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TO: Crook County Board of Commissioners

FROM: John Eisler, Community Development Director

DATE: May 22, 2025

SUBJECT: Ordinance 351 - TSR North Solar Farm LLC, 217-20-000887-PLNG Goal 3 Exception

The Crook County Board of Commissioners (the "Board") is meeting to consider Ordinance 351, which incorporates the Planning Commission's recommendation to amend the County's Comprehensive Plan by including an exception to Goal 3 for TSR North Solar Farm LLC's commercial photovoltaic facility located at Township 15S, Range 15E WM, Tax lot 1223 (formerly tax lot 1226). As this is an ordinance, the Board needs to hold at least two public hearings on the ordinance no less than 14 days apart.

I. Procedural Background

The Planning Commission considered this comprehensive plan amendment and Goal 3 exception concurrently with a conditional use modification request to expand an approved site. The original 320-acre TSR North CUP was approved on September 23, 2019 (217-19-000378-PLNG). The modification request to expand the site from 320 to 585 acres was approved by the Planning Commission (217-20-000581-PLNG) but appealed to the Board (then the County Court) and ultimately approved (217-21-000321-PLNG). While the Planning Commission voted 6-0 to recommend the Board approve this exception to Goal 3 on March 31, 2021, the hearings before the Board were tabled until now.

II. Substantive Background

Statewide Planning Goal 3 aims to preserve and maintain agricultural land for farm use. Development proposals for nonfarm uses on agricultural land must comply with land use regulations, which often include provisions for exceptions to the requirements of applicable statewide planning goals. An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals. The documentation supporting an exception must be included in the local government's comprehensive plan and must demonstrate that the standards for an exception have been met.

1. The Planning Commission's Recommendation

The recommendation from the Planning Commission was incorporated with the final decision for the Conditional Use Permit. For convenience, I am reproducing those specific findings herein (information from the Applicant's burden of proof statement is shown in ***bold+italics***):

Exception for Project sited on more than 320-nonarable acres

For a use located within an EFU zone, the "applicable statewide planning goal" is Goal 3, which is the State's Agricultural Lands Goal. As expressed in Oregon's Statewide Planning Goals and Guidelines, Goal 3 is to preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

Counties are authorized to approve an exception to a goal if certain criteria are met. For these local jurisdictions, the exceptions process is authorized by Goal 2 (Land Use Planning) and ORS 197.732(2) which provides, in relevant part:

"A local government may adopt an exception to a goal if:

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

The applicable administrative rules set forth in OAR Chapter 660 Division 4, Interpretation of Goal 2 Exception Process, and in particular OAR 660-004-

0020(2), Exception Requirements, outline how each of the four standards in ORS 197.732(2)(c) should be met.

1. First, the exception shall list "the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land." OAR 660-004-0020(2)(a).

Both the original and amended proposal have demonstrated that the subject property, while zoned for farm use, does not have the soil quality or irrigation water rights to be developed as productive farmland and therefore the goal to protect agricultural land should not apply to this property. In general, as noted in the County's Comprehensive Plan Agriculture Section 7 (page 41), while agriculture is an important part of the county's economy, "only a relatively small portion, approximately 5% [of the County's Agricultural lands] are classified as agricultural cropland of which only 60% are under irrigation, the remaining cropland being dry land farming ... agricultural cropland in the county is restricted generally by soil capabilities, a short growing season, and limited sources and supplies of water for irrigation." The subject property is rangeland and per the Comprehensive Plan (page 46) can be developed through the goal exception process.

Statewide Planning Goal 3 seeks to preserve farmland for future use. The proposed use for a solar facility is not permanent. Unlike a request for a rezoning or a comprehensive plan change, where the zoning classification would be permanently changed, and the EFU status lost, this application is for an allowed conditional use on EFU-zoned property. The land will continue to carry its farm zoning designation. At the end of the solar facility's useful life, the site would be decommissioned, and the solar panels removed in accordance with the Decommissioning Plan. The site could be reclaimed for agricultural use.

