

CROOK COUNTY PLANNING COMMISSION MEETING

May 13, 2020

Crook County Planning Commission Chairperson Michael Warren II called the meeting to order at 6:05 p.m. The meeting was conducted by WebEx, a call in service. Commissioners joining by phone and in person at the Crook County Annex were Chair Warren, Gary Bedortha, Laquita Stec, and Susan Hermerck. Commissioners joining by phone were George Ponte and Bob Lundquist. Commissioner Linda Manning was not present and did not participate. County staff joining in person and via phone was Ann Beier and Hannah Elliot. Katie McDonald joined via the phone. The Crook County Annex was open for the meeting no members of the public attended in person. Chair Warren conducted a roll call and then asked if any members of the public were on the phone call.

Members of the public on the phone line: (stated name and address)

- Greg Jackle – Oregon Department of Fish and Wildlife submitted written testimony in conjunction with DLCD. His contact information is on the submitted letter.
- Jake Stephens – Applicant- New Sun Energy – contact information is on application
- Mark Boissevain – Applicant -New Sun Energy – contact information is on application
- Paul Stern – Applicant -New Sun Energy – contact information is on application

APPROVAL OF MINUTES

April 29, 2020 –Chair Warren noted on page 9 there needs a correction from application to applicant. Commissioner Steq moved for approval of the minutes as corrected. Commissioner Bedortha seconded. The Commissioners present approved the motion by a vote of 4-0-2. Commissioners Hermerck and Ponte abstained, as they had not been present at the April 29, 2020 hearing.

PUBLIC HEARING – Crook County File Number 217-20-000375-PLNG – Modification to the Conditional Use approval for West Prineville Solar Farm

Bryan Sproat (owner) and West Prineville Solar Farm, LLC (applicant) – Record number 217-20-000375-PLNG - are requesting a modification to conditional use permit 217-19-000029-PLNG to expand the approved West Prineville solar Farm, LLC, a photovoltaic (PV) solar power generation facility, from 320 acres to up to 654 acres. Commercial energy facilities are allowed as conditional uses under Crook County Code 18.16.020 and Oregon Revised Statutes (ORS 215.283) and are subject to review under Oregon Administrative Rule (OAR) 660-033-130(38), Crook County Code 18.160 (Conditional Uses) and 18.161 (Commercial Power Generating Facilities). The proposed modification will also require an exception to Statewide Planning Goal 3 (Agricultural Lands) as required by Oregon Administrative Rule 660-04, and Oregon 2019 HB2329. The property is identified as Township 15 S, Range 15 E WM, tax lots 2900 and 3000.

Commissioner Warren noted that the tax lot on the notice that went out had listed the tax lot as 2400 instead of 2900.

Commissioner Warren asked if any of the Planning Commission members had a conflict of interest. The members responded that they had no conflicts. The Chair then asked if anyone had had ex parte contact with the Applicant or any member of the public. The Planning Commission members responded that they had no ex parte contact with the Applicant or any member of the public. The Planning Commission did conduct a site visit to the subject property in 2019 with the original application. Staff un-muted the phone lines and no member of the public raised any challenges. Chair Warren asked if any member of the public on the phone wished to challenge any member of the Commission. Staff then muted all lines except those of staff and Commissioners.

The Chair asked staff to present. Ann Beier, Community Development Director, provided an overview of the project, key criteria, and process to date. This proposal is a modification of an approved 2019 commercial solar facility 320 with a request to add up to an additional 334 acres. The acreage is located farthest south toward the PacifiCorp and Bonneville substations. A map was provided by the applicant to show where the additional acreage is located.

Crook County Code under the Administrative Decisions criteria states we review the decision under the code that was in place for the original application which was prior to the adoption of the Model Code for Exclusive Farm Use. The criteria are essentially the same but the numbering may look different. Triggering additional review criteria is due to the project now being over 320 acres. The applicant had to demonstrate that an exception to the Statewide Planning Goal 3 is warranted. One consideration is that unlike a subdivision, at the end of the life of the solar facility the land could return to farm ground. There is no change to the underlying zoning or comprehensive plan designation.

