

**Crook County Community Development
Planning Division**

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**CROOK COUNTY BOARD OF COMMISSIONERS
FINAL DECISION WITH STIPULATED FINDINGS
APPEAL: 217-20-000546-PLNG**

I. INTRODUCTION

Date: May 21, 2025

Appeal: 217-20-000546-PLNG

Applicant: West Prineville Solar Farm LLC
Jacob Stephens, Manager
2033 E Speedway Blvd. Ste 200
Tucson, AZ 85716

Appellant: Oregon Department of Fish and Wildlife
2042 SE Paulina Hwy
Prineville, OR 97754

Property: Tax Lot: 1515000003000, 1515000002900

II. PROPOSAL

The Applicant is requesting approval to modify an existing conditional use permit (217-19-000029-PLNG). The permit authorizes a commercial photovoltaic system on up to 320 acres in the County's EFU-3 zone. The modification (217-20-000375-PLNG) would increase the project acreage from 320 acres to approximately 654 acres. This application is in conjunction with 217-20-000720-PLNG, a comprehensive plan amendment for the Goal 3 exception, which was approved on October 7, 2020. This decision is on remand from the Oregon Court of Appeals, case number A176344, and the Oregon Land Use Board of Appeals, case number

2020-114. Applicant and Appellant reached an agreement to settle the case before the Crook County Board of Commissioners¹ and request the Board's adoption of these stipulated findings.

III. PROCEDURAL BACKGROUND

The Applicant applied for the Modified Conditional Use Permit on April 15, 2020. An evidentiary hearing was held on May 13, 2020, and continued for deliberation to May 27, 2020. Based on the staff report, application materials, findings, facts, and testimony in the record, the Planning Commission voted to approve the modification application on June 2, 2020.

The Oregon Department of Fish and Wildlife (ODFW) appealed the Planning Commission's approval to the Crook County Court, challenging the sufficiency of the Applicant's Habitat Mitigation Plan in terms of compliance with ORS 215.446 and implementing ODFW regulations at OAR Chapter 635, Division 415. The Habitat Mitigation Plan provided three options to mitigate big game habitat potentially impacted by the proposed solar facility: (1) juniper removal to be conducted by the Applicant or a designee; (2) a juniper removal project to be conducted by Deschutes Land Trust; or (3) another mitigation project to be reviewed and approved by ODFW at a later date.

The Crook County Court held a public hearing on October 6, 2020, which was continued to October 21, 2020. On November 10, 2020, the Crook County Court affirmed the Planning Commission's decision, but modified the decision to remove Option 3 from Applicant's Habitat Mitigation Plan.

ODFW appealed to the Oregon Land Use Board of Appeals (LUBA). LUBA remanded the decision to Crook County Court on June 9, 2021. Crook County and Applicant petitioned to the Oregon Court of Appeals, which reversed and remanded the decision to LUBA on November 17, 2021. *Or. Dep't of Fish & Wildlife v. Crook Cty.*, 315 Or App 625 (2021).

On remand, LUBA determined that "the [Habitat Mitigation Plan] is not evidence in the record as to the quality of mitigation, the reliability or durability of mitigation, and lacks a schedule of performance measures required to be included in a mitigation plan" and stated that "the county will need to adopt findings that state the facts relied upon in rendering the decision and explain the justification for the decision based on the criteria, standards and

¹ During the pendency of this application, via Order 2024-13, the Crook County Court revised its form of governance and became the Crook County Board of County Commissioners. The two terms are used throughout this decision to describe the same governing body or also simply as the "Board."

facts set forth[.]” *ODFW v. Crook County*, ___ Or LUBA ____ (LUBA No 2020-114, May 9, 2022). LUBA therefore remanded the decision to the Crook County Court on May 9, 2022.

Applicant and Appellant then began settlement discussions to address the issues outstanding on remand. Applicant and Appellant entered into a Settlement Agreement on May [REDACTED], 2025, which is attached as Exhibit A. The Settlement Agreement amends the Conditions of Approval in Conditional Use Permit 217-20-000375-PLNG and includes an Option 2 Mitigation Plan from Crook County Soil and Water Conservation District (“CCSWCD”).