2. Second, the Applicant should sufficiently demonstrate that "areas that do not require a new exception cannot reasonably accommodate the use." OAR 660-004-0020(2)(b). This can be met by describing the location of possible alternative areas considered for the use that do not require a new exception (OAR 660-004-0020(2)(b)(A)) broadly rather than specifically (OAR 660-004-0020(2)(b)(C)).

The Applicant reviewed an analysis provided by the Community Development Department using County GIS (Geographic Information System) data to identify suitable lands in all of Crook County to accommodate the proposed 585-acre solar facility. The Applicant's analysis considered four factors to identify a site for a new solar generating facility:

- i. *Identify zones in both Crook County and the City of Prineville that authorize a commercial photovoltaic facility as a permitted or conditional use;*
- ii. *Identify lands that are 585 acres or greater, whether as a single parcel or as a contiguous block;*
- iii. *Identify parcels within proximity to a high-voltage transmission facility or substation or parcels to site a transmission facility in order to relay electricity to a substation¹ and*
- iv. *Identify conflicts as to the use proposed and the surrounding land uses.*

Crook County Lands

Commercial power generating facilities are not allowed as an outright, permitted use in any Crook County zone.² The County authorizes commercial power generating facilities as conditional uses in the EFU Zone, Forest zone (F-1), Forest Recreation Zone (FR-10), Powell Butte Rural Residential Zone (PBR- 20), Rural Residential Zone (R-5), Light Industrial Zone (LM), Heavy Industrial Zone (H-M), Recreational Residential Mobile Zone (RR(M)-5) and Rural Residential Zone (R-10).

Although commercial utility facilities are allowed as conditional use facilities in the County's Forest (F-1) zone, Crook County Code 18.28.015(9) states "A commercial utility facility for the purpose of generating power shall not preclude more than 10 acres from use as a commercial forest operation.

Renewable energy facilities are subject to the standards in Chapter 18.161 CCC. " Thus, properties in forest zones are not included in this analysis.

Any other property zoned EFU would also require an exception to Goal 3. Thus, no other EFU-zoned parcels are included in this analysis. Similarly, any site over 320 acres in the FR-10 Zone would require an exception to Statewide Land Use Planning Goal 4 (Forest Use). Thus, no parcels zoned FR-10 are included in this analysis.

¹ As discussed herein, the City of Prineville code would allow solar arrays in many zones but would not allow the transmission lines which are deemed an associated major utility facility.

² In contrast, non-commercial solar energy facilities are authorized as an outright, permitted use in the Light Industrial Zone (L-M zone) per CCC 18.68.010(17) (with some limits imposed). A non-commercial power generating facility operates as a standalone power generator and is not connected to a utility grid. (CCC18.08.140 N Definitions). In this case, the Applicant will connect the power generated from the solar energy facility into the PacifiCorp or Bonneville Power utility grid system. Thus, Crook County lands carrying the L-M designation do not allow the requested use, which is defined as a commercial power generating facility.

There are no single or contiguous properties within PBR-20, R-5, LM and H-M zones that meet or exceed the 585-acre site requirement. Thus, no properties within these zoning designations are included in the analysis because there are no sites that can reasonably accommodate the acreage needed for the proposed use.

There are properties within the County's RR(M)-5 that are larger than the required 585 acres, either individually or as contiguous properties. These are located in the southeastern part of the County, south of Prineville and east of the Crooked River in the Juniper Canyon area. However, none of the parcels are contiguous to a high-voltage transmission line and thus do not meet that site requirement. There are some low-voltage transmission lines in the area owned by Central Electric Cooperative, however a project of this size needs to interconnect to a high-voltage (115 kV or 230 kV) transmission line or substation. Connecting to existing high-voltage transmission would be costly and result in additional impacts to both resource and non-resource lands. Furthermore, all these large parcels are located within Mule Deer Winter Range, including both general and critical winter range. Two of the larger properties would require 200-foot setbacks from the rimrock. There are two 640-acre parcels zoned RRM-5 east of Juniper Canyon Road. These are both entirely in general deer habitat and on property that directly abuts a rural residential subdivision, raising the potential for conflicts with existing residential uses. Both of these properties lack access to the required transmission infrastructure.