Also triggered by the increase in size are criteria from HB2329. Requirements include additional notice to other state agencies; State Historic Preservation Office, Oregon Department of Fish and Wildlife, Department of Military, and the Tribes. We did receive comments and those are incorporated. Soil types are evaluated and the bulk of the soil types on this project are class 6 and class 7 there are a two pockets of class 4 soils (less than 35 acres total) and the applicant has opted to avoid development on those areas. The soils are nonarable and there are no irrigation water rights on the property. The transmission line would run from the south of the property where the Bonneville substation is located to the PacifiCorp substation. The acreage involved with the transmission lines is well within the applicants' 654 acres. The main point of contention on this application is around the Mitigation Plan. There is a letter from Oregon Department of Fish and Wildlife and the Department of Land Conservation and Development (Exhibit 6). The letter indicates that the agency disagrees with some of the site classification work that was done and not specific enough mitigation. Beier stated that she thought the applicant met their requirement for submitting a wildlife plan. This property unlike other

properties does not have a mapped wildlife habitat. There have been elk and antelope on site because of the Bonneville Power Lines usage as a corridor. The applicant has realized that and done an assessment and proposed a wildlife mitigation plan. The plan includes three options, one of them is project specific with Deschutes Land Trust, and they submitted a letter that said they are not ready to enter into an agreement at this time. This is something that ODFW is uncomfortable with at this time. Regarding the exception to Goal 3, the burden is on the applicant to show that there is no better place for this type of project. The criteria is that applicant shows where there is the acreage available not in resource lands: there is some property in the Juniper Canyon area, zoned Recreation Residential Mobile Zone 5, those properties are well away from existing transmission lines, would require more acreage, and they have mapped big game habitat. There is also some land that is zoned Rural Residential zone (R10), that area is being looked at for an alternative access route to Juniper Canyon and is away from existing transmission lines. There are some properties zoned Industrial within the City but not large enough. The County has property, but it is around the landfill and not interested in this type of project. Beier stated she felt the applicant has met their burden of proof.

There are a number of Conditions of Approval that go along with approval of the proposal. One is an Emergency Management Plan, the Crook County Fire and Rescue do not want to have a final plan at this stage, instead they request that the plan be able to be modified to reflect what is needed at the time of buildout and site lay out. The Weedmaster has worked with the applicant and is comfortable with the plan submitted. This site does not have a good vegetative buffer along HWY 126. Recommendation includes an 8ft perimeter fence with gates for wildlife. Lighting being directed down and shielded and where possible the lighting is not 24/7, accept where safety concerns.

Beier then asked for questions from the commissioners.

Chair Warren called on each Commissioner for questions of staff.

Commissioner Bedortha asked staff about adding a condition of approval for a non-remonstrance agreement to protect the Goal 5 aggregate resource located in that area. He had just received Exhibit 6 and asked for clarification on why the applicant was being asked to mitigate for wildlife if the Fish and Game doesn't have it mapped for wildlife. Understanding that it may trigger different requirements due to the increase in size and acknowledged that wildlife being seen on site. He asked for staff or agency to respond.

Beier stated that she would allow for Greg Jackle, Oregon Department of Fish and Wildlife to answer but that the statute requires the applicant to consult with ODFW.

Commissioner Bedortha said that it leaves the opportunity for an agency to have vague criteria for applicants.

Beier responded that non-remonstrance area required to protect people's right to farm and we have asked (on various projects) for non-remonstrance's for other Goal 5 resources and specifically

aggregate resources and their normal operating procedures. And the Planning Commission has implemented for a number of uses throughout the county.

