

**Crook County
Community Development Department**

300 NE 3rd Street, Room 12
Prineville, OR 97754
(541)447-3211 Ext 1. Planning

**Before the Crook County Planning Commission
Conditional Use Modification Request – TSR North Solar Facility
FINAL DECISION**

April 2, 2021

APPLICATION: 217-20-000581-PLNG
217-20-000887-PLNG

OWNER: Ronald Raasch
P.O. Box 11
Powell Butte, Oregon

APPLICANT/AGENT: TSR North Solar Farm LLC
Jacob Stephens, Manager
2033 E Speedway Blvd. Ste 200
Tucson, Arizona 85716

PROPERTY: Township 15S, Range 15E WM, Tax lot 1226

PUBLIC HEARING: March 17, 2021 (hearing) and March 31, 2021 for deliberation only

REQUEST: The Applicant is requesting approval to modify an existing conditional use permit (217-19-000378-PLNG).¹ The permit authorizes a commercial photovoltaic system on up to 320 acres in the County's EFU-3 zone. The modification would increase the project acreage from 320 acres to approximately 585 acres. This application is in conjunction with 217-21-000887-PLNG, a proposed comprehensive plan amendment for the Goal 3 exception described in these findings.

Location: The proposed photovoltaic solar power generating facility (the Project) is located on 1515 tax lot 1223 on property owned by Ronald Raasch (ATTACHMENT A). The property is zoned EFU-3 (Exclusive Farm Use – Powell Butte Area).

THE ABOVE-ENTITLED MATTER came before the Crook County Planning Commission at its March 17, 2021 meeting. At the end of the hearing, the Planning Commission closed the record and continued the hearing for deliberation only until March 31 at 6:00 p.m.

The Planning Commission considered a request for a comprehensive plan amendment to take

an exception to Statewide Planning Goal 3 (Agricultural lands) and after consideration of the staff report, application materials, findings, facts and testimony in the record, considered a motion to recommend approval of the plan amendment to the Crook County Court. Application 217-21-00887 received six votes in favor of the approval recommendation from the six Planning Commissioners present.

The Planning Commission also considered the request for a modification to the conditional use permit (217-19-000378-PLNG) for a commercial solar facility. After consideration of the staff report, application materials, findings, facts and testimony in the record, application 217-20-000581-PLNG received five (5) votes in favor and one (1) vote against the proposal from the Planning Commission members present.

FINAL DECISION:	Approved subject to conditions	<u> x </u>
	Denied	<u> </u>

The Applicant's request (217-20-000581-PLNG) to modify the existing conditional use permit to construct and operate a solar photovoltaic facility and associated transmission lines on up to 654 acres is APPROVED subject to the following:

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 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
 - 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 will be placed within the site boundary on the site plan submitted with the application. The associated transmission line may be located outside of the property line boundary of tax lot 1223 as shown on page 3 of the Applicant's site plan. 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. The Applicant will provide a final site plan showing the location of project components, including the gen-tie line, prior to beginning site clearing and grading.

6. The Applicant will work with the Road Department to determine the specific location of any proposed additional access. Any new road approach permit will be approved prior to the start of clearing and grading. The Road Master will determine if a road use agreement is necessary for any potential impacts to County roads.

7. The Applicant shall implement the following practices, recommended by Transight Consulting in the January 25, 2021 Traffic Assessment Letter:

- a. Place a "Trucks Entering Highway" temporary sign on either side of the access to warn motorist on Highway 126 of construction traffic;
- b. Develop a shared use agreement with the Por-Tay quarry regarding use of the access road;
- c. Identify separate on-site areas for passenger vehicle parking and truck staging; and
- d. Coordinate with the Crook County Roadmaster on any permits required for internal site roadways and secondary access roads.

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

9. 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.

10. The solar field enclosure will be completely fenced at a minimum height of 8 feet. Secured gates will be in place at the Project entrance(s). The fence shall be a chain link fence, without slats. Corner gates will be provided to allow removal of wildlife trapped within the enclosed area.

11. 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, Department of State Lands regarding wetlands, 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.

12. 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.

13. 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. The Applicant shall provide a letter from the Oregon Department of Environmental Quality to determine if a stormwater management permit is required from the State of Oregon.

14. The Applicant shall submit a letter from Crook County Fire and Rescue approving the Emergency Management Plan prior to the start of clearing and grading the Project site.

15. 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).

16. The Applicant shall provide a legal description of the Project Site, including the transmission corridor prior to issuance of building permits. Necessary easements shall be acquired and recorded for the gen-tie line prior to any clearing and grading.

17. 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. The Applicant will prepare and implement an Inadvertent Discovery plan.

18. Towers for the gen-tie line linking the project substation to the utility substation shall be located outside the Prineville Airport approach zone located on the northeast side of the

property.

19. The Applicant shall avoid or minimize development in the mapped flood hazard area on the northeast boundary of the subject property by doing one or more of the following:

- a. Requesting and receiving a “letter of map change” from FEMA (the Federal Emergency Management Agency), demonstrating that the area is not within a special flood hazard area;
- b. Avoiding building within the currently mapped special flood hazard area; and/or
- c. Designing any structures to be placed within the mapped flood hazard area to meet or exceed the County’s flood plain development ordinance.

20. The Applicant shall conduct mitigation for impacts to the Project site as follows:

a. The Applicant will implement migratory bird conservation measures to conduct vegetation removal and construction activities from August 2 – February 28 to avoid impacts to active nest sites (March 1 – August 1) or to monitor for nest sites if construction occurs during normal nesting periods.

b. Implement Mitigation Option 1 (juniper removal) on a site within Crook County. Prior to Site clearing and grading, the Applicant shall submit the following information for a juniper removal project:

Location – The Applicant shall provide location information (map and tax lot number) for a juniper removal project located within big game winter range identified on ODFW’s maps within Crook County. The Applicant shall identify the Project acreage.

Scale – The Applicant shall perform juniper removal on the number of acres disturbed by the TSR North project, including the associated transmission line that occurs with the approximately 220-acre portion of the site within mapped pronghorn winter range. The area within 500 feet of the boundary of the adjacent aggregate site, as measured from the boundary of the mining area permitted by the Oregon Department of Geology and Mineral Industries, shall be excluded from the acreage requirement. The area within ODFW’s mapped pronghorn habitat (approximately 220 acres) is characterized as category 2 habitat and shall be mitigated at a ratio of 1.5 acres to 1 acre disturbed. The remainder of the acreage (approximately 365 acres) is characterized as category 4 habitat and shall be mitigated at a ratio of 1 to 1.

Maintenance – The Applicant agrees to revisit and conduct additional juniper removal as needed in consecutive intervals of 12 years following the initial treatment or to the standard specified by the U.S. Department of Agriculture’s Natural Resources Conservation Service, whichever is shorter.

Durability – Before site clearing or grading at the TSR North site, the Applicant shall provide Crook County Community Development with a fully executed instrument preventing development on the mitigation site for at least the duration of the Project, including but not limited to a working lands agreement, a deed or outright purchase agreement, or a conservation easement.

Monitoring – The Applicant shall submit a monitoring plan prior to site clearing and grading to demonstrate the efficacy of the one-time juniper clearing project. This shall include “before” and “after” photos of the site and reports on juniper regrowth during the initial 12-year period.

c. Implement Mitigation Option 2 (One-time Fee-in-lieu payment). If the Applicant elects to implement Option 2, the Applicant shall make a one-time mitigation payment to a qualified conservation organization, based on the formula identified in the Applicant’s wildlife mitigation

plan and applying the ratios and acreage requirements listed for option 1 (condition 20.b). Documentation of said payment shall be submitted to Crook County Community Development before site clearing and grading at the TSR North site. The Planning Commission supports the project proposed by the Crook County Soil and Water Conservation District (Exhibit 6). If that project is not feasible, another project within Crook County would be considered by the Crook County Planning Director or the Planning Commission.

d. Prior to site clearing and grading, the Applicant shall submit a checklist to the Planning Director to demonstrate that it has met all outstanding conditions of approval. This checklist shall include information on the option chosen for mitigation of wildlife habitat loss and information on how mitigation has been/will be implemented.