There is a single lot within R-10 (residential, 10 acre lots) that is larger than 585 acres (Tax lot 1516 tax lot B00). The property is approximately 900 acres. It is located on a butte in the Juniper Canyon area north of the RR(M)-5 zoned lands and due south of Prineville and the Urban Grown Boundary. The R- 10 property is not adjacent to or proximate to the needed high voltage transmission line or substation infrastructure. The property was recently partitioned (217-20-000606-PLNG) into three lots, one 800 acres, one 32 acres and one 64 acres. The County Planning Department has held a preapplication conference with the property owner has submitted a proposal to subdivide 500 acres of the 800-acre property into 10 to 70+ acre lots. The County received a subdivision application on March 9, 2021 (217-21-000136-PLNG). Although the property will likely be developed for residential use and will be unavailable for commercial solar facility development, further analysis demonstrates that the property is not a suitable alternative site for solar development due to conflicts with the proposed use and surrounding land uses described below.

Transportation

The only existing access to this site is off SE Davis Loop, which serves residential properties in Juniper Canyon. During construction of the solar project, a high

volume of vehicles would make use of the residential road. The Comprehensive Plan states that any industry that generates more than 20 auto-truck trips a day shall not locate in a residential neighborhood. P. 61. While these transportation impacts would occur only during construction, construction activities generally occur over a four to six-month period and would impact traffic in this area.

Additionally, SE Juniper Canyon Road provides residential access to Crook County residents and the limited access to the Juniper Canyon area is of concern for traffic safety and emergency purposes. The County is considering an alternate access to serve the residents of this area south of Prineville. One option for the secondary access is to cross this R-10 property and connect the Crooked River Highway to SE Davis Loop.

Rimrock Protection

The alternative site is surrounded on the north, west, and east sides by rimrock. The Comprehensive Plan includes policies to protect natural rimrock:

"7. Rimrocks from the intersection of Elliot Lane and O'Neil Highway, including Westwood Subdivision and Ochoco Wayside Viewpoint, to Stearns Ranch; and those rimrocks paralleling Juniper Canyon, Combs Flat Road and Ochoco Creek to Ochoco Reservoir shall be protected against manmade structures by such zoning restrictions as deemed necessary. Restrictions addressing setbacks and building restrictions shall be applied to protect scenic values." P. 109.

Crook County Code 18.124 (Supplementary Provisions) requires that any structure located on the rimrock shall be set back 200 feet from the edge of said rimrock (CCC 18.124.100). The setback requirement would reduce the usable and developable size. These limitations could require the solar facility to locate closer to existing residential properties and the aggregate site located south of the property. Transmission and interconnect lines would also be required to meet rimrock setback requirements.

Housing

Housing is a concern throughout Central Oregon. The Comprehensive Plan details the projected need for housing in an effort to ensure enough land is earmarked for housing. See, e.g., P. 16. One of the County's Energy Policies is to encourage high density residential development in close proximity to high employment areas and commercial areas. P. 34. This alternative site is in close proximity to and overlooks downtown Prineville. The site is already zoned for rural residential development, has existing residential development nearby, and is intended to serve future residential needs of the County. The property owner has recently been preparing to develop the subject property and has partitioned off two parcels (65 acres and 32 acres), leaving 800 acres (217-20-000606-

PLNG). The owner completed an infrastructure project (initial paved road) in anticipation of future residential development.

City of Prineville Lands

The Applicant also reviewed properties within the City of Prineville to determine if there are zones that would allow a commercial generating facility. In the City, a commercial solar array facility is referred to as a "Minor Utility Facility" if it is a "smaller scale...self-generating facility that will not impact surrounding properties." In contrast, related power transmission lines including poles or towers are considered a "Major Utility Facility". City of Prineville Code, Chapter 153: Land Development.