Commissioner Stec- no questions

Commissioner Ponte

Commissioner Lundquist commented that wildlife migrates and is difficult to accurately map. The area is becoming saturated with solar developments and there is wildlife on site and that Oregon Department of Fish and Wildlife needs to be involved and there needs to be a mitigation plan in place that they are happy with. The Commissioner understands where Commissioner Bedortha is coming from but there are things the commission has to look at

Commissioner Hermreck none at this time

Commissioner Ponte asked about the difference between a modification and new application?

Beier responded that because the original application was approved on both tax lots, the same criteria would apply and because the size triggered the new criteria it is almost like a new application.

Commissioner Ponte then asked about an article that was in the Bend Bulletin regarding the Land Use Board of Appeals ruling in Lake County regarding the lack of an approved Mitigation Plan between the developers and ODFW. How does that have the potential to impact the decision tonight?

Beier responded that she would leave that question for ODFW and the applicant to address. She stated that her understanding was that there were a number of items that distinguished the Lake County case from ours – applicant in Lake County has not prepared any Mitigation Plan, in our case there is one in place but it is not agreed upon at this point.

Chair Warren clarified that because the applicant's original approval involved both tax lots it is can be modified rather than a new application.

Beier responded that yes, the applicant is expanding the footprint; same interconnect same associated transmission lines, same land owner and lease agreement.

Chair Warren asked for a clarification regarding Exhibit 2 about artifacts, it doesn't seem like they are asking for the Commission to do anything.

Beier stated that the comments from the Warm Springs and State Historic Preservation Office are a little vague. The county is asking that if the applicant shall come across something while on the site that there is a plan in place. It doesn't seem like there are other requirements being asked at this time. Beier said no other correspondence was received from Warm Springs or SHIPO.

Commissioner Lundquist wanted to refer to Exhibit 6, that ODFW and DLCD doesn't want to block the project, just a more specific plan in place.

Chair Warren then reminded everyone of testimony needing to address the criteria and hearing procedures.

Greg Jackle, District Wildlife Biologist, Oregon Department of Fish and Wildlife, Prineville OR – contact information is on the top of Exhibit 6. He provided a quick overview of his comments and apologized for the late delivery of Exhibit 6. Because this project is subject to House Bill 2329, there were a lot of agency folk reading and reviewing the response. Prior to HB2329 projects larger than 320 acres would go to the Energy Facilities Siting Committee (EFSC) and they would honor the ODFW mitigation policy. Since HB2329, ODFW is looking how the statute and mitigation policy would be applicable in Crook County. Jackle offered to provide training for Planning Commission regarding ODFW mitigation policy. The policy identifies wildlife categories and what mitigation is required for each - from category 1 (irreplaceable) to category 6 (essentially a non-habitat).

ODFW comments regarding Exhibit 6 includes a map of the area with context of other projects that have been allowed by the county. This project is for a total of 654 acres and the applicant has agreed to mitigate for 200 acres. ODFW looks at all impacts and ask the applicant to classify it. ODFW is in disagreement over the applicant's site evaluation as they categorized it as a 6. Another question is why the applicant is only offering to mitigate for 200 acres and not the entire 354. If there are parts of the acreage that is non habitat then the applicant needs to address that and work with ODFW in providing that explanation.

Jackle then went into the 3 options that the applicant had proposed and their concerns. He stated that conceptually option 1 is a good mitigation policy, identifying acres and durability. It is just not fully identified and finalized. Option 2, is an agreement with Deschutes Land Trust and ODFW would ask that the applicant work more with them and get develop the agreement, but there are other projects and areas in the county that they could work with. Then Option 3 is an extra option that the applicant has left in there.

ODFW is not trying to block or limit the sites; they are just trying to make sure that there is adequate mitigation for the impact.

Jackle's concern is the elk that is trying to cross the highway and restricted movement with fencing within that particular area.

The LUBA decision out of Lake County, to his understanding that there was not a Mitigation Plan in place at the time the County approved it.

Jackle then asked for any questions from the Planning Commissioners.

