

CROOK COUNTY PLANNING COMMISSION MEETING

March 31, 2021

Meeting minutes are not a complete representation of discussions at the meeting. An audio recording is available from Crook County Community Development at plan@co.crook.or.us or (541) 447-3211.

Crook County Planning Commission Chair Michael Warren II called the meeting to order at 6:03 p.m. The meeting was conducted by WebEx, a call-in service and at the Crook County meeting room. Commissioners attending the meeting in person were Chair Warren, Susan Hermreck, Laquita Stec, and Gary Bedortha. Commissioners George Ponte and Bob Lundquist attended via phone/webex. Commissioner Linda Manning was absent. The following County staff was present at the meeting: Community Development Director, Ann Beier and Senior Planning Tech, Hannah Elliott; Planner, Katie McDonald; Assistant County Counsel; Jon Eisler and Outside Legal Counsel, Peter Watts; participated via webex.

Parties in Attendance:

Rachel Davee, Crook County Soil and Water Conservation District

Participating via phone WebEx:

Merissa Moeller, Stoel Rives LLP on behalf of West Prineville Solar Farm

Paul Stern, New Sun

Mark Bousevain, New Sun

Jake Stephens, New Sun

Max Yoklic, Stoel Rives LLP

Greg Jackle, Oregon Department of Fish and Wildlife

ITEMS NOT ON THE AGENDA

- NA

PUBLIC HEARING

Chair Warren called the Continuation of the Public Hearing for Deliberations only to order.

Chair Warren read the opening statements and introduced the item for consideration. **Crook County File** numbers 217-20-000581-PLNG (Conditional Use Permit Modification) and 217-20-000887-PLNG (Comprehensive Plan Amendment). The request is a modification to the existing conditional use permit for the TSR North Solar facility (217-19-000378-PLNG) expanding a commercial photovoltaic solar project from approximately 320 acres to approximately 585 acres.

The Applicant is also requesting an exception to Statewide Planning Goal 3 (Agricultural Lands) for a commercial photovoltaic solar facility that uses, occupies, or covers more than 320 acres of nonarable lands, as required by Oregon Administrative Rules (OAR) 660-033 and OAR 660-004. The property is identified as Township 15 S, Range 15 E WM, tax lot 1223, owned by Ronald Raasch. The Goal 3 exception, if approved by the Planning Commission, will require an amendment to the Crook County Comprehensive Plan to document the Planning Commission's findings of fact and statement of reasons in support of the exception.

The Planning Commission held a Public Hearing on March 17th and heard testimony at that time. This meeting is a continuation for deliberations only on the record. No additional material is being heard, accepted, or considered.

The Planning Commission will be evaluating the request against the following applicable criteria:

Crook County Code, Title 18 - Zoning, Chapter 18.16.020

Crook County Code 18.160 (Conditional Uses

Crook County Code 18.161(Commercial Power Generating Facilities)

Oregon Revised Statutes (ORS 215.283) and (ORS 215.446(3))

Oregon Administrative Rule (OAR) 660-033-130(38)

Oregon Administrative Rules (OAR) 660-033 and OAR 660-004

Crook County Comprehensive Plan

Chair Warren asked if any of the Planning Commission members had a conflict of interest or had any ex-parte contact with the Applicant or any member of the public.

Commission Hermreck -no

Commission Bedortha - no – He stated that he sits on the Crook County Soil Conservation District and does not feel it will influence the decision.

Commissioner Stec - no

Commissioner Ponte – no – He added that his wife is on the Board of Deschutes Land Trust and that would not make a difference on how he views this application.

Commissioner Lundquist - no

Chair Warren responded - no

Chair Warren asked if any member of the Planning Commission had any ex-parte or contact:

Commission Hermreck - no

Commission Bedortha - no

Commissioner Stec - no

Commissioner Ponte - no

Commissioner Lundquist - no

Chair Warren responded - no

The Chair then asked if any member of the public, including those participating by phone, wished to challenge any member of the Commission. Max Yoklic joined onto the call. No members of the public stated a challenge.

Chair Warren stated that the Planning Commission will only consider information in the record when deliberating. He then said that the Commission will be asked to make motions on the two planning files before them.

1. Modification of the conditional use permit for TSR North
 - a. Approve with proposed conditions drafted by Staff.
 - b. Approve with modifications to proposed conditions with specific direction to staff regarding modifications.
 - c. Denial of proposed modification of conditional use permit

2. Recommendation to County Court regarding proposed plan amendment for Goal 3 exception

Chair Warren asked if staff wanted to add anything.

Ann Beier, Community Development Director, reminded everyone that deliberations tonight are on the record and they would not be taking testimony. She has updated the staff report to reflect the factual inaccuracies submitted prior to the public hearing on March 17th public hearing. She reminded the Commissioners to consider how they feel about the application and then carefully consider the conditions. As more of the projects have been done, more conditions have been added. Making sure those are clear and objective.