The Applicant found that the City's code authorizes Minor Utility Facilities outright in Light Industrial (M-1) and Heavy Industrial (M-2) Zones and as Type I conditional uses in Residential Zones 1 through 5 (R-1 through R-5), Commercial Zones 1 through 5 (C-1 through C-5) and Industrial Park (IP) zones. Major Utility Facilities are authorized as Type II conditional uses in R-1 through R-5, C-1, C-2, C-5, M-1, M-2, and IP zones. City of Prineville Code Zoning Tables 153.035 and 153.037.

There are several large M-1 parcels, however the largest contiguous parcels comprise two 160-acre parcels which even when combined do not meet the 585-acre requirement. There is a large property zoned M-2 that is occupied by the County's landfill and is unavailable for development.

The City's policy is to protect land for industrial uses as they produce more employment in comparison to other lands, such as agricultural lands located in the County. The City's Urban Growth Boundary is developed, in part, to provide for the development of lands that cannot be built outside the UGB in the County. To remove lands within the City's UGB for a solar facility is counterintuitive to the very purpose of building solar facilities to generate power to serve businesses and residents. The solar facility, unlike most industrial uses, does not require City sewer and water services. Thus, these industrial zoned lands were not further analyzed.

Information from the County's GIS system confirms that here [sic] are no single or contiguous lots in the City's R-1 through R-5, C-1, C-2, C-5 and IP zones that meet or exceed the 650-acre requirement for the proposed facility. Thus, no lots within these zoning designations were further analyzed.

3. The next criterion to address is the long term environmental, economic, social and energy consequences resulting from the use at the proposed site location. We must also consider measures designed to reduce adverse impacts that are not

significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. ORS 197.732(2)(c)(C). Because this statute and the applicable administrative rules largely use identical language, with the administrative rules providing additional specificity as to exceptions requirements, the findings below pertain to the administrative rules as set forth in OAR 660-004-0020.

The administrative rule requires that the local jurisdiction must find that "the long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse that would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site." OAR 660-004-0020(2)(c).

Environmental

This project requires a site large enough to accommodate this size of energy system, must be in close proximity to high-voltage transmission that can support the power generation, must not cause significant adverse impacts to adjacent properties, and must be in a location that captures maximum sun exposure.

The subject property is ideal in that it is comprised primarily (90%) of nonarable land and soil types (by definition), is non-irrigated, and is otherwise nonproductive for agricultural uses. The site is adjacent to an operating aggregate site which limits certain conflicting uses (e.g. residential and other development within an identified impact area) The site is outside any County Goal 5 inventoried resource area and has 220 acres ODFW mapped pronghorn winter range habitat. Impacts to this habitat and mitigation options are described in the Applicant's Wildlife Mitigation Plan.

The subject property is uniquely located near existing transmission infrastructure and large energy users, minimizing the need to disturb additional lands for transmission lines. The site plan demonstrates that the Project area is traversed by an existing 115kV transmission line and is proximal to PacifiCorp and BPA substations (BPA Ponderosa, PacifiCorp Ponderosa and PacifiCorp Stearns Butte). This makes the site ideal for siting a commercial solar photovoltaic facility.

The Applicant notes that there may be potential adverse environmental impacts associated with temporary construction activities including potential soil erosion. The project has been designed to minimize potential impacts to the existing water table (see discussion below). Although the site is not known to be used by notable avian or bat species, mitigation measures designed to reduce

adverse impacts such as conducting vegetation pre-clearing activities prior to the onset of the nesting season and/or ensuring that pre-construction surveys for migratory bird species occur if clearing is to occur during nesting season (See Condition 20). Mitigation measures would be implemented during nesting season, to protect avian or bat species. The Applicant proposes to use the existing soils and perimeter vegetation to reduce erosion. Fencing will assist to keep big game on the perimeter of the site. The Applicant has consulted with the Oregon Department of Fish and Wildlife to minimize impacts to wildlife and habitat.

