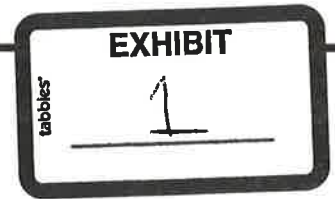


**Hannah Elliott**



**From:** Rory Isbell <rory@colw.org>  
**Sent:** Tuesday, August 16, 2022 9:00 PM  
**To:** Will VanVactor; Plan  
**Subject:** Application File No. 217-21-000321-PLNG  
**Attachments:** COLW\_TSRNorthSolar\_CountyCourt\_8.16.22.pdf

Hi Will,

Please find attached comments from Central Oregon LandWatch on file no. 217-21-000321-PLNG for tomorrow's County Court hearing. Could you please confirm that these comments will be placed before the County Court at tomorrow's hearing?

Regards,

Rory Isbell

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**Rory Isbell** (he/him)  
Staff Attorney & Rural Lands Program Manager  
**Central Oregon LandWatch**  
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Bend, Oregon 97703  
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August 16, 2022

*Filed by email: [plan@co.crook.or.us](mailto:plan@co.crook.or.us), [Will.VanVactor@co.crook.or.us](mailto:Will.VanVactor@co.crook.or.us)*

Crook County Court  
Attn: Will Van Vactor  
Crook County Community Development Department  
300 NE 3rd Street, Room 12  
Prineville, OR 97754

**Re: Application File No. 217-21-000321-PLNG; TSR North Solar**

Dear Judge Crawford, Commissioner Brummer, and Commissioner Barney:

Central Oregon LandWatch submits these comments in opposition to the above-referenced application for consideration at the scheduled August 17, 2022 hearing. Our concerns with this application are that it fails to comply with state law concerning agricultural lands, and that its proposed wildlife mitigation plans are insufficient to meet the requirements of state law.

LandWatch is a party of record that participated in the proceedings below before the Planning Commission. LandWatch also received notice of the hearing from the County. Pursuant to CCC 18.172.110(12)(a)(vi), we request the County Court admit this additional testimony.

## **I. Background**

This application seeks to expand the area of a previously permitted solar energy facility from 320 to 585 acres. The subject property is on the south side of Highway 126 and adjacent to the Prineville urban growth boundary. Much of the property is in pronghorn winter range habitat, as mapped by ODFW.

The Planning Commission recommended approval of the application in early 2021, and ODFW subsequently appealed that decision to the County Court. A hearing before the County Court was delayed until pending appeals on a nearby project (the West Prineville solar energy facility) resolved. The issues on appeal in that case bear on the current application, specifically concerning the County's obligations to comply with ORS 215.446 and its requirement that the applicant's wildlife mitigation plan must be consistent with ODFW's policies at OAR 635-415.

The Court of Appeals and LUBA clarified that wildlife mitigation plans must meet standards of specificity and definiteness in habitat quantity and habitat quality; provide reliable and durable mitigation; a schedule of performance measures; and be supported by substantial evidence in the





record. *Oregon Department of Fish and Wildlife v. Crook County*, 315 Or App 625 (2021); *Oregon Department of Fish and Wildlife v. Crook County* (Order, LUBA No. 2020-114, May 9, 2022).

## **II. The application fails to propose adequate mitigation of the project's impacts on wildlife habitat.**

The application fails to meet the criteria at ORS 215.446(3)(a)(C) that require a wildlife mitigation plan that is consistent with ODFW's Fish and Wildlife Habitat Mitigation Policy at OAR 635-415. We agree with ODFW's April 26, 2021 letter to the Court. Specifically, if Option 2 is used, the County should require that mitigation occur in winter range habitat that is mapped for pronghorn. The mitigation work must be completed prior to or concurrent with project development. Category 2 habitat should be mitigated at a ratio of 2:1. The mitigation plan must include enforceable provisions for monitoring and maintenance. The mitigation site should be protected from conflicting uses by a durable legal mechanism, and should be protected for the same duration of time as the project physically occupies the subject property, including reclamation time.

We also agree with ODFW that Option 2 may meet the standards of ODFW's mitigation policy, so long as it continues to propose a viable project and provide adequate funding.

Adequate habitat mitigation is especially needed for this project because the subject property is an area of vital pronghorn and big game habitat that is increasingly impacted by the cumulative effects of multiple large-scale solar energy projects. Using LUBA's decision in *Oregon Department of Fish and Wildlife v. Crook County* (Order, LUBA No. 2020-114, May 9, 2022) as a guide, it is clear that the habitat mitigation proposed by the applicant here is insufficient to comply with ORS 215.446(3)(a)(C).

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

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

OAR 660-004-0022 governs "reasons" exceptions for any use not allowed by the applicable Goal. OAR 660-004-0022(1) requires that the reasons to justify such a Goal exception must show that "[t]here is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19." The Oregon Court of Appeals has held that a reasons





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exception must be based on a goal requirement. *1000 Friends of Oregon v. Jackson County*, 292 Or App 173, 193, 423 P3d 793, 805 (2018), *rev dismissed*, 365 Or 657 (2019) (describing “the necessity to base a reasons exception under OAR 660-004-0022(1)(a) on a goal requirement”).

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

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

Thank you for the opportunity to comment in this matter. LandWatch requests notice of any decisions or further comment opportunities on this application.

Regards,

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WE DEFEND AND PLAN FOR CENTRAL OREGON'S LIVABLE FUTURE