21. The project owner shall 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 on-going activities associated with the neighboring Goal 5 aggregate resource site. Such document shall be submitted to the Crook County Counsel for review prior to site clearing and grading.

22. Any on-site lighting during construction and operation will be illuminated only when people are present on the site and will be directed downward and shielded. Motion-detection lighting will be used where appropriate. Lighting on the substation will meet required safety standards.

23. A fifty (50) foot vegetative buffer, measured from the edge of the State highway right of way, will be retained along State Highway 126.

24. As required by ORS 215.446(4), Upon receipt of a reasonable cost estimate from the state agency or tribe, the applicant and county may jointly enter into a cost reimbursement agreement administered by the county with:

(a) The State Department of Fish and Wildlife to receive comments under subsection (3)(a) of this section.

(b) The State Historic Preservation Officer or any affected federally recognized Indian tribe to receive comments under subsection (3)(b) of this section.

(c) The State Department of Energy to receive comments under subsection (3)(c) and (d) of this section as well as comments regarding other matters as the county may require.

25. The Applicant shall submit a vegetation removal and management plan prior to site preparation and clearing. The Applicant shall work with area Natural Resource agencies and Crook County Fire and Rescue to evaluate options for disposing of vegetation (e.g., juniper) removed from the site.

BACKGROUND

The Planning Commission staff reports and attachments, the application and all exhibits are included in the record and incorporated by reference.

A. **Project Summary:** The Applicant received Planning Commission approval for the 320-acre TSR North Solar Facility on September 11, 2019 (Exhibit A of the Application). The Applicant has provided a

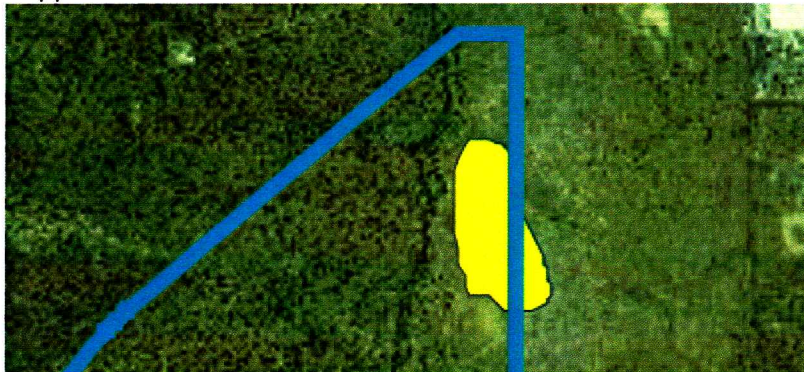
complete project description in their burden of proof statement. ATTACHMENT B includes the modified plot plan. The approved facility includes access roads and fencing; solar photovoltaic modules and solar inverters; transmission and communication equipment, and a project substation. The expanded project area will include the same components as originally proposed. The proposed modification would add approximately 265 acres to the project for a total of approximately 585 acres. The Applicant estimates a project lifetime of forty (40) years.

Many of the original conditions of approval continue to apply to the larger project footprint. However, the Planning Commission modified some conditions to reflect the expanded acreage and to address additional criteria that apply due to the project exceeding 320 acres and triggering the requirements of 2019 Oregon House Bill 2329 (Oregon Revised Statutes 215.446(3)).

B. Site Description: The subject property does not have irrigation water rights and has not been irrigated in the past. The property is uncultivated. It is composed primarily of sagebrush steppe and juniper woodland with some grasslands. The site is gently sloped (0-8% to the southeast).

The property is traversed by a number of transmission lines and associated easements operated by PacifiCorp and Central Electric Cooperative. These transmission line ROWs (or corridors) are identified in ATTACHMENT B.

There is a mapped special flood hazard area (see map below – yellow area is mapped flood hazard area) on the northeast border of the subject property. It is mapped as a “Zone A,” an area subject to flooding by the 1% annual change flood (the “100-year flood”). There are no mapped flood elevations for this area.



The Applicant has agreed to pursue one or more of the following options regarding the mapped flood hazard area (Condition 19):

1. Requesting and receiving a “letter of map change” from FEMA (the Federal Emergency Management Agency), demonstrating that the area is not within a special flood hazard area.
2. Avoiding building within the currently mapped special flood hazard area
3. Designing any structures to be placed within the mapped flood hazard area to meet or exceed the requirements in the County’s floodplain development ordinance.

C. Project Size: The Project, in its entirety, will not occupy more than 585 acres.

D. Surrounding Land Uses: The subject property is bounded by Hwy 126 to the northwest, and several other lots also zoned EFU-3 to the south. Two tax lots to the east are within the City of

Prineville and zoned M1 (Light Industrial). None of the adjacent properties have existing residences. Adjacent to the southeast corner of the site is the Powell Butte Aggregate Pit, operated by Por-Tay Northwest LLC, on tax lot 1231 which is also zoned EFU-3.

E. Ownership: The subject property is wholly owned by Ronald A. Raasch and Susan I. Raasch, Trustees of the Raasch Family Trust. The authorized agent for the property owners is Jacob Stephens.

F. Soils: The Applicant provided a Custom Soil Resource Report using data from the National Resources Conservation Service (NRCS) soil survey (Exhibit F of the original application). The majority of soils on the subject property are classified as Class 6, with some soils classified as Class 4. Major soil types are summarized below.

Map Unit	Soil Type	Classification Non-irrigated	Acres	Percent of acres
026	Buckbert ashy sandy loam, 0-3% slopes	4	16.8	2.8%
031	Swartz silt loam, 0-3% slopes	4	42.4	7.1%
143	Stukmond-Lickskillet Redmond Complex 0-8% slopes	6e	198.3	33.3%
144	Redmond-Stukmond Complex 0-8% slopes	6e	338.9	56.8%
Total acreage			596.4	100.0

G. Water Rights: There is no evidence of irrigation water rights on the subject property. The property has not been irrigated in the past.

H. Wildlife – Sensitive Bird Habitat: Approximately 220 acres of the subject property are mapped pronghorn antelope winter range habitat according to Oregon Department of Fish and Wildlife (ODFW) maps. The Applicant has consulted with ODFW regarding mitigation requirements and these requirements are discussed in detail later in this staff report. The subject property is not identified as winter range for elk and deer in the County's Goal 5 big game habitat inventory although ODFW states that the property serves as an elk migration route. The property is not identified as Sagebrush Grouse habitat (Sensitive Bird Habitat zone). There are no identified raptor nesting sites near the subject property.

I. Cultural Resources: As required by 2019 House Bill 2329, the County provided notice of this application to the State Historic Preservation Office (SHPO) and to the Confederated Tribes of Warm Springs. The Applicant will engage with SHPO 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 cultural resources surveys. The Applicant agrees that procedures to address best management practices for cultural discoveries will be in place during constructions.

This will be a condition of approval.

During construction, procedures shall be in place reflecting generally accepted practices for cultural discoveries. Applicable regulations will be followed, including implementation of an Inadvertent Discovery Plan (IDP) prior to construction, including notification of applicable authorities if any discoveries of significance are found. Continued correspondence with SHPO and the County will be maintained. (Condition 17).

J. Access: No change is being proposed to site access. The Solar PV Facility will be accessed by an existing private road from State Hwy 126. If necessary, any alternative entrances and/or additional road access permits will be obtained from the County or ODOT as applicable (Condition 6).

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 well on the subject property pursuant to ORS 537.545(1)(f) or will use a combination of purchased water and well water. 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.

L. Fire Protection: The subject property is located inside the Crook County Fire and Rescue District (CCF&R). Provisions for wildfire prevention and control are included in the draft Emergency Management plan (Exhibit J of the original application). The Emergency Management plan will be submitted to Crook County Fire and Rescue (CCF&R) for their review. The plan will reflect the final design, layout and location of ingress and egress points. Plan elements may be modified based on comments from CCF&R. (Condition 14).

M. 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. There are two areas proposed, both towards the southern portion of the site. The final location of these temporary construction facilities is subject to Applicant's final site design.