IV. PROCESS ON APPEAL

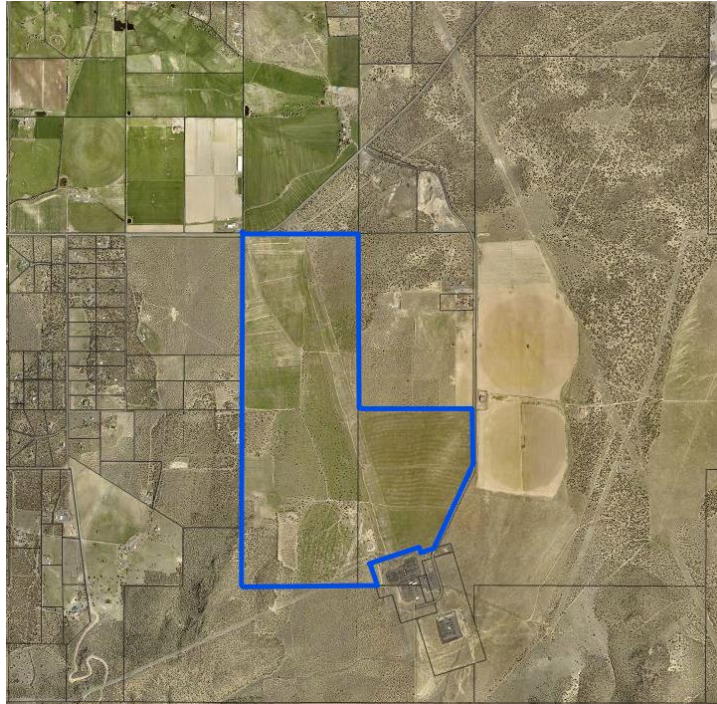
Notice of the remand hearing was published and provided to appellant and applicant on May 8, 2025. The remand hearing is limited to staff, Applicant, and Appellant, unless the Board moves to allow additional participants. CCC 18.172.130(2)(b). The remand hearing is limited solely to issues remanded in the final decision of LUBA, unless the Board moves to expand the issues on remand. CCC 18.172.130(2)(c). The remand hearing is limited to new evidence and testimony regarding the issues remanded in the LUBA decision. CCC 18.172.130(2)(d).

V. BASIC FINDINGS

A. Location

The subject property is approximately 2 miles southwest of the City of Prineville. It is identified on the County Assessor’s maps as Tax Lot: 1515000003000, 1515000002900. Figure 1 is a vicinity map depicting the subject property.

Figure 1



Property Lines are Approximate

B. Zoning and Overlays

The subject property is zoned EFU-3 . The subject property is not in deer winter range, sage grouse, critical deer winter range, antelope, or elk habitat. There are no floodplains mapped on the property.

C. Site Characteristics

The subject property is listed as 654 acres with the Crook County Assessor's records and is directly south of U.S. Highway 126. There is a residential dwelling and storage structures on the property. The property is not in farm use and is not within an irrigation district. The property has been historically used as a domestic sewage discharge seepage field.

D. Surrounding Land Uses

Surrounding properties are held in private ownership and all zoned Exclusive Farm Use (EFU). The norther border of the property abuts Oregon Department of Transportation facility; SW Highway 126.

The table below illustrates the existing use and approved land use for the surrounding area.
1515000003000

Direction	Map tax lot	Property owner	Structures	Acreage	Current use	Land Use

West	1515290000100	KOEHLER DIETER & SIGRUN TRUSTEES	Single Family Dwelling	160	Single family dwelling with accessory structure Taxed @ 559 – farm, efu, manufactured structure	Remainder farm parcel from , C-LP- (NF)-347-02 & 2131- 02 & 2132-02 – PP2002-26
West	1515290000103	BALES LANNY A	Single Family Non Farm Dwelling with accessory structure	17.08	Single family dwelling with accessory structure	Land partition and nonfarm single family dwelling, C-LP- (NF)- 347-02 & 2131-02 & 2132-02
West	1515290000102	CHLOTTMANN GARY & DARCY A	Single Family Non Farm Dwelling with accessory structure	20	Single family dwelling with accessory structure	Land partition and nonfarm single family dwelling, C-LP-096-98 & C-CU-1072-98 & C- CU-1078-98
West	1515000003108	CHADWICK NORMAN L	Single Family Non Farm Dwelling with accessory structure	127.86	Single family dwelling and home occupation/counter tops Transmission line runs east west through property	Land partition and nonfarm single family dwelling, C-LP-(NF) (HB)-373-02 & 2160- 02 & 2161-02; Home Occupation 217-17-000043-PLNG
South and South West	1515000001208	RAASCH RONALD A	Multiple accessory structures is part of a large, active cattle ranch with two pivots and cattle grazing as the primary farm uses	2,230.65	Part of active cattle ranch with two pivots and cattle grazing	Conditional Use approval Ponderosa Solar Facility 217-16-000027-PLNG 320 acres w/substation, permanent access to Millican and transmission lines Site Plan modification for Corral Substation, 217-18-000189- PLNG; Property Line Adjustment, 217-18- 000189-PLNG & 217- 18-000299-PLNG - Substation 217-19-000372-PLNG transmission lines;