The Applicant may make partial use of City water for dust control to minimize impacts to the ground water table. The Applicant may also use water from a permitted, existing well on the property during construction for dust control and to clean the panels to optimize the energy produced. Water will be returned to the water table through the soils that filter water quickly. The same type of soils that make the subject property not ideal for agricultural production make the subject property ideal for return of water to the water system through quick filtration.

The identified adverse impacts of installing a photovoltaic energy system at the subject site are not significantly more adverse than would result from the same proposal being located in other areas of the County. In other words, if the proposal were sited elsewhere in the County, we would anticipate additional adverse impacts such as visual impacts or construction traffic impacting adjacent residential properties. It should be noted that many of the identified alternative site [sic] have a greater presence of inventoried Goal 5 resources including big game such as mule deer, elk, and pronghorn. (Other sites in the County were not ideal in any case because of the criteria mentioned at the beginning of this section). Siting such a proposed low development density on this site will reduce any large-scale environmental impacts on this or adjacent properties.

The County's air, water and land resource policy in the Comprehensive Plan is to "encourage non-pollutant industries to locate in Crook County" (p. 23). The photovoltaic energy system will generate electricity without polluting air or water resources in the County.

Economic

The original and amended proposals do not require extension of public services such as water, sewer, or roads. The project will be accessed via an existing, private, ODOT permitted access from State Highway 126. The project will not generate additional traffic that would warrant improving any additional roads in

the area. The Applicant will work with Crook County Fire and Rescue to address potential costs to the district. There are no costs to other special service districts.

The Applicant based their identification of resource land that is least productive by considering properties that had no irrigation water rights. They then reviewed soil surveys to ensure that the property would not be considered high-value farmland. The subject property has not been utilized as a commercial agricultural operation, has not been farmed, does not receive irrigation. There is little long-term economic impact on the general area caused by removal of this property from the agricultural land resource base. Furthermore, the project is not irreversible; the photovoltaic energy system may be removed per the submitted Decommissioning Plan and used for agricultural activities in the future.

The County's economic policy in the Comprehensive Plan is "to diversify, stabilize and improve the economy of the county." (p. 29) The long-term economic benefit of the proposed expansion would be both direct and indirect. During construction, the project will employ approximately 100 full-time-equivalent workers, some of whom will be from the surrounding area. During operations, the project will employ approximately two to four full-time-equivalent employees. There will be indirect benefits to businesses such as restaurants, hotels, gas stations, grocery stores and equipment suppliers.

Additionally, the proposal may help support the ability of the County to attract additional data center development because of the increased local renewable electricity generation. Oregon Senate Bill 611 allows local jurisdictions to attract data centers and inherently recognizes that data centers may prefer to use locally generated electricity. Data centers bring jobs and tax revenue to the area. The County has been a supporter of data centers as one part of an engine to support rural communities' economic stability. And the County prefers data centers and other employers to locate on industrial-zoned property, rather than allowing projects such as this photovoltaic energy system, which does not require City services, to locate on limited industrial land. In this way, large industrial users can make use of public services within the City of Prineville and the City's Urban Growth Boundary.

Social

When addressing the social impacts of a project, it is helpful to analyze the potential impacts to nearby residences. There are no residences in the expanded Project vicinity. The facility substation is proposed to be located in the southeast corner of the site, where the adjacent land use is the permitted aggregate mining

site. To address potential conflicts with the adjacent Goal 5 aggregate site, a condition of approval requiring the Applicant to sign a "non-remonstrance" agreement relative to accepted mining practices, is recommended. (Condition 21). The associated transmission lines will also be located in the southeast corner, away from existing residential development.

Additionally, the overall long-term social benefits of the proposal would be to provide stability and growth of a few long-term direct and mostly indirect employment opportunities in an area that currently suffers from relatively high unemployment levels.

Energy

Energy efficiencies are realized by transmitting the energy production to growing energy users in the immediate Prineville area. The first energy principle in the County's Comprehensive Plan states "Prineville and Crook County receive about 300 days of sunshine per year. Solar energy will be a very feasible source of energy." (p. 30). Other renewable power generation including hydropower, biomass, wind and geothermal were not determined to be as feasible. The first energy policy in the Comprehensive Plan is "to encourage renewable and/or efficient energy systems design, siting and construction materials in all new development and improvements in the county", and the fourth energy policy is to regulate objects from casting shadows on existing solar collecting units (p. 34).