N. 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.

O. Airports: The facility is not located in an airport control zone. However, the northeastern portion of the project site is located within the approach zone for runway 15/33 of the Prineville Airport. Based on consultation with the Airport Manager, it is determined that the project will not interfere with the runway approach/departure zone, provided that no tall transmission poles are located within this area. The proposed facility will avoid placing tall structures within this zone. The towers supporting the transmission line to connect the project to the utility substation are located on the southwestern area of the project, well away from the approach zone. The Applicant also received "Determination of no hazard to air navigation" findings from the Federal Aviation Administration,

based on the height of the tallest tower structure and solar panels at the four corners of the Project site.

APPLICABLE CRITERIA:

Development in Exclusive Farm Use Zones

CCC Title 18, Chapter 18.16 Exclusive Farm Use Zones

18.16.010 Permitted uses

18.16.020 Conditional uses review criteria

18.16.060 Commercial facilities for generating power

Oregon Revised Statutes

ORS 215.283 (Uses authorized on agricultural lands)

ORS 197.732 Goal Exceptions

ORS 215.416 Permit Application

ORS 215.446 (2019 House Bill HB 2329)

Oregon Administrative Rules

OAR 660-033-0120

OAR 660-033-0130(5),(38) (Minimum standards for allowed uses)

OAR 660-004 Interpretation of Goal 2 Exception Process

Conditional Use Criteria

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 to modify the existing conditional use approval (217-19-000378-PLNG) to site a commercial photovoltaic energy facility on up to 585-acres non-arable land 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 staff report refers to exhibits that were provided as part of the application. The Applicant's burden of proof statement includes their response and is available on the Planning Commission website or by contacting the Community Development Department.

AMENDMENT REQUIREMENTS

CCC 18.161.010(2) Commercial Photovoltaic Energy Systems Criteria.

(d) Amendments. The photovoltaic energy system requirements shall be facility specific but can be amended as long as the facility does not exceed the boundaries of the Crook County land use permit where the original facility was constructed. An amendment to the specific requirements of the land use permit shall be subject to the standards and procedures found in Chapter 18.172 CCC. Additionally, an amendment shall be required if the facility changes would:

- (i) Require an expansion of the established facility boundaries;
- (ii) Increase the footprint of the photovoltaic energy system by more than 20 percent;

The proposal requests an expansion of the established facility boundary and increases the footprint of the photovoltaic energy system from 320 acres up to 585 acres, an increase of approximately 83%, and therefore requires an amendment to the existing conditional use permit.

CROOK COUNTY – EFU ZONE FINDINGS

Crook County Code 18.16 outlines requirements for development in the County’s Exclusive Farm Use (EFU) zones. The subject property is located in the County’s EFU-3 zone (Powell Butte Area).

CCC 18.16.010 In an EFU 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. CCC 18.16.015(15) mirrors the following statutory language:

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.

There are no changes to the gen-tie line proposed in the original application (217-19-00378-PLNG). The criteria in ORS 215.275 have been met as demonstrated in the final decision for the original application, incorporated here by reference.

CCC 18.16.020 In an EFU 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. The standards in Crook County Code mirror the requirements of OAR 660-033-120 and 660-033-130 discussed below.

OREGON ADMINISTRATIVE RULES (OAR) – USE OF AGRICULTURAL LAND

Commercial photovoltaic energy systems in EFU zones are subject to OAR 660-033-0120 and 660-033-0130.²

² Crook County Code 18.16 mirrors the requirements of OAR 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.

Crook County is the governing body and has provided the requisite notice and opportunity for a hearing to the public and adjacent property owners. The hearing before the Crook County Planning Commission, was originally scheduled for November 4, 2020, was rescheduled several times with notice provided for the March 17, 2021 hearing.

OAR 660-033-130 provides the minimum standards applicable to a schedule of permitted and conditional uses. The relevant sections applicable to the proposed photovoltaic energy system begin at subsection (5), which is more commonly known as the "significant impact test" and include subsection (38) which applies specifically to photovoltaic energy systems.

OAR 660-033-130(5)(a) provides that the proposed use may only be approved by the county where such use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.

OAR 660-033-130(5)(b) provides that the proposed use may only be approved by the county where such use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The Applicant states that development of the additional acreage will not force a significant change in nor significantly increase the cost of accepted farm practices on surrounding lands. The Applicant has agreed to review and record a Farm Covenant not to Sue releasing liability against accepted farming practices (as defined in Oregon Revised Statute 30.930(2)) for this property. (Condition 1). No additional neighboring properties are impacted by the amended proposal.

The Applicant states that the Project will not significantly change accepted farming or forest practices on surrounding lands nor will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. 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 site has no irrigation rights and will use minimal to no water; operations will not affect neighboring properties with water rights.

There may be limited impacts to adjacent properties during construction, but these should not impact farming practices. The most significant impacts will occur during a 4-8-month period of primary construction. Peak activity will likely occur during 2 to 4 months when there may be construction traffic (trucks delivering materials and employee vehicles). During this time period, there may be noise and visual impacts consistent with typical construction activities. The Applicant's weed control plan addresses noxious weed control management practices to help avoid the spread of noxious weed to adjacent agricultural operations.

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)(d) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

The 585-acre property is vacant, uncultivated land. 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)(e) "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, the soils on the proposed project site, including the additional 220 acres, are classified as predominately NRCS Class IV and VI (non-irrigated). There are no irrigation water rights on the property and no evidence that the property has ever been irrigated or cultivated. The 525-acres with Class VI soils (approximately 90% of the site) are nonarable, by definition. Approximately 60 acres (about 10% of the subject property) has soils classified as Class IV soils. This area is on the eastern portion of the subject property. Exhibit F of the original application contains the NRCS soils data for the website. None of the soils on the property have a history of irrigation nor are they currently being cultivated. Neither the original project site, nor the expanded site have high value soils.

Based on the authority in 660-033-0130(38)(e), the County may determine that the Class IV soils on the site are non-arable. Based on evidence that the property has not been cultivated historically and has no irrigation rights, the County determines that the Class IV soils on the site are non-arable.

OAR 660-033-130(38)(f) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860,

The proposed use meets the definition of a "photovoltaic solar power generation facility." The proposed addition of 265 acres will include components of the project approved in the original decision (217-19-000378-PLNG).

OAR 660-033-130(38)(g-h) apply to solar facilities on high value farmland; (i) applies to facilities on arable lands. These provisions to not apply to the subject property.

OAR 660-033-0130(38)(j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land.

A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(D) No more than 20 acres of the project will be sited on arable soils;

(E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;

The 585-acre Project site is not located on high value soils. Approximately 90% of the site contains non-arable soils (by definition) and the County finds that the remaining 10% of soils are non-arable due to the lack of irrigation water and no history of past cultivation.

(F) 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

(G) 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.

Based on information provided to the Applicant from ODFW, the potential exists for adverse effects to big game winter range (pronghorn) and migration corridors (elk and deer). (See ODFW letter dated December 16, 2020). A site-specific assessment has been conducted by the Applicant's consulting biologist. Under this provision, where the Applicant and resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation. The Applicant's mitigation plan and ODFW response are discussed in findings regarding implementation of ORS 215.446(3).

(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

See the Goal exception findings, below.

(l) 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 ORS 30.930(2) and (4).

The Applicant has agreed to sign a "non-remonstrance" agreement (Condition 1).

(m) 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.

Crook County Code requires the Applicant to submit a bond or other acceptable financial security to ensure decommissioning and site reclamation. (Condition 9).

(n) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (g), (i) and (j) of this section.

As of the date of the staff report, the Land Conservation and Development Commission has not re-evaluated the acreage thresholds.

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 substation³; 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.⁴ 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 Coded 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

³ 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.

⁴ 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.

included in this analysis.

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 800). 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 there 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 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.

CROOK COUNTY CONDITIONAL USE STANDARDS AND CRITERIA

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.

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

The comprehensive plan also 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."

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 on 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 refers to the original conditional use approval for the Project and 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 modified 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 choosing the project site. Most of the surrounding lands are marginally used rangeland and many are vacant. A neighboring property is the site of an aggregate mining operation. There should be minimal impact on the livability of the surrounding area. 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. Ambient road noise from Highway 126 traffic will far exceed noise from the facility. The original conditional use permit required setbacks from Highway 126 and retention of native vegetation to minimize visual impacts. The Applicant states that the expansion of the permitted solar facility will have minimal impacts on views due to the low elevation profile of the solar panels. The Applicant notes that it is often hard to tell the difference between agricultural crops, lakes, and solar facilities.