Commissioner Bedortha – no questions

Commissioner Stec – no questions

Commissioner Lundquist asked about the how the wildlife winter range boundaries are determined.

Jackle responded that historically, when the land use planning was developed in the 1970's, ODFW went to the counties and worked with the county to identify wildlife areas. Jackle said that most of the low elevations with access to water are wildlife areas.

Commissioner Lundquist offered that it would be a good area to revisit.

Jackle responded that a more recent and long process was undertaken but was not implemented. There are new mapping technologies and data regarding habitat, and it is an important resource with meaning to many people in the state.

Commissioner Hermerck- no questions

Commissioner Ponte- no questions.

Chair Warren – no questions.

Beier stated that in the future we would welcome Jackle to come in talk about wildlife protections and discuss what ODFW is doing. She then went on to say that the data we have for our wildlife maps is from the 1970's because they didn't adopt new maps. What is different is that with big projects there does need to be mitigation, but the question is how much specificity would need to be included and when in the process.

Chair Warren confirmed that there were no other agencies on the line, and then asked for the applicants to speak to their application. Staff unmuted the applicants' lines.

Paul Stern, representative with New Sun spoke to the application; commended staff for the overview already provided and addressed the site. He stated that the site is in an ideal location for a solar pv facility. It is over 93% nonarable land and soil type with no irrigation. It is currently being used for land application of domestic septic waste. No mapped Goal 5 resources. Currently on site are four major transmission lines already crossing the site. Three of the lines are 500kv lines and one is a 230kv line and three major substations. Initially they applied for the site to be under the 320 acres, but with HB2329 they would like to expand it for better utilization of this site.

Chair Warren asked the Commissioners if there were any questions regarding the site location or site specific questions, prior to a discussion of the mitigation plan and ODFW concerns.

Commissioner Bedortha -no questions

Commissioner Stec- no questions

Commissioner Lundquist-no questions

Commissioner Hermerck-no questions

Commissioner Ponte asked if the solar panels would be under the powerlines?

The applicant responded that no they would not.

Commissioner Ponte then asked if the perimeter fencing would be as two separate parcels or include the area under the powerlines?

The applicant responded that there is an easement under the powerlines and that no structures would be placed under those lines.

Commissioner Hermerck asked a question regarding the tax base of the property?

Beier responded that just with any change out of farm use be it a residential use or solar facility there is a lookback and it goes into the new use.

Chair Warren asked for the applicant to continue and address the wildlife.

Stern with New Sun spoke to the wildlife issue and stated that they are close to agreement with ODFW and on the same page. He went on to provide an overview and history from the developer's point of view. He stated that the requirement in HB2329 is to conduct a site specific habitat study of which they did. They hired a professional wildlife biologist to complete the assessment for threatened and endangered species as well as big game. The biologist noted that the site is not in a Goal 5 resource and not in any mapped habitat. They then conducted the habitat calculation, of which, ODFW does not agree. Regardless of the discrepancy the applicant stated they are proposing to do mitigation for the impacted acreage. ODFW feels it is a category 4 the applicant's professional identified as a category 6, the applicant is offering to do a 1-1 mitigation for the acreage they are impacting with the modification. Which is what is required for a category 4. Mitigation is for no net loss and that is what they are proposing.

Stern stated that the main disagreement between ODFW and the applicant is the level of specificity required and at what time that level is required. The applicant feels that to have the level of specificity wanted from ODFW at the time of application is a burden in that a project of this size may be built out many years from now and situations may arise that would provide undo complications, such as projects changing, land owner or property changes, and changes to the site.

The applicant provided 3 options; with options 1 and 2 having ODFW's agreement conceptually. The applicant does not feel that it is feasible and would not be able to comply with at the time they are asking for it. For instance the applicant is willing to mitigate for 1-1 no net loss. The applicant has applied for up to 334 additional acreage but building out all of that will not be available. There are site constraints such as easements, north facing slopes and setbacks that will reduce the number of acres. Therefore until the final site development plan is done the final acreage numbers are not available. The applicant has used a rough estimate of impacted acres and what they are developing. They are not saying a hard number, they will mitigate for what they will end up impacting.