Commissioner Bedortha clarified that they could ask staff and legal counsel questions, on the material in the record only.

Beier replied that was correct and asked for confirmation along with any additional comments on the proceedings from legal counsel.

Peter Watts, Outside Legal Counsel answered that Ann was correct

Chair Warren then said there were three things before them the project, the conditions (including mitigation plan) and the goal amendment.

The Commissioners asked if the Goal 3 amendment needed to be done first.

Beier responded that it may not matter as long as it was done. In other instances (aggregate) the recommendation would be made first and the approval would be contingent upon that. The motion would be that the findings support a goal 3 exception.

Commissioner Bedortha clarified that if the motion didn't pass then the application would die.

Beier asked for any comments from Legal Counsel.

Watts responded that the Goal 3 language that is in front you has been included in other decisions and has been acceptable with state agencies in the past.

Commissioner Stec stated that the information supporting the goal exception that was provided by the applicant included other sites, some of which were large, but not near transmission lines. According ORS 660-004 and so on; there's none same or existing on the exception site and it will maintain rural lands, will not commit adjacent or nearby resources, use of the land and regarding the aggregate site, and can be considered compatible with adjacent or nearby resources.

Commissioner Bedortha asked if that was a motion.

Commissioner Stec so moved.

Chair Warren said it should include a recommendation to County Court.

Commissioner Stec moved that a recommendation be made to County Court for approval of the exception.

Commissioner Bedortha seconded the motion.

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Ponte - aye

Commissioner Lundquist - aye
Chair Warren - aye
Passes 6-0-0

Chair Warren then started deliberations regarding the conditions.

Commissioner Hermreck asked to go through the Conditions of Approval 1 by 1.

Commissioner Stec asked to skim them.

Discussion followed.

Beier stated that she did not change any of the conditions when updating the staff report, only the text language.

Chair Warren asked for clarification regarding condition 14 and the Crook County Fire Rescue, that they didn't submit at this time.

Beier said that the applicant has submitted an emergency management plan. It is in the record. On previous applications, the Fire Marshall "Russ" has requested that the plan not be referred to as the final plan. CCFRD has asked that they be able to work with the applicants when the project gets closer to being built.

Chair Warren then asked the Commissioners if there were any questions on conditions of approval

Commissioner Stec stated none prior to 20

Commissioner Ponte stated none prior to 20

Commissioner Lundquist stated none prior to 20

Beier then had a suggested change to Condition of Approval #5 based on comments received on the text and to be more consistent with the staff report; remove site boundary and replace with site plan.

Commissioner Bedortha asked to make Condition of 10 to more consistent, by specifying corner gates and adding that into the condition. He added that he had nothing further until 20.

Commissioner Lundquist then asked for clarity.

Commissioner Bedortha then stated the specific language regarding putting in corner gates into Condition of 10.

Chair Warren then asked for Comments regarding Condition #20

Commissioners then discussed the process for how to approach Condition 20. They confirmed they were looking at the correct exhibits and staff report.

Beier then suggested that they consider the 3 options within Condition 20. Do they have any comments on 20a?

Commissioners had no comments on 20a.

Commissioner Bedortha then asked if there were any of the potential options that the Commission did not agree or would support. One of which was not listed but had been brought up where the applicant would pick a project and then come back for another public process.

Commissioner Ponte referred to that option as pick a project option 3 and does not support it.

Commissioner Lundquist does not support an option 3

Commissioner Hermreck then reminded that if there is an option of a revisal of an approved option.

Commissioner Ponte clarified that it would have an additional hearing.

Commissioner Lundquist then said the Commissions role is to dictate the options.

Chair Warren then clarified that, as with any project, an applicant can come back and ask for a modification.

Commissioner Hermreck concurred that the option is there for the applicant to come back and ask for a modification and that the Commission would again be able to make a decision.

Commissioner Bedortha could support option 3 with additional language, but would support the majority and potentially save a step with an additional hearing. He then stated that he had reconsidered today and would not support option 3.

Commissioner Stec does not support an option 3.

Chair Warren then clarified that he too had gone back and for the with adding clarifying language but does not support option 3.

Having a consensus that Option 3 would not move forward, Chair Warren asked the Commission how they felt about Option 1 and 2. Option 1 being Juniper removal and Option 2 being a fee in lieu of.

Commissioner Lundquist then stated he was in favor with Option 2 more cut and dry. The question is what ratio for mitigation. He proposes a minimum of 2:1, with reasoning.

Commissioner Ponte said he doesn't see a ratio in terms of scale.

Discussion continued regarding the ratio of mitigation levels and specific acreage.

Commissioner Stec pointed out that there has been a mix of ratios approved in the past.