The Applicant states that the impact of the proposed expansion of the solar facility on surrounding property values will be minimal relative to impacts of certain permitted uses (e.g., intensive agricultural practices, a nearby aggregate pit, and potential development of property zoned for light industrial use directly east of the subject property). 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 will be visible from Highway 126. The property is already host to three large transmission lines that cross the highway approximately one mile south of the project site. 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. 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 in meeting setbacks required from Highway 126. 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.

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 located adjacent to existing powerlines and substations. The intent is that interconnection facilities will not be easily visible from Highway 126, if at all.

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

The Project will further the County's interest in renewable energy development, is not sited on commercial agricultural land, and will not have adverse impacts on other County interests. The proposed solar facility is compatible with the Crook County Airport located to the east.

(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 states that the application for the expanded commercial photovoltaic energy system meets the applicable criteria in CCC 18.160.020, as demonstrated in the approved Conditional Use Permit (217-19-000378-PLNG), which is incorporated herein by this reference. The Applicant states that, expanding the Project footprint is consistent with the findings set forth in the original approval. The additional acreage is located on property that is not in commercial farm use and is not located closer to area residences than the original proposal. As with the original proposal, most potential negative impacts are associated with construction activities.

These provisions of the Crook County Code were addressed by the original conditions of approval and will continue to apply to the expanded Project footprint. The Planning Commission may revisit some of these conditions to address the expanded footprint and potential impacts associated with the modified project.

CCC 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.

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

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

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

The proposed conditions of approval include limitations to minimize impacts. There will be a "laydown" yard for construction materials, parking areas for construction materials and an office/maintenance building.

The Project will be accessed by an existing private access road off State Highway 126, which is an Oregon Department of Transportation permitted access.

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

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

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

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

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

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

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

(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 original conditional use approval included conditions to address many of the factors listed above. The Applicant will designate parking areas. The Applicant agrees that any on-site lighting during construction and operation will be illuminated only when people are present on the site and will be directed downward and shielded. Motion-detection lighting will be used where appropriate. Lighting on the substation will meet required safety standards. (Condition 22). An 8-foot-tall chain link fence shall be located on the Project perimeter (Condition 10). The Applicant will preserve a buffer of 50' along Highway 126. (Condition 23).

The Planning Commission may evaluate the application of the original conditions to the proposed expanded Project and may revise them to address any additional concerns.

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;

(B) A route and permitting plan for transmission lines connecting the project to the grid.

The Applicant provided a complete description of the proposed solar facility and its components in the original application and exhibits to that application. According to the Applicant, the description, schedule, property legal description and proposed transmission interconnection provided in the original application remain the same. (The interconnect request will apply to the larger Project area). The Project is now expanded from 320 acres to approximately 585 acres (Exhibit B of the modified application).

(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 expanded Project would have limited potential conflicts with accepted farming practices on adjacent lands.⁵ The original conditions of approval require the Applicant to sign a “non-remonstrance” agreement (a covenant not to sue for generally accepted farming practices). This condition will apply to the proposed modification (Condition 1).

There are no existing photovoltaic energy facilities within one mile of the subject property, although two have been permitted. There is an active aggregate mining and processing site directly to the east of the subject property. The Applicant states that, after limited impacts during construction of the Project, the operation of the expanded solar facility will not conflict with solar projects or the on-going mining operations. (Condition 21 requires the Applicant to sign a non-remonstrance agreement regarding on-going mining operations).

(iii) A Transportation Impact Analysis (TIA) or Traffic Assessment Letter (TAL) with proposed

⁵ These findings are discussed under Crook County Code 18.16 and OAR 660-033).

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 included an informal traffic assessment letter as part of the initial application (Exhibit L of the original application). This assessment was updated in January 2021 (letter from Transight Consulting dated January 25, 2021). The letter describes the proposed site access roads and estimates traffic during construction and normal operation. The access will be from an approved ODOT access from Highway 126. The new traffic assessment assumes that with the larger project, there will be two employees on site and these employees would generate approximately eight (8) trips per weekday. Based on the traffic assessment letter, the operation will not generate enough traffic to require a Transportation Impact Analysis under current County Code. The construction period may be extended due to the larger footprint but the assessment states that peak construction traffic will occur over a five-month period and will include trucks delivering materials and workers commuting to the site. The letter makes specific recommendations regarding safety during the construction period, and these are incorporated into the recommended conditions of approval (Condition 7).

(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 Applicant has confirmed that the site is outside County-adopted big game winter range habitat for elk and deer and is not in an area identified as Sage Grouse habitat. The southern portion of the site, approximately 220 acres, is identified by ODFW as being within pronghorn antelope winter range. This type of habitat is identified as being of concern in the Crook County Comprehensive Plan.

The Applicant has consulted with ODFW and has hired a professional biologist to prepare a site-specific wildlife and sensitive plant review (Exhibit C of the original application). A Wildlife Mitigation Plan has been developed.⁶

The Applicant's site assessment found no ground-nests or raptor nests on the Project site.

⁶ See discussion of consultation required by 2019 HB 2329.

They determined that the site may have suitable nesting sites in trees on the property. The Wildlife Mitigation Plan includes migratory bird conservation measures and includes language agreeing to conduct vegetation removal and construction activities to avoid impacts to active nest sites (March 1 – August 1) or to monitor for nest sites if construction occurs during normal nesting periods.

(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 (CCFRD). CCFRD responds to structural and natural vegetation fires in Crook County Rural Fire Protection District No. 1. (Exhibit J of the original 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. These provisions also apply to the larger Project footprint proposed in this application.

As part of Project development, the Applicant will work with CCFRD to review and further adapt the plan as necessary and will update the plan as site-specific information is available. Crook County Fire and Rescue will assess an impact fee consistent with their Board Policies for projects of this nature. The impact fee will be due prior to clearing and grading. The Applicant's plan will be reviewed under the Oregon Fire Code and shall include a full site plan and information on MW capacity. (Condition 14).

(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 original application. The plan discusses erosion control and other mitigation measures to be undertaken by any qualified EPC contractor chosen for project design and construction. These measures will apply to the entire 585-acre site proposed in the modification application. The Applicant states that erosion control shall be addressed during facility development, including civil engineering for the Project's final site plan. The Applicant agrees to have appropriate County agencies review aspects of the plan or the facility engineering design as part of the ongoing site development. Erosion control during construction will also be addressed. The Applicant will consult with the Oregon Department of Environmental Quality

to determine if a stormwater management permit is required for the site. (Condition 13).

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

The Applicant has developed a Noxious Weed Control Plan for the entire 585-acre Project site.

(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. No wetlands or other waters were documented on the site. The U.S. Army Corps of Engineers submitted a letter (January 22, 2021) stating, "The Corps has determined there are no waters of the U.S. in the review area" (the entire 585-acre Project site).

The subject property is not identified as big game habitat or sage grouse habitat in the County's Comprehensive Plan. However, ODFW has mapped a 220-acre area of pronghorn winter range on the subject property. The Applicant has consulted with ODFW regarding mitigation for this habitat. (see discussion below).

There are no state or federal listed endangered, threatened, sensitive or special status species on the property. The site assessment found no raptor nesting sites on the subject property. The Applicant's mitigation plan includes measures to protect migratory bird nesting sites.

(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 around the entire Project site and the facility entrances will be gated and locked with public safety and security in mind. The fence will be an eight-foot-tall chain link fence. The perimeter fence will extend around the expanded footprint area.

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

The Applicant will provide a final decommissioning plan that reflects the expanded Project footprint. The plan will address the anticipated schedule and cost of dismantling Project components and restoring the site and will be subject to review and approval by the Crook County Counsel, prior to site groundbreaking. The Applicant will provide a decommissioning surety (a bond, letter or credit, cash deposit, or other financial mechanism acceptable to the

County). (Condition 9).

(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 original application outlined potential positive and negative socio-economic impacts associated with the proposed Project. The Applicant states that facilities shall be designed to minimize adverse socioeconomic impacts to the County, including but not limited to increased demands 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 at different stages of the Project:

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 likely take place over a 4-8-month period, with peak activity during a 2-4-month period. Dozens of workers will be required through 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 facility. These types of facilities are generally low maintenance but will require routine visits and minor repairs and property maintenance. It is anticipated that there could be two employees available. 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 CCFRD. The Applicant understands that there may be an Emergency Response assessment to help defray potential CCFRD costs.