The applicant then went to state that their opinion of the LUBA decision was for a different situation. Where they did not do a site assessment or a mitigation plan and punted it. This application has the site assessment is completed; a Mitigation Plan has been submitted.

Jake Stephens, Principle of New Sun Energy, he provided a quick overview of their company and 4 sites under construction and potentially coming on-line.

Stephens commented on the LUBA decision. The project was originally at EFSC then they went back to the county, from several thousand acres to a two 320 acre projects, then they tried to split a lot, with unclear findings, acknowledgement of wildlife, but no mitigation plan and did not complete one. The county decision included that the county would decide in the future if there were impacts. The remand to the county was to make clearer findings. Stephens went on to say that some of the other important take away from the decision is that the court affirmed that the applicant has to consult with ODFW and

they have to do an assessment but that the county gets to decide and their has to be findings to support it but that the applicant and ODFW do not have to agree. The decision also cites decision that support a plan, a draft plan was acceptable. Stephens states that Oregon Statute does not define 'plan'. He stated that the outline and conceptually ODFW is in agreement with. The applicant will provide clarification regarding the details of the plan with ODFW.

The plan they submitted also includes durability with net benefit. The applicants' intent is to meet or exceed the expectations as outlined in their submitted Mitigation Plan and if there is a change to that plan or an area that they are not in agreement with ODFW the applicant will provide documentation to the county to support their position.

Stephens then asked for assurances from the planning commission that if the project goes forward that it includes the submitted Mitigation Plan as it is and does not allow ODFW another look or review to then impose or require additional or different mitigation measures.

Chair Warren then asked for any Commissioner questions

Commissioner Bedortha expressed his appreciation for the applicant's explanation of the wildlife issue from the developer's perspective.

Commissioner Stec no questions

Commissioner Lundquist agreed with Commissioner Bedortha and went on to ask about the expansion of the development by 334 additional acres. Why are they asking for the additional acres if they are not planning on developing it all?

The applicant responded that they would really like to develop as much of the property as possible. The previous application was restrained by the 320 acre cap. Wildlife mitigation would be as much as they disturb and in regard to SHIPO is if they run into something then they are to follow the proper procedures. They would like to reserve comment.

Commissioner Lundquist asked why the applicant can not do what ODFW is asking.

The applicant responded that the projects are complex and include many different aspects that may change over the developing of the site prior to any building permits. What ODFW is asking is that the one piece be approved too early in the project, when something that may change.

Commissioner Hermerck no questions

Commissioner Ponte asked Stephens that if the Commission approves the application then the submitted Mitigation plan is also approved.

Stephens responded that yes, the Mitigation plan submitted with the 3 options would also be approved.

Beier stated that the Planning Commission has approved PV projects some of which have required mitigation and consistently required the final mitigation plan be submitted prior to any land clearing. The County has also required mitigation payment be submitted at that time, other plans such as the emergency management plan prior to clearing and grading, as well as the decommissioning

bond. The county has included final plans as conditions of approval and is consistent with other types of development and industries.

The applicant would like the Planning Commission and county to make findings that does not allow ODFW to come in later and redefine or veto the project.

Beier clarified that the agency would not be given the opportunity to change the criteria for approval but would be given the opportunity to say yes or no that the applicant has met the mitigation obligation.

Commissioner Hermerck asked about Condition 9 if that would meet the requirements of what they are discussing?

Beier then reviewed the condition and said if there was a change then they would need to come back.

Stephens stated that they would like to establish findings that the Mitigation Plan is approved as submitted with the application with defined criteria.

Beier stated the Commission is providing guidance and would need to have consultation with ODFW to ensure that the intent was met.

Chair Warren stated that the applicant will need to meet the conditions of approval.