Beier confirmed.

Commissioners continued discussion.

Commissioner Hermreck supports option 2 (in lieu of payment) and goes to Soil and Water Conservation District, with a ratio of 1.5:1 for Category 2 and a 1:1 for Category 4.

Commissioner Ponte then clarified Commissioner Hermreck's position.

Commissioner Lundquist then asked what Commissioner Hermreck's referenc to Soil and Water was.

Commissioner Hermreck then clarified that two options were presented with Option 2 (in lieu of payment) one being Deschutes Land Trust and the other Soil and Water. Her preference would be with Soil and Water.

Beier then stated for the record that Soil and Water has submitted a specific mitigation and monitoring plan in the record.

Chair Warren then said they would look at having both options.

Commissioner Stec feels that Option 1 is a given, it has to do with Juniper removal and Option 2 deals with habitat. Option two should be in as well. No Option 3.

Commissioner Bedortha then agreed with Commissioner Stec.

Commissioner Ponte then asked where the equation is for Option 2 that is used to calculate what that fee would be.

Discussion continued to locate the equation in the materials.

Commissioner Bedortha said the Soil and Water included a budget.

Commissioner Ponte said he was good with Option 2.

Watts then asked if he could provide some clarity. He stated that the Commissions job is to consider what the best is for the County. They could choose which option would be best for the County and what would be best to mitigate this solar facility.

Chair Warren then stated he thought they would choose only one, but it could be multiple options.

The Commissioners then discussed Condition 20 option 1, including the ratios of 1.5:1 for Category 2 and 1:1 for the rest and with exception of the buffers (500ft around the aggregate pit)

Beier stated that the County set a boundary for the aggregate pit and the state permit (DOGAMI) operates within that. For a clear and objective condition, we can state the DOGAMI footprint to establish the setback.

Discussion continued with Commissioners.

Commissioner Bedortha stated that the Weed Mitigation Plan should be not required. As this property is leased and could be the property owner's responsibility.

Commissioner Ponte then agreed with Gary.

Commissioner Lundquist stated that he somewhat agreed with Commissioner Bedortha but disagreed to the 1.5 to 1 ratio for mitigation. He felt it was not enough mitigation and there was justification for a 2:1.

Commissioner Stec stated that the County should be consistent and when ODFW does not agree, they can recommend to the County but as long as the County is being consistent then it is a recommendation.

Discussion continued.

Chair Warren then stated he was good with the 1.5:1 and 1:1 ratio for mitigation, especially considering the surrounding land use and knowing the plans for that area.

Commissioner Hermreck agreed.

Chair Warren asked for discussion on specific condition language regarding Option 1

Commissioner Ponte stated he is okay with Option 1 as long as it includes more specific language in the Condition.

Chair Warren stated that was the intent to add those specifics.

Commissioner Ponte said that if they could add the ratio of 1.5:1 for Category 2 and 1:1 for the rest, then he could support that.

Chair Warren concurred with Commissioner Ponte's recommended addition.

Commissioner Bedortha, Commissioner Stec agreed with the recommended addition as well.

Commissioner Hermreck did not support Option 1, but will go with the majority and agree with Commissioner Ponte's recommended changes.

Commissioner Lundquist does not agree with ratio of 1.5:1.

Chair Warren asked if he supported Option 1 as an option.

Commissioner Lundquist said he preferred Option 2 but could support Option 1 with a different option.

Commissioner Ponte clarified that Commissioner Lundquist would be open to Option 1 with a 2:1 ratio.

Commissioner Hermreck then asked if Commissioner Lundquist wanted the 2:1 ratio to be applied to the entire project not just Category 2.

Commissioner Lundquist clarified he would support 2:1 for Category 2 and 1:1 for the rest of the project. He considered a 1.5:1 for the entire area but felt that would not be supported.

Commissioner Ponte then said it was a difference of 110 acres.

Commissioner Bedortha then addressed Commissioner Lundquist 1.5:1 for the entire project, but said they need to be fairly clear, mindful of precedent and be consistent.

Commissioner Lundquist stated that he does not feel the maps used by ODFW or the County are accurate and feels that asking for the 2:1 ratio is justified, due to the loss of habitat.

Discussion continued regarding consistency in determining the ratio.

Beier stated she would work with Legal Counsel to determine where to put the ratio and scale into the condition. She then asked if the Commission was comfortable with the language that identified the need to have the details of the mitigation plan prior to breaking ground.

Watts agreed to place it under scale.

The Commissioners continued clarifying Option 1 as it would stay in the Conditions with the addition of ratio under scale, Category 2 at 1.5:1 and Category 4 1:1 and clarifying the 500ft buffer of DOGAMI's boundary.

Commissioner Stec then asked about the maintenance time period of 12 years.

Discussion continued regarding the time frame for maintenance.

