329 Mitigation Rule. Instead, the rule must be applied methodically against the HM Policy, step by step. My hope is that this memo will assist County decision-makers work through that process. Please let me know if you have any questions.