The Applicant states that no material (if any) adverse socioeconomic impacts are expected from the proposed use. The Applicant is willing to provide a more detailed socioeconomic impact statement as part of on-going development as part of on-going development activity. Once site plans and designs become finalized, additional information such as impacts to state and local tax revenues may also be considered.

The Applicant states that the Project shall be designed to minimize adverse socioeconomic impacts to the County, including but not limited to increased demand for governmental services or capital expenditures. Commercial solar facilities are generally expected to result in net positive socioeconomic impacts in the communities that they locate in. While the larger Project may result in more traffic during construction, there are likely to be more employees on site, generating trip to local hotels, restaurants, and other businesses. The development of a larger Project should ultimately result in greater tax revenues associated with the Project.

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 associated with the expanded footprint will be located within 100 feet of any property zoned for residential use. Property surrounding the facility is zoned for Exclusive Farm Use and for Light Industrial use. The Applicant agrees that facility equipment will be setback to meet 100-foot setback requirements. The transmission lines are located in the south east corner of the subject property, well away from residential development. No transmission lines will be closer than 500 feet to 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. Based on the January 2021 letter from the U.S. Army Corps of Engineers, there are no "waters of the U.S." on the Project site. The Applicant will continue to work with ODFW and USF&WS to protect and preserve trees and native vegetation as well as wildlife habitat and other natural resources. The Applicant is required to retain a fifty (50) foot buffer along state highway 126. This will be reflected in the proposed conditions of approval for the expanded project. (Condition 23).

(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.

In the original application, the Applicant agreed that 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 Applicant agrees that this limit will apply to the expanded Project area as well. 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) Controlling weeds to avoid the creation of artificial habitat suitable for raptor prey

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

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

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

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

The Applicant agrees to implement the best practices identified in the original application and in the wildlife mitigation plan for the expanded Project site.

(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 stated in the original application 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. There will be no misdirection of solar radiation associated with the expanded Project.

(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.

As stated in the original application, 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. Fencing will be required on the perimeter of the entire expanded Project site.

(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 near or located within the portion of the Redmond Airport Control Zone located in Crook County. The Prineville Airport, located immediately east of the Project, does not have a Control Zone. The northeastern portion of the Project site is located in the approach zone for runway 15/33 of the Prineville Airport. The Applicant consulted with the Airport Manager and determined that the solar project will not cause interference with the runway approach/departure zone, provided that no tall transmission poles are located within this area. According to the Applicant, towers associated with the gen-tie line will be located in the southeastern part of the Project site, outside of the approach zone. The Applicant provided letters of "Determination of No Hazard to Air Navigation" from the Federal Aviation Administration regarding towers and the solar panel arrays.

(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.

(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.

(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.

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

The Applicant states that the proposed addition of 265 acres to the approved Project site does not require additional conditions to meet the criteria in (ix) – (xii). There are no changes proposed to cleaning practices, cables will be buried underground at a depth of 3 feet, where practicable, and there is no change in the proposed location of the operation and maintenance building. The original conditions will continue to apply. If the office and operation and maintenance structures are permanent, they will be consistent with the character of other farm buildings in the area 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. (Condition 1).

(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.

As with the initial application, access will be from Oregon Highway 126 under an approved access permit from Oregon Department of Transportation (ODOT) and there should be minimal, if any impacts to County roads.

(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 plan will apply to the entire 585-acre site. In addition, the Applicant's ground lease for the subject property includes requirements for removal of system components at the end of the lease term and requires site restoration and reseedling.

(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 and credit in a form acceptable to the County to cover the cost of dismantling any uncompleted construction and/or decommissioning the facility on the expanded Project site. The financial security shall be reviewed and accepted by Crook County prior to facility ground-breaking. (Condition 9).

(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 additional site facility plans showing as-designed and as-built changes to Crook County. (Condition 5).

(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. (Condition 3).

FACILITY SITING – 2019 House Bill 2329/Oregon Revised Statutes 215.446(3)

House Bill 2329 was passed by the Oregon legislature in 2019 with an effective date of January 1, 2020. It authorizes County governments to review and approve certain energy facilities that had previously been subject to permitting through the State of Oregon’s Energy Facility Siting Council (ORS 469.300(11)).

215.446(2) An application for a land use permit to establish a renewable energy facility must be made under 215.416 (permit application). An applicant must demonstrate to the satisfaction of the county that the renewable energy facility meets the standards under subsection (3) of this section.

The County is responsible for making findings that the proposed facility meets the standards under subsection (3) of this section.

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;

The Applicant has provided documentation that they have consulted extensively with ODFW and have met the requirement in ORS 215.446(3)(a).⁷ Exhibit 6 includes correspondence between the Applicant and ODFW.

The Applicant initially consulted with staff from Oregon Department of Fish and Wildlife regarding the entire 585- acre property when they applied for the conditional use permit for the 320-acre site (217-19-000378-PLNG). At that time, ODFW agreed to recommend that the County approve the original conditional use permit while the Applicant and ODFW continued to negotiate on the wildlife mitigation plan. It should be noted that the requirements of ORS 215.446(3) did not apply to the Applicant’s original request. The original conditional use approval included a condition that a final “mitigation plan be prepared for ODFW and County review and approval prior to site clearing and preparation.”

The Applicant reinitiated consultation with ODFW as part of the conditional use modification request to increase the Project site to 585 acres. The wildlife mitigation plan (Exhibit 3 dated February 10, 2021) and Exhibit 6, the supplemental burden of proof submitted March 4, 2021, document the communications between the Applicant and ODFW.

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

The Applicant states that they have met the requirement to conduct a habitat assessment of the proposed 585-acre development site. The Applicant contracted with PBS Engineering and Environmental, Inc. (PBS) to conduct a site-specific habitat assessment of the entire 585-acre project site. PBS conducted site visits to the property, contacted ODFW and other agency staff, and reviewed

⁷ According to ODFW’s February 24, 2021 letter, the Applicant mischaracterized statements from ODFW staff during consultations.

scientific literature relevant to the Project site. PBS summarized its findings and conclusions from the assessment in the Wildlife and Federal Sensitive Plant Assessment (June 2020, submitted as the Applicant's Exhibit C).

PBS used ODFW's Centralized Oregon Mapping Products and Analysis Support System (COMPASS) geographic information system to search for winter range habitat for big game species (deer and elk) in eastern Oregon. The Project site is not in ODFW deer or elk winter range and has not been identified in Crook County's Goal 5 inventory of big game winter range. As discussed in the original conditional use findings (217-19-000378-PLNG), approximately 220 acres of the Project site is mapped by ODFW as Pronghorn antelope range, although maps for this range were not adopted as part of the County's comprehensive plan.

Despite a portion of the site being mapped by ODFW as pronghorn habitat, PBS concluded that the site does not provide optimal habitat for pronghorn. The PBS Habitat Assessment also found that the site does not appear to be optimal elk or deer habitat. PBS concluded that, based on the conditions of the study area observed during the site visit and analysis following ODFW's Fish and Wildlife Habitat Mitigation Policy flowchart, that the Project site would be classified as "Habitat Category 6" for big game, pursuant to ODFW's habitat mitigation rules at OAR Chapter 635, Division 415. "Habitat Category 6" is defined as habitat that has "low potential to become essential or important habitat for fish and wildlife with no irreplaceable habitats present." OAR 635-415- 0025(6).

ODFW disagrees with the findings of the Applicant's habitat assessment (See December 16, 2020 and February 24, 2021 letters). They suggest that the area mapped as pronghorn habitat should be characterized as Habitat Category 2 and that the remaining areas be characterized as Habitat Category 4 due to the use of the property as an elk and deer migration corridor. The characterization of the property as Habitat Category 2 is consistent with the assessment conducted on the nearby Tango and Millican solar projects, which also had mapped pronghorn habitat.