						Extension requests for 217-16-000027-PLNG – 217-22-000254-PLNG Solar panels are not constructed
Northern parcel East	1515280000100	RAASCH RONALD A	Two accessory structures; in conjunction with MTL 1515280000200 which has a single family dwelling	230.89	Seasonal commercial cattle grazing	Financial Partitioning recognized – C-LP-716-92; Property Line adjustment C-LP(B)-296-01; Multiple accessory structure approvals
Southern Parcel East	1515000002900	SPROAT RANCHES LLC	Current construction of Hoss Substation	174.60	Solar/Substation and infrastructure, has transmission lines on western side of property	DEQ approval LUCS for storage tanks for lime stabilized domestic septage that is land applied; 217-19-000029-PLNG West Prineville Conditional use Energy Facility; 217-20-000375-PLNG modification for West Prineville CU; 217-20-000720-PLNG Plan Amendment for West Prineville Energy Facility; 217-23-000456-PLNG Extension for Energy Facility
North	1515210000200	DERBY SMITH PARTNERS LLC	Vacant	37.21	Two sets of transmission lines run through the property.	Land Partition – included in partition and sale C-LP-504-85

The table below illustrates the existing use and approved land use for the surrounding area.
1515000002900

Direction	Map tax lot	Property owner	Structures	Acreage	Current use	Land Use
West	1515000003000	SPROAT RANCHES LLC	Single Family Dwelling	479.40	Single family dwelling with	Single Family Dwelling-217-C-SR-2320-06;

					<p>accessory structure</p> <p>Solar Energy Facility</p>	<p>217-SP-14-0110-Accessory farm dwelling;</p> <p>217-19-000029-PLNG West Prineville Solar Facility;</p> <p>217-20-000375-PLNG Modification West Prineville Solar Facility;</p> <p>217-20-000720-PLNG Plan Amendment for West Prineville</p> <p>217-23-000456-PLNG Extension for West Prineville</p>
South and South East and East	1515000001208	RAASCH RONALD A	Multiple accessory structures is part of a large, active cattle ranch with two pivots and cattle grazing as the primary farm uses	2,230.65	Part of active cattle ranch with two pivots and cattle grazing	<p>Conditional Use approval</p> <p>Ponderosa Solar Facility</p> <p>217-16-000027-PLNG 320 acres w/substation, permanent access to Millican and transmission lines</p> <p>Site Plan modification for Corral Substation, 217-18-000189-PLNG;</p> <p>Property Line Adjustment, 217-18-000189-PLNG & 217-18-000299-PLNG - Substation</p> <p>217-19-000372-PLNG transmission lines;</p> <p>Extension requests for 217-16-000027-PLNG – 217-22-000254-PLNG</p> <p>Solar panels are not constructed</p>
North	1515280000100	RAASCH RONALD A	Two accessory structures; in conjunction with MTL	230.89	Seasonal commercial cattle grazing	Financial Partitioning recognized – C-LP-716-92;

			1515280000200 which has a single family dwelling			Property Line adjustment C-LP(B)-296- 01; Multiple accessory structure approvals
South	1515330000200	UNITED STATES DEPT OF ENERGY	Ponderosa Substation	17.39	Substation and infrastructure, has transmission lines on western side of property	C-SR-28-86 Ponderosa Substation Boundary Line Adjustments 217-BA-11- 0032 & 11-31

E. Access

The property is accessed via an access route directly from U.S. Highway 126 via an existing ingress.

VI. CRITERIA AND ANALYSIS

A. Character of the Request

Applicant and Appellant request the Crook County Court to adopt stipulated findings and the Settlement Agreement to resolve the issues outstanding on remand from LUBA. The Board adopts the following findings of fact and conclusions of law based on the evidence in the record, the procedural history including the decisions of the Oregon Court of Appeals and Oregon Land Use Board of Appeals, and the Settlement Agreement. These findings are limited to the legal issues related to Applicant's Habitat Mitigation Plan presented and resolved on appeal. Outside Counsel's Proposed Findings of Fact and Conclusions of Law attached to the Court's November 10, 2020 Final Decision are replaced and superseded in their entirety by these findings.