Chair Warren asked about the distance or measurement for the easement under the powerlines. The Applicant responded that they thought it was 100 feet.

Staff identified that there were no public on the phone call.

Chair Warren asked for anyone in favor of the proposal – no response

Any individuals with a neutral position to the proposal - no response

Any individuals in opposition of the proposal – no response

Because there was no additional testimony, no rebuttal was needed from the applicant

Stephens stated that ODFW was in general agreement with their mitigation plan

Chair Warren asked that Greg be unmuted, he responded that in Crook County the ODFW has been consistent with comments and ODFW was moving away from a payment in lieu of and they are moving to allowing options. Jackle does not see the added specificity as a burden such that has been portrayed by the applicant. ODFW is looking for assurances that the mitigation will be met.

Stephens rebutted that they hope to work with Deschutes Land Trust but it is just not finalized. The applicants experience in another county was a burden and ran into complications.

Chair Warren asked for any additional questions for staff from Planning Commissioners
Commissioner Bedortha does not agree with staff or ODFW and that each application has been weighed on their own merits to have specificity.

Beier replied that because this application is under HB2329 it triggers different criteria and consultation requirements

Commissioner Bedortha then asked how the Planning Commission addresses the issue.

Beier then stated that the Planning Commission could make findings that the applicant has provided the Mitigation Plan meets the intent and will be met and proof submitted at the time of ground clearing. The Planning Commissioners can make the decision that the plan meets the intent of HB2329. The applicant has provided 3 ways for them to meet the Mitigation and before ground clearing they will submit the documentation that it was met.

Commissioner Stec- no questions

Commissioner Lundquist asked staff if the original acreage needs to be included in the Mitigation plan. Beier responded that all parties reviewed the original proposal and acreage, made findings that mitigation was not needed. Because of the legislation for the additional acreage, the consultation is applied and only that new acreage needs to have a Mitigation Plan, both ODFW and the applicant agree on the point.

Commissioner Lundquist expressed concerned and uncertainty of which rules the project would be under if the timeline for buildout took ten years and the rules changed then it would need to conform to the rules in place at that time?

Beier responded that Conditional Use approvals are good for four years; the county regularly grants extensions to approvals and if there is a change to the site characteristics or the project there are modifications and/or extensions that the applicant could apply for.

Commissioner Lundquist asked if staff researches any changes with each application.

Beier responded that on larger projects standards can be reviewed (e.g. destination resorts, road standards) but there is flexibility in the process and modifications are looked at.

Stephens (applicant) interjected that they are applying under the laws today and not the laws 4 years from now.

Chair Warren reminded the applicant that the testimony portion of the hearing was closed and if they were in a regular meeting the applicant would not be able to speak at this point.

Commissioner Lundquist expressed concern that if the project buildout has a long timeline it may need to have additional review for meeting rules.

Commissioner Hermreck no questions

Commissioner Ponte's understanding is that prior to the House Bill a project this size would need to go to the Energy Facility Siting Council?

Beier answered that yes.

Commissioner Ponte then followed up with a question of if the County is being asked to look at things more closely?

Beier replied that there is more explicit consultation of state agencies – ODFW, SHPO, Military, and the Tribes. It doesn't provide a lot of specific guidance of what that entails. Crook County Code has very specific Conditional Use criteria regarding energy facilities, and more criteria to consider than the EFSC (e.g. weed or emergency management). They have some scenic vista criteria but our code parallels theirs. A difference is the process; theirs is a much longer process the County's suggested that the decisions should be made locally. They changed the process so the counties could make the decision locally on the bigger projects.

Chair Warren had no questions for staff.

Chair Warren asked if anyone has requested to keep the record open.

Staff reviewed the ODFW exhibit to see if there was a specific request to leave the record open. Not seeing any she suggested that Jackle clarify if they were requesting to leave the record open.

Staff unmuted all the phone lines.