Chair Warren asked for an informal vote regarding Option 1

Commissioner Ponte - aye Ratio 1.5 to 1 for Category 2 and 1 to 1 for the rest and then the monitoring the 12 year or NRCS standard and Commissioner Hermreck added recognizing the gravel pit boundary.

Commissioner Lundquist stated he was okay with everything except the ratio for Category 2.

Commissioner Stec agreed with what George stated

Commission Bedortha agreed with what George stated

Commission Hermreck agreed with what George stated

Chair Warren agreed with what George stated

Chair Warren then asked for Commissioners to share thoughts on Option 2

Discussion continued including needed specificity and designated who it went to.

Commissioner Ponte said he could support Option 2 with added specificity, including the ratios, and was fine with designating the payment goes to Soil and Water.

Commissioner Hermreck agreed with Commissioner Ponte about the added specificity and would like it to go to Soil and Water

Commissioner Lundquist said he could not support the ratio less than 2:1.

Commissioner Bedortha agreed with Commissioner Ponte including the Ratio 1.5 to 1 for Category 2 and 1 to 1 for the rest. He stated that he commission should use the NRCS standard for monitoring and recognize the aggregate pit boundary. He added that he would like to leave it a bit open so the applicant and Soil and Water work out details.

Further discussion among the Commissioners that almost the same language as Option 1 with the addition for Soil and Water to receive the funds would go into Option 2. There was also discussion of allowing the applicant and Soil and Water to have flexibility to work out the details at a later date based on the plan they submitted.

Commissioner Bedortha stated that he would like to not have the requirement of the Weed Mitigation Plan.

Hannah Elliott, Senior Planning Technician added that Assistant John Eisler stated the formula is on page 18 of the original WMP (Wildlife Mitigation Plan).

The Commissioners discussed that they could not set a formula as costs would inevitably be different and their concern is to be consistent.

Commissioner Bedortha stated that if Soil and Water Conservation District is not an option then who the applicant decides to work with could be a modification brought to the Community Development Department and they could make a decision as it meets the same criteria or they could bring it to the Commission for a decision.

Commissioners discussed this option and received support for giving staff flexibility to make the decision.
Commissioner Stec - concurred with all of the changes.
Commission Hermreck – concurred
Commission Bedortha - concurred and added that the mitigation be kept within the county
Beier said she would add that into both Options.

Beier then asked if there should be a separate condition for prior to site clearing the applicant shall submit a checklist.

The Commission discussed and suggested that it be left in Condition 20 but made a little d.

Commissioners discussed a Condition 26 that was going to be about the gravel pit and since it had been incorporated into the Options it was no longer needed.

Condition 21 was identified as the non-remonstrance for the aggregate pit. No Commissioner questions.

Condition 22 – No Commissioner questions

Condition 23 – Chair Warren then asked if the 50ft was measured from the property line. Discussion among the Commissioners ensued regarding where to measure from, property line or right of way.

Watts then identified that the property line may go to the middle of the road. He suggested that the Commissioners may want to identify from the edge of the State Road Right of Way.

Condition 24 – No Commissioner questions

Condition 25 – No Commissioner questions – Commissioner Ponte asked if they should add Crook County Fire and Rescue for permitting if they choose to burn.

Chair Warren asked for questions.

Commissioner Ponte asked Legal opinion if things are tight enough the way they have been described
Watts answered that there are not clear guidance from LUBA regarding the Oregon Administrative Rules regarding mitigation. In his mind they are consistent with those Administrative rules due to the specificity the Commission has done. He feels that if this got appealed to County Court and if there is a decision from LUBA this decision could be brought in line with that. His opinion is that it is buttoned up enough.

John Eisler agreed with Watts and added to ask yourself if the conditions were significant enough to offset the development and impact to wildlife

Chair Warren then asked for a motion.

Commissioner Ponte then moved to approve to a 217-19-000378-PLNG from TSR North Solar with the edits and changes that were discussed tonight to the Conditions of Approval.

Commissioner Hermreck then questioned the proper file number 217- 20-000581-PLNG. Commissioner Hermreck then seconded the motion.

Chair confirmed that staff had the motion.

Commissioner Stec - aye

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Ponte - aye

Commissioner Lundquist - opposed

Chair Warren - aye

Motion Passes 5-1-0.

Beier then provided a brief update on the next steps. The Goal Exception will go to County Court and then a staff report within 10 days and Chair Warren will sign out of a meeting.

Beier then provided a brief update on the next meeting with site visit. She also stated that the Juniper Canyon Survey has been sent out.

Commissioner Hermreck made a motion to adjourn the meeting, Commissioner Stec seconded the motion.

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Ponte - aye

Commissioner Lundquist - aye

Chair Warren - aye

Passes 5-0-0

Chair Warren closed the meeting @ 7:45 p.m.