B. Relevant Approval Criteria

- **Oregon Revised Statute 215.446**
- **Oregon Administrative Rules (OAR) Chapter 635, Division 415**
- **Crook County Code, Title 18, Chapter 18.161 Commercial Power Generating Facilities**
- **Or. Dep't of Fish & Wildlife v. Crook Cty., 315 Ore. App. 625 (2021)**
- **ODFW v. Crook County, ___ Or LUBA ___ (LUBA No 2020-114, May 9, 2022).**

ORS 215.446(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;

Finding: Applicant consulted with the Oregon Department of Fish and Wildlife regarding wildlife impacts and any necessary mitigation plan in March and April 2020. The Application was submitted on April 15, 2020. Therefore, this criterion is satisfied.

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

Finding: Applicant provided documentation that a habitat assessment of the site was conducted in March 2020, including site visits, contact with ODFW and other agencies, and review of scientific literature. The April 2020 site-specific habitat assessment is included in the record. Therefore, this criterion is satisfied.

(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 (Wildlife policy); and

Finding: Applicant's Habitat Mitigation Plan is the subject of the appeals and the LUBA remand. On remand from the Court of Appeals, LUBA sustained and remanded two subassignments of error to the Crook County Court. The first and second subassignments of error challenged the sufficiency of substantial evidence in the record to support a conclusion that the Habitat Mitigation Plan will achieve the mitigation goal of "no net loss" for Category 4 habitat on the property under OAR 635-415-0025(4)(a). Specifically, LUBA analyzed whether Applicant's Habitat Mitigation Plan contains the requisite specificity and definiteness on habitat quantity and quality, reliability, durability, and schedule of performance measures.

Habitat Quality

Finding: Habitat quality is defined as "the relative importance of 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." OAR 635-415-0005(7). The mitigation goal for Habitat Category 4 is "no net loss in either existing habitat quantity or quality." OAR 635-415-0025(4)(a). If development impacts cannot be avoided, ODFW's Habitat Mitigation Policy requires mitigation for Category 4 habitat to be reliable "in kind" or "out-of-kind" or "in-proximity" or

“off-proximity” to achieve no net loss in either habitat quantity or quality. OAR 635-415-0025(4)(b)(B).

- “In-kind Habitat Mitigation” means “habitat mitigation measures which recreate similar habitat structure and function to that existing prior to the development action.” OAR 635-415-0005(12).
- “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.” OAR 635-415-0005(25).
- “In-proximity Habitat Mitigation” means “habitat mitigation measures undertaken within or in proximity to areas affected by a development action”—meaning “within the same home range” to have “the highest likelihood of benefiting ... wildlife populations directly affected by the development.” OAR 635-415-0005(13).
- “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.” OAR 635-415-0005(24).

LUBA determined that the Habitat Mitigation Plan lacked the necessary specificity and definiteness to provide substantial evidence that the no net loss of habitat quality mitigation goal would be achieved because neither of Applicant’s proposed options were specific enough to allow any interested party to evaluate the quality of the replacement acreage ultimately chosen. For Option 1, LUBA determined that the Habitat Mitigation Plan lacked details on the location of replacement property that will be used for habitat mitigation. Because an Option 2 plan was not provided in the record, LUBA determined that Option 2 lacked detail on the method and timing of mitigation, and on the location, type and quality of habitat where that mitigation will occur.

As discussed in detail below, the CCSWCD Mitigation Plan (for Option 2) in Appendix A is substantial evidence providing the level of specificity and definiteness necessary to determine that habitat mitigation will achieve “no net loss in either existing habitat quantity or quality” because it identifies the location and type of mitigation property, the future actions that must be taken in terms of implementation including mitigation actions that will measurably increase the habitat quality, performance measures, timing, and reliability and durability assurance. Therefore, the Option 2 mitigation plan demonstrates that the mitigation site will add habitat quality that is equal to or greater than the habitat lost by the development action.

For Option 2, the Settlement Agreement includes a Wildlife Habitat Mitigation Proposal provided by CCSWCD (CCSWCD Plan), which identifies a specific juniper treatment project on Shotgun Ranch, located approximately 30 miles southeast of the development action in Crook County, in a location that “offers connectivity between intact habitats” and an expansion on a “well vetted project” selected by USFWS and ODFW. The Option 2 mitigation location is within the same home range as the development, therefore providing “in-proximity” mitigation. The CCSWCD Plan restoration actions include Phase 2 juniper clearing and piling, aerial annual grass treatment, and drill seeding with native bunch grasses and forbs. These actions will recreate similar habitat structure and function, providing “in-kind” mitigation.

For these reasons, the Board finds that there is substantial evidence in the record providing specificity and definiteness as to the quality (location and type) of habitat mitigation under Applicant’s selected mitigation pathway.