After additional consultation with ODFW, the Applicant has agreed to mitigate impacts to mapped pronghorn antelope habitat that will be permanently impacted by construction and operation of the Project, not to exceed the 220 acres of the Project site located within ODFW-mapped pronghorn winter range. The Applicant proposes to perform mitigation for impacts to those areas that achieve the mitigation standard applicable to Category 2 habitat under ODFW's habitat mitigation rules. (OAR 635-415-0025(2)(a)). Based on the habitat assessment, findings for adjacent solar projects and ODFW's comments, the County suggests that the appropriate classification for pronghorn habitat should be Category 2 and mitigation activities designed to address impacts to Category 2 habitat.

The County has applied a range of a 1.5 to 1 to 2.0 to 1 mitigation ratio for impacts to Pronghorn winter range in decisions approving the Tango, Millican and Crook Flat solar projects. Both ratios achieve ODFW's "no-net loss" and "net benefit" mitigation standards for Category 2 habitat. The class 4 habitat on the remaining 365 acres should meet ODFW's "no-net loss" mitigation standard.

(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; and

Under ORS 215.446(3)(a)(C), the County retains the ultimate responsibility to determine, based on

substantial evidence in the record, that the Applicant's final habitat mitigation plan is "consistent with" ODFW's habitat mitigation rules.

ODFW retains a consulting role and is responsible for providing mitigation recommendations to the County.⁸ Accordingly, while the County must consider ODFW's comments regarding the Applicant's proposed mitigation strategy as part of the record, the County is not obligated to require the Applicant to implement all of ODFW's mitigation recommendations but rather must demonstrate that the mitigation plan is consistent with ODFW's mitigation policy. ODFW suggests that the County "may not be satisfied with a mitigation plan that is inconsistent with" ODFW's administrative rules.

For local land use applications, ODFW's habitat mitigation policy requires ODFW to recommend mitigation consistent with the goals and standards of OAR 635-415-0025. (OAR 635-415-0020(3)).

ODFW's habitat mitigation goal for Category 2 habitat is that any mitigation project provides "no net loss" plus "net benefit" of either habitat quantity or quality. OAR 635-415-025(2)(a).

- **The no-net-loss mitigation standard means that the Project will not result in "a loss of habitat quantity and/or habitat quality resulting from a development action despite mitigation measures having been taken." OAR 635-415-0005(22).**
- **The net-benefit mitigation standard means that the Project will result in "an increase in overall in-proximity habitat quality or quantity after a development action and any subsequent mitigation measures have been completed and monitored." OAR 635-415-0005(21).**
- **"Habitat quantity" means the amount of a given habitat type." OAR 635-415- 0005(6).**
- **"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." OAR 635-415-0005(7).**

The standards of mitigation for Category 2 require the habitat also be "in-kind" and "in-proximity." OAR 635- 415-0025(2)(a)(B). Progress towards the goals and standards shall be reported on a schedule to monitor the mitigation plan performance measures. Id. The mitigation measures must be implemented prior to or concurrently with development. Id.

ODFW's December 16, 2020 letter states that the components of OAR 635-415-0020(8) are also required to demonstrate evidentiary support for a mitigation plan subject to ORS 215.446(3). Those

⁸ The Applicant suggests comparing OAR 635-415-0020(2) (delineating ODFW's authority to "require mitigation" consistent with certain standards for development actions that impact fish and wildlife habitat for which ODFW has statutory authority to require mitigation as a condition of a permit or order) with OAR 635-415-0020(3) (delineating ODFW's authority to "recommend mitigation consistent with the goals and standards of OAR 635-415-0025 for development actions * * * other than Department actions when * * * [f]ederal or state * *or [l]ocal environmental laws or land use regulations authorize or require mitigation for impacts to fish and wildlife habitat").

components set forth information that must be included in a mitigation plan prepared for ODFW, which include the location of the development action and mitigation action, how the mitigation actions will complement and not diminish mitigation provided for previous development actions, identify protocols and methods and a reporting schedule for monitoring, provide for future modification of mitigation measures, be effective through the project life, contain mitigation performance measures including provisions for long term protection and management of the mitigation site, if appropriate.

The Applicant's mitigation plan in this case was not prepared for ODFW; it was prepared for the County. ODFW's mitigation policy states that, at the discretion of ODFW, the components of OAR 635-415-0020(8) may be "partially or entirely fulfilled" by the County's local land use regulations. OAR 635-415-0020(9). Thus, each individual component of OAR 635-415-0020(8) is not required for a mitigation plan to be consistent with ODFW's policy in a local land use application. However, the components are instructive as to the composition of a mitigation plan likely to achieve its intended purpose and the basis that forms ODFW's recommendation to the County. The County remains responsible for determining if the mitigation plan and its contents offset impacts in a manner consistent with ODFW's policy.

- *"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).*
- *"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).*

The Applicant proposes to achieve mitigation for those impacts to mapped pronghorn winter range (not to exceed 220 acres) through three mitigation options designed to achieve ODFW's Category 2 habitat mitigation policy goal of "no net loss" plus "net benefit."

"No net loss" requires a determination of the total amount of impacted acreage. The Applicant has proposed a 200-meter setback area around the aggregate mine in the southeastern portion of the site. The Applicant states that they would not be responsible for mitigating for impacts within the setback area because both ODFW and the Applicant agree that this area does not meet the definition of Category 2 habitat used by pronghorn. The 200-meter setback proposal is based on the recommendation of the Applicant's professional wildlife biologist and is supported by a number of studies discussed in the Applicant's Revised Wildlife Mitigation Plan, version 7, at pages 12–13. ODFW has recommended a 500-foot (152-meter) setback around the gravel mine. The 500-foot setback is consistent with the County's Comprehensive Plan definition of "impact areas" for conditional uses adjacent to aggregate site.⁹ The intent of the impact area is to ensure that other uses (e.g., the solar facility) do not impact the operation of the mine site. A 500-foot buffer should

⁹ Impact areas are defined as "The impact area is that area surrounding and near a Goal 5 mineral and aggregate resource site wherein the presence or application of a conflicting use that is allowed outright or conditionally in the surrounding broad zoning district would adversely impact the resource site by limiting the mining or processing of the resource." Unless otherwise indicated...the impact area is that property extending outward from the resource site boundary to a distance of five hundred (500) feet).

suffice for the proposed use.

In addition, the County recommends that the remaining 365 acres not mapped as pronghorn habitat, be mitigated at a 1:1 ratio, reflecting ODFW's recommendation that the acreage is Category 4 habitat, based on the use of the property as an elk/deer migration route.

The Applicant's Final Wildlife Mitigation Plan (Exhibit 3 -February 20, 2021) and supplemental burden of proof statement (Exhibit 6) discuss the options in detail. The Applicant requests that the County approve all three mitigation options to provide the Applicant with necessary flexibility. The Applicant proposes selecting one of the three mitigation options and provide the County with additional documentation of the final implementation plan for the selected option before conducting site clearing or grading.

The Applicant included a summary of options in their supplemental burden of proof statement.

Option 1 – Conservation of Like Habitat with Juniper Removal Uplift

Under this mitigation option, the Applicant would ensure “no net loss” to big game habitat by conserving a number of off-Project mitigation acres equivalent to the total number of acres that are located within ODFW-mapped pronghorn habitat and will be impacted by the final Project design. In other words, the Applicant will mitigate at a “scale” or “mitigation ratio” of 1:1 to achieve ODFW's habitat mitigation policy of “no net loss.”¹⁰

Location: *The Applicant states they will also ensure that any mitigation project pursuant to Option 1 achieves “in-kind” and “in-proximity” mitigation, consistent with OAR 635-415-0025(2)(a)(B). The mitigation project site will be within mapped big game winter range currently identified on ODFW's maps and on “sagebrush and/or bitterbrush dominant” habitat (or habitat that could be restored to be sagebrush and/or bitterbrush dominant habitat), satisfying the “in-kind” habitat requirement. The mitigation project site will be in Crook County, thus benefiting pronghorn within the same “home range” as any pronghorn impacted by the Project, satisfying the “in-proximity” habitat.*

ODFW continues to be concerned regarding the lack of specificity regarding a mitigation site. They recommend that the County not approve the proposed project until a specific juniper removal site (or sites) has been identified.