Jackle commented that they do not wish to delay the process, especially because the Crook Flat application is already delayed to May 20th. The agency is at a disagreement with the applicant regarding the level of specificity at the time of application.

Chair Warren is asking if they are making a request to leave the open.

Jackle's recommendation is that the application would be delayed until there could be an agreement or condition the decision for ODFW to review it later. The plan submitted just doesn't have the degree of specificity that ODFW is looking for. Jackle is not requesting to leave the record open.

The applicant responded that they have gone through this process previously and they had the baseline shift and that is why they are requesting to have it be well defined and accepted as current.

Chair Warren asked the applicant if they would like to waive their 7-day final written argument, the applicant did not waive their final argument period.

The applicant responded that yes they are willing to waive their 7-day final argument, not having heard the motion or the decision. The applicant asked for clarification of process for timing of the waiver.

Chair Warren clarified the process.

The applicant then responded that they do wish to keep their 7-day final argument period. They would like to reserve the opportunity to comment based on the motion, conditions, and discussion.

Beier commented that the applicant is not waiving their 7-day final argument so they would get 7 days for submitting the final argument to the draft final decision.

McDonald clarified that a decision would not be made for the applicant to respond to.

Beier confirmed that a motion and deliberations would proceed and the applicant could respond to that discussion.

Chair Warren asked if the Commissioners had further questions for staff before calling for a motion.

Staff muted all lines except the commissioners.

Commissioner Hermreck made a motion to close the public hearing. Commissioner Bedortha seconded the motion.

Chair Warren called for the vote

Commissioner Bedortha -aye

Commissioner Stec aye

Commissioner Lundquist aye

Commissioner Hermreck aye

Commissioner Ponte – asked for clarification regarding discussion for the motion – Chair Warren said this was to close the public portion of the hearing. Commissioner Pont voted – aye

Chair Warren then asked for a motion on the application being heard with the conditions discussed tonight.

Commissioner Hermreck made a motion to approve the application 217-20-000375-PLNG, with the staff's recommended conditions of approval. Commissioner Stec seconded the motion.

Chair Warren then asked for discussion.

Commissioner Bedortha asked that they add to the conditions, a Goal 5 resource protection for aggregate and lighting being only for security or time of operations. As to the Wildlife issue, he stated he was willing to show good faith and lean toward the side of the applicant that it would be worked out in the future.

Commissioner Stec stated that she supported the Goal 5 protections and the lighting is pointed down, when it is needed. She also supported the applicant with the Mitigation issue.

Commissioner Lundquist would like to add something to the conditions to address the Wildlife issue. He felt there should be a final Mitigation Plan approved from ODFW prior to any groundbreaking.

Chair Warren said it is reflected in Condition 9.

Beier stated that Condition 9 would need to be revised to make it more explicit. It would need to speak directly to prior to clearing and grading and consistent with some of the earlier decisions.

Chair Warren asked if the Condition could read that the applicant shall demonstrate to the County.

Commissioner Stec asked if it could read a final mitigation plan prior to ground breaking or clearing.

Commissioner Lundquist said that Condition 9 didn't address his concern.

Chair Warren asked if he had heard the discussion that just happened on revising Condition 9 and if that would address his concerns

Commissioner Lundquist said he would like to read the revision

Chair Warren asked staff where it would be added in.

Beier stated that the condition would need to be separated to be clearer and more explicit for the Mitigation Plan. She offered that a new condition be added that a Final Mitigation Plan be submitted to Crook County Community Development prior to clearing and grading. And any proof of mitigation payment, or show documentation that payment has been made.

Commissioner Lundquist then asked if the Condition could include Oregon Department of Fish and Wildlife approval.

Chair Warren then responded that it would be coming from both of them to the County.

Commissioner Lundquist then asked for clarification that another condition was being added?

Staff responded yes, unless Commissioner Hermreck had another option.