Habitat Quantity

Finding: LUBA concluded that the Habitat Mitigation Plan is “complete and detailed enough for the county to conclude that there will be no net loss of habitat quantity.” Applicant’s Habitat Mitigation Plan would have required Applicant to provide a 1-to-1 mitigation ratio, or one acre of mitigation property, plus a buffer, for each acre of land developed. The Settlement Agreement further clarifies that the project “shall be mitigation at a ratio of 1 acre to 1 acre disturbed up to 200 acres, plus a reasonable failure buffer, as described in Applicant’s mitigation plan” for each acre disturbed on the property over 320 acres. Therefore, the Habitat Mitigation and Plan and Settlement Agreement provide specificity and definiteness as to the quantity of mitigation to be provided.

Reliability and Durability

Finding: Reliability and durability of mitigation means a mechanism to ensure that the mitigation will remain in place for the lifetime of the facility, including decommissioning including reclamation. LUBA determined that “absent any sample or example instrument that evidences reliability (such as an instrument that runs with the land and is binding on future owners)” the Habitat Mitigation Plan lacked evidence that the mitigation would be reliable.

For Option 2, the CCSWCD Plan is located on property that has been enrolled in a conservation easement with The Nature Conservancy since 2000, which includes stipulations to prevent future fragmentation and development. The term of the mitigation

project is the life of the solar facility (40 years). The Board finds that the CCSWCD Plan therefore presents substantial evidence in the record demonstrating that the mitigation will be durable for the life of the facility.

Schedule of Performance Measures

Finding: On remand, LUBA noted that the Court of Appeals observed that a schedule of performance measures provides a reporting schedule demonstrating “progress towards achieving the mitigation goals and standards.” LUBA concluded that the Habitat Mitigation Plan did not include a sufficient schedule of performance measures.

For Option 2, the CCSWCD Plan includes a schedule of performance measures including baseline sampling of vegetation, annual monitoring for five years after project completion, recurring landowner interviews thereafter, and retreatment that may be required under maintenance and monitoring provisions. The CCSWCD Plan also outlines performance standards (such as a minimum of five deep rooted perennial bunchgrasses per square meter, a reduction in juniper cover, invasive annual grasses at trace levels, and a minimum of five native forbs) and retreatment obligations if necessary.

The Board finds that the Settlement Agreement and CCSWCD Plan present substantial evidence of a schedule of performance measures in compliance with the decisions on appeal and the ODFW Habitat Mitigation Policy because they require scheduled reporting of actions necessary to demonstrate progress towards achieving the “no net loss” mitigation standard for Category 4 Habitat by ensuring that the juniper treatment actions are reviewed, maintained, and retreated throughout the life of the impact.

Option 2 Implementation

Finding: LUBA determined that without an Option 2 Plan, there was not substantial evidence in the record to demonstrate that Option 2 qualified as appropriate habitat mitigation. An Option 2 mitigation plan from CCSWD is submitted into the record and attached to the Settlement Agreement. The CCSWCD Plan provides specificity and definiteness of habitat quantity and quality, reliability, durability, and schedule of performance measures to be consistent with the ODFW Habitat Mitigation Policy. The CCSWCD Plan has a mitigation budget that differs from the Option 2 mitigation formula in Applicant’s Habitat Mitigation Plan, but to which the Applicant and CCSWCD have agreed.

The Board finds that the Option 2 mitigation plan submitted by CCSWCD, along with the proposed conditions of approval in the Settlement Agreement, provide substantial evidence in the record demonstrating that Option 2 mitigation will be consistent with ODFW's Habitat Mitigation Policy.

The Settlement Agreement also proposes conditions of approval covering implementation of the Option 2 Plan.

(D) Follow administrative rules adopted by the State Fish and Wildlife Commission and rules adopted by the Land Conservation and Development Commission to implement the Oregon Sage-Grouse Action Plan and Executive Order 15-18.

Finding: The proposed development is not within sage grouse habitat and this criterion is not applicable.

VII. DECISION

The Crook County Board of Commissioners finds there is enough evidence based on the above findings of fact and the materials in the record, all of which are incorporated herein by reference, and the Settlement Agreement (including the CCSWCD Plan), to meet the approval criteria and comply with the Oregon Court of Appeals and Oregon Land Use Board of Appeals decisions on this application. The Crook County Board of Commissioners adopts and incorporates by reference the Settlement Agreement and its attachments and exhibits, including the proposed Conditions of Approval.

Respectfully submitted:

**John Eisler, Director
Community Development**

DATED this ____ day of _____, 2025

**Brian Barney
County Commissioner**

Susan Hermreck

County Commissioner

Seth Crawford

County Commissioner

EXHIBIT A
SETTLEMENT AGREEMENT