Scale: *The Applicant proposes to “protect from development a number of acres equal to the number of acres ultimately disturbed by the TSR North project” within the mapped pronghorn habitat (approximately 220 acres less the setback area associated with the adjacent aggregate*

¹⁰ The Applicant notes that the concept of “mitigation ratios” has no clear basis in ODFW's Habitat Mitigation Rules at OAR Chapter 635, Division 415. Nonetheless, the Applicant uses those ratios here as a convenient shorthand to describe the Applicant's current proposed mitigation approach that is consistent with those rules. Although not proposed for this Project, the Applicant asserts other mitigation approaches not relying on mitigation ratios at all could potentially satisfy the requirements of ORS 215.446(3) and relevant provisions in ODFW's Habitat Mitigation Rules.

mine). The Applicant proposes mitigation at a 1:1 ratio to achieve ODFW's habitat mitigation policy of "no net loss."

ODFW's December 16, 2020 and February 24, 2021 letters raised several concerns regarding the Applicant's proposal. First, the mitigation ratio proposed in option 1 is 1:1, not the 2:1 ratio required for mitigation of habitat characterized as Category 2.

The County has applied both a 1.5 to 1 mitigation ratio and a 2.0 to 1 mitigation ratio for impacts to Pronghorn winter range in decisions approving the Tango, Millican and Crook Flat solar projects. The mitigation goal in ODFW's administrative rules is "to achieve no net loss of either quantity or quality and to provide a net benefit of habitat quantity or quality." OAR 635-415-00025(2)(b).

Further, the Applicant is also responsible for mitigating impacts to the remaining 365-acres characterized as Category 4 habitat. ODFW recommends mitigation at a 1:1 ratio (no-net loss of habitat).

The Applicant has proposed a "failure buffer" to ensure that mitigation goals are achieved. With application of the appropriate 1.5:1 mitigation ratio for the loss of pronghorn habitat and the 1:1 mitigation ration for the remaining Project acreage, this buffer would not be necessary.

Maintenance: *The Applicant agrees to revisit the mitigation site 15 years after the original juniper removal and to recut the site if necessary.*

ODFW recommends that juniper removal sites are revised in 12-year intervals rather than the 15-year intervals proposed by the Applicant. This is consistent with guidance provided by the Natural Resources Conservation Service.

Durability: *The Applicant states they will ensure that any mitigation project pursuant to Option 1 is "durable" and its mitigation benefits are maintained throughout the life of the Project. Before site clearing or grading, the Applicant will provide the County with a fully executed instrument to prevent development on the final mitigation acreage site during the life of the Project (such as a working lands agreement, deed restriction or outright purchase agreement, conservation easement, or similar instrument). This is consistent with ODFW's suggestion that mitigation benefits will need to occur for the duration of the Project (estimated at 40 years).*

Monitoring: *The Applicant states that no monitoring will be required under Option 1, because (1) the proposed land conservation actions are "one-time" actions that will be accomplished by executing a durable instrument at the Project outset and (2) juniper removal projects require only minor updates once every fifteen years, given the slow rate of juniper growth.*

The County continues to work with stakeholder groups in order to determine the best way to appropriately monitor habitat mitigation sites, and how often those sites should be revisited for juniper removal. The County recommends effectiveness monitoring to ensure that the juniper removal treatments are effective, that there is a return of desired vegetation and to assess whether or not a 12-year period is sufficient to ensure that juniper does not return to the mitigation site. Until the County has sufficient information to establish its own best practices, the County defers to the National Resources Conservation Service guidance of requiring juniper removal every 12 years.

Option 2 — One-Time Fee-in-Lieu Payment to Established Conservation Organization (Specifically Including Deschutes Land Trust Aspen Valley Ranch Conservation Project in Crook County or Crook County Soil and Water Conservation District)

Under this option, the Applicant states they will make a one-time mitigation payment to the Deschutes Land Trust or another established land conservation organization for wildlife enhancement at the Aspen Valley Ranch or a comparable project in Crook County. Crook County Soil and Water Conservation District has recently entered into an agreement with the County to accept mitigation funds and implement mitigation projects. Exhibit 6 includes a mitigation project proposed by the Applicant and the Crook County Soil and Water Conservation District.

The Applicant's final wildlife mitigation plan sets forth the formula to calculate this payment, which is based on ODFW's mitigation recommendation pursuant to its Habitat Mitigation Rules at OAR Chapter 635, Division 415. This formula has been used to calculate mitigation requirements for similar nearby solar facilities, including the Gala Solar and Millican Solar facilities. The Applicant has proposed to calculate the mitigation payment based on a 1.5:1 mitigation ratio for impacts to mapped big game habitat (minus a 200-meter setback buffer around the adjacent aggregate mine) and 1:1 for other portions of the project site. The Applicant's wildlife mitigation plan provides current values for all other variables in the mitigation formula. The mitigation formula, once complete, will be applied to the total number of acres that will ultimately be disturbed within the mapped pronghorn winter range area by the TSR North Project, to produce a final mitigation payment amount. According to their correspondence, ODFW finds that the mitigation formula included in the plan is consistent with the requirements of OAR 635-415-0025(7).

The Applicant has not yet entered into an agreement with a conservation organization but has identified a specific mitigation project that will be funded by the payment under this Option. (See Exhibit 6, proposed project provided by the Applicant and the Crook County Soil and Water Conservation District). The Applicant has been engaged in ongoing negotiations with Deschutes Land Trust to fund a mitigation project at the Aspen Valley Ranch, as recommended by ODFW. The Applicant is also working with the Crook County Soil and Water Conservation District and has included a mitigation project proposal as part of Exhibit 6. This proposal includes a monitoring plan and specific mitigation activities.

It is not reasonable to expect that an organization like the Deschutes Land Trust or the Crook County Soil and Water Conservation District could commit property for mitigation with no certainty regarding whether or not the development project requiring mitigation will move forward.

ODFW recommends that the County condition approval upon the Applicant providing a map indicating the specific location of available habitat improvement projects that could serve as mitigation sites (e.g., Aspen Valley Ranch or Crook County Soil and Water project site) prior to beginning grading and clearing operations on the site. ODFW also recommends that the Applicant include a monitoring plan consistent with criteria outlined in ODFW's December 16, 2021 prior to site clearing and grading. The Applicant shall also provide proof of mitigation payment to the County Community Development Department prior to beginning site clearing and grading.

The County suggests that the impact area around the existing aggregate site should be 500 feet rather than the 200 meters proposed by the Applicant to be consistent with provisions in the Crook County

Comprehensive Plan regarding impact areas and Goal 5 aggregate sites.

Option 3 — Alternative Mitigation Project Approved by ODFW or Cooperative Mitigation Agreement with ODFW

As a third mitigation option, the Applicant proposes an “alternative mitigation project” for ODFW to approve in the future to achieve the “no net loss” and “net benefit” mitigation goals, as well as ODFW’s habitat mitigation policy goal of achieving “in-kind” and “in-proximity” habitat mitigation. Under the Applicant’s proposal, any future mitigation agreement with ODFW would require ODFW’s approval and not the County’s. The Applicant states that if no such alternative mitigation proposal meeting these criteria is identified by the Applicant, approved by ODFW, and implemented by Applicant, then the Applicant shall implement either mitigation Option 1 or mitigation Option 2, as described above.

The Applicant states that an alternative mitigation project approved by ODFW pursuant to ODFW’s Habitat Mitigation Policy—or a mitigation agreement with ODFW—will necessarily be consistent with ODFW’s habitat mitigation rules. Therefore, an alternative mitigation option approved by ODFW pursuant to this mitigation option complies with ORS 215.446(3)(a)(C). As provided in the Applicant’s final Wildlife Mitigation Plan and proposed conditions of approval, if ODFW chooses not to approve an alternative mitigation project or enter into a cooperative mitigation agreement in the future, the Applicant will implement either mitigation Option 1 or Option 2 described in the Wildlife Mitigation Plan.

While the County agrees that Option 3 could result in a mitigation project that meets ODFW criteria, the County does not have sufficient evidence to make findings that Option 3 is consistent with ODFW’s mitigation policy. Further, the County is not comfortable delegating its responsibility for determining that the mitigation plan is consistent with ODFW’s mitigation policy and for determining that the renewable energy facility meets the standards under ORS 215.446(3). The County is concerned that the public will not have an opportunity to comment on this mitigation option in violation of Statewide Planning Goal 1 (Citizen Participation).