The long-term environmental, economic, social and energy consequences resulting from locating the proposed use at the proposed site is less than they would be at any other location in the County. No adverse impacts have been identified for the proposed site that would be significantly more adverse than if the proposal was sited elsewhere in Crook County.

4. Finally, the local jurisdiction must find that "the proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." See OAR 660-004- 0020(2)(d).

Adjacent uses include vacant, non-irrigated farm ground, an aggregate mining and processing site and vacant property zoned for industrial uses. The fact that the proposed use is compatible with other adjacent uses or will be rendered through measures such as the required non-remonstrance statements regarding accepted farming practices and accepted practices on the adjacent Goal 5 aggregate mine site. The site is located in an area with no adjacent residences so the location of the Project itself minimizes reduces impacts.

2. Public Comment

Following the Planning Commission's recommendation, the County received public comment from Central Oregon LandWatch's Rory Isbell. The comment addressed issues in the CUP's wildlife habitat mitigation plan that were resolved on appeal and the following regarding the recommended goal exception:

The application fails to provide adequate reasons for an exception to statewide land use planning Goal 3 Agricultural Lands.

This application requests to expand the area of an approved solar energy facility to 585 acres on agricultural land in the County's EFU-3 zone. Oregon Administrative Rules that implement statewide land use planning Goal 3, however, require that "a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres." OAR 660-033-0130(38)(j). Thus, in order to receive approval for this application, the applicant must meet the requirements for an exception to statewide land use planning Goal 3. Those requirements have not been met.

OAR 660-004-0022 governs "reasons" exceptions for any use not allowed by the applicable Goal. OAR 660-004-0022(1) requires that the reasons to justify such a Goal exception must show that "[t]here is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19." The Oregon Court of Appeals has held that a reasons exception must be based on a goal requirement. *1000 Friends of Oregon v. Jackson County*, 292 Or App 173, 193, 423 P3d 793, 805 (2018), *rev dismissed*, 365 Or 657 (2019) (describing "the necessity to base a reasons exception under OAR 660-004-0022(1)(a) on a goal requirement").

Reasons to justify a Goal exception must be truly exceptional: "[A] sufficient basis for a reasons exception under OAR 660-004-0022(1)(a) must be 'exceptional.'" *Oregon Shores Conservation Coalition v. Coos County*, LUBA No. 2020-002, 2021 WL 2336704, at *13 (2021) (citing *VinCEP v. Yamhill County*, 55 Or LUBA 433 (2007)).

The Planning Commission decision errs by failing to make findings in response to OAR 660-004-0022. LandWatch raised this issue to the Planning Commission in a March 17, 2021 comment, which was added to the Planning Commission record as Exhibit 10. This application should be denied for failure to comply with OAR 660-004-0022.

III. Recommendation for Current Hearing

Staff concurs with Isbell's comment that the Planning Commission erred by not addressing the criteria in OAR 660-004-0022. While DLCD amended OAR 660-004-0022(3) in 2023 to include solar power generation facilities as a rural industrial use (addressing the *1000 Friends* decision), a county must still justify why the state policy embodied in the applicable goal should not apply through detailed findings based on substantial evidence in the record pursuant to OAR 660-004-0022.

To date, the Applicant has not submitted findings to show the applicable criteria of OAR 660-004-0022 are met. As this is an ordinance, the record will stay open at least through the second reading of Ordinance 351 on June 18, 2025. Should the County receive said materials such that the Applicant has met their burden, Staff's recommendation would be to modify the Planning Commission's recommendation by fully addressing the "reasons exception" requirements of OAR 660-004-0022. Until such time, Staff's recommendation on this application would be either to deny or remand the decision back to the Planning Commission.

Please let me know if you have any questions.