Commissioner Hermreck added that ODFW is concerned about Mitigation and the applicant is concerns. The applicant submitted Exhibit 4, which has options for mitigation. Option 3 of which states that it would be supported by ODFW. The Commission could include Exhibit 4 document and have it be attached to the Conditions of Approval of which ODFW still has approval.

Commissioner Hermreck then moved to have Condition 23 include Exhibit 4. Condition 21 would be for the Goal 5 resource protection for aggregate. Condition 22 would be for lighting only when necessary, shielded and downcast. Condition 23 would be acceptance of Exhibit 4 as presented by West Prineville Solar farm Wildlife Mitigation Plan and they would have to show proof of one of the options being done. With Option 3 being open ended subject to ODFW approval.

Hermreck amended her original motion with the three conditions of approval if the second would agree.

Commissioner Stec seconded the amended motion.

Commissioner Ponte during reviewing the staff report he was concerned about how fuzzy the Mitigation Plan was and agrees with several of the issues raised in Exhibit 6 from ODFW. He stated he does not feel comfortable in approving the application with Mitigation Plan as submitted. He raised concern on how it could be conditioned adequately and was uncomfortable with how things stood at this time.

Chair Warren then asked for additional comments.

Commissioner Ponte responded no.

Chair Warren asked if there was a different way it could read.

Commissioner Ponte responded that yes. He would have liked some more time for deliberation. He doesn't think they can say they must agree on the Mitigation Plan, unless Ann has something else to say. He would have like to see more time allowed for the applicant and ODFW to work out their differences and is that something that could be conditioned?

Chair Warren offered that by having Exhibit 4 be a part of the conditions and approved prior to breaking ground. It lists what they would have to do. He then offered support to conditioning the submittal of documentation that the mitigation was met prior to. He

Commissioner Lundquist then asked what repercussion is in place if the applicant does not do it. It seems like there is no monitoring or enforcement in place.

Chair Warren stated that they would not be able to pull permits or clear ground until the Conditions have been met and they would have to come back to the County to show how they have met the Conditions. So which ever option they chose they will have to show proof to Planning that it was done. Commissioner Bedortha stated that before ground is cleared that all parties come to an agreement, so even though the document is not perfect, the applicant still has to have a final working document before they clear the ground.

Commissioner Ponte disagreed.

Beier stated that it has been required in past practice.

Commissioner Bedortha said the application and ODFW be in agreement at the time of ground breaking.

Chair Warren asked for a restatement of the motion.

Commissioner Stec said the motion would include 21, Goal 5 protection; 22, lighting; 23, adoption of Exhibit 4 to be included. Condition 9 would be revised

Commissioner Hermreck provided guidance on the applicant not waiving his 7 day final argument. The Commission will not be able to vote, they will have to wait at least 7 days.

Commissioners and Staff discussed around procedure.

Commissioner Hermreck made a motion to move 3217-20-000375-PLNG to May 27, 2020 at the beginning of the Agenda.

Chair Warren asked for deliberations:

Commissioner Bedortha - No

Commissioner Stec - No

Commissioner Lundquist – added deliberations need to consider the Wildlife Mitigation plan further - okay with deliberations for the 27th

Commissioner Hermreck - no

Commissioner Ponte – No discussion on the motion

Chair Warren called for the vote:

Commissioner Bedortha - aye

Commissioner Stec - aye

Commissioner Lundquist – aye

Commissioner Hermreck - aye

Commissioner Ponte – aye

Chair Warren – aye

Commissioner Hermreck moved to adjourn the meeting, Commissioner Stec seconded

Chair Warren asked for a vote:

Commissioner Bedortha- aye

Commissioner Stec -aye

Commissioner Lundquist -aye

Commissioner Ponte -aye

Chair Warren -aye

Staff provided an update on the upcoming Planning Commission schedule.

Commissioner Lundquist asked that staff provide more detail in public notice and get materials out earlier.

Beier responded that staff will look at noticing requirements and follow statute.

The meeting ended at 8:50.