The Applicant states, in summary, any of the three mitigation approaches detailed in the final wildlife mitigation plan, if implemented consistently with all proposed conditions of approval, will ensure mitigation that is consistent with ODFW’s habitat mitigation rules at OAR Chapter 635, Division 415, and the requirements of ORS 215.446(3)(a)(C).

Based on the evidence in the record, the Planning Commission could find Option 2 consistent with ODFW’s mitigation policy. Option 1 could be consistent with the mitigation policy with implementation of recommended conditions of approval.

(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.

Based on the site assessment and findings in the original conditional use approval, the Project site is not in mapped sage grouse habitat and the administrative rules do not apply.

(b) Demonstrate that the construction and operation of the renewable energy facility, taking into account mitigation, will not result in significant adverse impacts to historic, cultural and archaeological resources that are:

(A) Listed on the National Register of Historic Places under the National Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

(B) Inventoried in a local comprehensive plan; or

(C) Evaluated as a significant or important archaeological object or archaeological site, as those terms are defined in ORS 358.905.

The Applicant states that they have initiated consultation with the State Historical Preservation Office (SHPO). No historic, cultural or archeological resources listed on the National Register of Historic places or included in the Crook County comprehensive plan have been identified. The County received a letter from SHPO (Exhibit 3) recommending that the Applicant contact a professional archaeologist to conduct an archaeological survey of the project area. The SHPO letter states that many archaeological sites exist outside the general area of the Project, but the Project is located on a landform generally perceived to have a high probability for possessing archaeological sites.

A notice of the proposed facility amendment was provided to tribal governments. The Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO) provided comments (Exhibit 2). The Applicant will continue to work with SHPO and with the CTWSRO. A site-specific archaeological survey will be required prior to any site clearing and grading. The survey shall be made available to the County, the tribes identified in HB 2329 and SHPO. Avoidance measures may be required depending on the findings of the survey and an inadvertent discovery plan shall be adopted by the Applicant. Condition 17.

(c) Demonstrate that the site for a renewable energy facility, taking into account mitigation, can be restored adequately to a useful, nonhazardous condition following permanent cessation of construction or operation of the facility and that the applicant has a reasonable likelihood of obtaining financial assurances in a form and amount satisfactory to the county to secure restoration of the site to a useful, nonhazardous condition.

A decommissioning plan was submitted and applies to the entire 585 acres. The plan and decommissioning bond will be subject to review and approval by Crook County Counsel prior to any site preparation and ground clearing. (Condition 9).

(d) Meet the general and specific standards for a renewable energy facility adopted by the Energy Facility Siting Council under ORS 469.470 (2) and 469.501 that the county determines are applicable.

The administrative rules that implement the specific standards set by the Energy Facility Siting Council (EFSC) are located in OAR Chapter 345. That chapter includes specific standards for the siting and operation of energy facilities. Certain types of facilities (like radioactive material facilities) and certain size of facilities (large scale operations) require an EFSC site certificate. The administrative rules apply only to uses that require a site certificate from EFSC.

This proposal does not require an EFSC site certificate because the project's total acreage is less than the acreage that would trigger EFSC review (a project located on greater than 1,920 acres of non-irrigated, low value farmland). This acreage standard has been adopted by the Oregon legislature (ORS 469.300(11)(D)(3)), as amended by 2019 HB 2329. This proposal will be located on less than 1,920 acres

of non-irrigated, non-arable land and thus the project is not subject to EFSC administrative rules.

Crook County has adopted standards to address siting of commercial renewable energy projects (wind and solar)(Crook County Code 18.161). The Code language states the County's policy on the renewable energy siting standards applicable to projects in the County. The County requirements generally mirror the fourteen standards set forth in the Energy Facility Siting Council's administrative rules. In addition, the County has adopted standards not covered by EFSC rules (e.g., for weed control, emergency management and others). The County also applies the general conditional use provisions of Crook County Code 18.160 allowing the County to address additional siting concerns. This amendment application and burden of proof and the findings of the original project approval demonstrate that the County's renewable energy facility standards have been met.

(e) Provide the financial assurances described in paragraph (c) of this subsection in the form and at the time specified by the county.

Crook County Code requires the Applicant to post a decommissioning bond or other specific financial assurance for project decommissioning. County Counsel will work with the Applicant to review the existing decommissioning plan and financial assurance and ensure that the bond/financial assurance is in place prior to site clearing and grading (Condition 9).

(4) Upon receipt of a reasonable cost estimate from the state agency or tribe, the applicant and county may jointly enter into a cost reimbursement agreement administered by the county with:

(a) The State Department of Fish and Wildlife to receive comments under subsection (3)(a) of this section.

(b) The State Historic Preservation Officer or any affected federally recognized Indian tribe to receive comments under subsection (3)(b) of this section.

(c) The State Department of Energy to receive comments under subsection (3)(c) and (d) of this section as well as comments regarding other matters as the county may require.

No cost estimates have been provided by state agencies or tribes at the time of this staff report. This will be included as a condition of approval. (Condition 24).

(5) A county that receives an application for a permit under this section shall, upon receipt of the application, provide notice to persons listed in subsection (6) of this section. The notice must include, at a minimum:

(a) A description of the proposed renewable energy facility;

(b) A description of the lots or parcels subject to the permit application;

(c) The dates, times and locations where public comments or public testimony on the permit application can be submitted; and

(d) The contact information for the governing body of the county and the applicant.

(6) The notice required under subsection (5) of this section must be delivered to:

(a) The State Department of Fish and Wildlife;

(b) The State Department of Energy;

(c) The State Historic Preservation Officer;

(d) The Oregon Department of Aviation;

(e) The United States Department of Defense; and

(f) Federally recognized Indian tribes that may be affected by the application. [2019 c.650 §4]

Crook County provided notice to the above entities on February 22, 2021.

PUBLIC COMMENTS

The Planning Commission received testimony from both the Applicant's team and Oregon Department of Fish and Wildlife at the March 17, 2021 hearing. The Applicant's counsel gave an overview of how the proposed modification met the County's criteria and state law for siting a commercial solar facility on more than 320 acres of nonarable ground. She discussed the findings related to the proposed Goal 3 exception. The Applicant's wildlife consultant described the condition of habitat on the project site. Both the Applicant and ODFW testified regarding the mitigation options.

The Planning Commission closed the record and continued the March 17 hearing until March 31 for Planning Commission deliberation only. The Planning Commission recommended clarifications to several of the conditions of approval that have been incorporated into this final decision. The Commission members reviewed the mitigation options presented by the Applicant. They determined that Option 3, as presented, was not sufficient to meet applicable standards and did not include that option in their final recommendation. The County modified the conditions relating to options 1 and 2 to specify a mitigation ration of 1.5 to 1 mitigation ratio for the 220 acres of pronghorn habitat based on the information presented by the Applicant regarding the quality of habitat on the site. They noted that the 1.5:1 ratio was consistent with their previous findings for pronghorn habitat and would meet the Category 2 mitigation standard of "no net loss" and "net benefit." One commissioner disagreed and felt that a 2.0 to 1 mitigation ratio should be required. They clarified the impact area around the aggregate site. They included a preference for the mitigation proposal submitted by the Applicant from Crook County Soil and Water District. The Commission members agreed to require a 1:1 mitigation ratio for the 365 acres of category 4 habitat (a no-net loss mitigation standard).

CONCLUSION

Based on the information provided by the Applicant, written and oral testimony and other information in the record, and on review of the applicable State and County requirements, the Planning Commission finds that the proposed modification of the existing conditional use permit to expand the proposed commercial solar photovoltaic facility, meets the requirements for conditional use approval and is consistent with the Crook County Comprehensive Plan. This conditional use permit expires if the project is not implemented within four years from the date of the signed decision.

DATED THIS 12th DAY OF April 2021



Michael Warren, 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 26th, 2021 (twelve calendar 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.

Cc: Oregon Department of Energy
Oregon Department of Fish and Wildlife
Oregon Department of Transportation
Oregon State Historic Preservation Office
Crook County Fire and Rescue
County Departments