

CROOK COUNTY PLANNING COMMISSION MEETING

May 27, 2020

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

Crook County Planning Commission 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, Linda Manning, and Susan Hermreck. Commissioner Bob Lundquist joined by phone. Commissioner George Ponte was not present but asked staff to provide his comments on one of the projects. County staff Ann Beier, Hannah Elliot and Katie McDonald joined in person and 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 the application
- Mark Boissevain – Applicant -New Sun Energy – contact information is on application
- Paul Stern – Applicant -New Sun Energy – contact information is on application
- Anna Marie Barlum – Applicant – New Sun Energy – contact information is on application

Chair Warren opened the Continuation of the April 29 and May 13, 2020 public hearings for deliberation only.

Chair Warren announced the rescheduled public hearing for file 217-20-000371-PLNG for June 10, 2020.

APPROVAL OF MINUTES

May 13, 2020 –Commissioner Lundquist would like the minutes to further detail his comments after the public hearing regarding transparency. Commissioner Bedortha requested that the minutes be amended to include statement that an audio version of the meeting is available for more detail. Commissioner Bedortha moves to approve the minutes with Commissioner Lundquist’s concerns being addressed. Commissioner Stec seconded. The Commissioners present approved the motion by a vote of 5-0-1. Commissioner Manning abstained, as she had not been present at the May 13, 2020 hearing.

Crook County File Number 217-20-000320-PLNG – Conditional Use request for Crook Flat Solar Farm Ron Raasch (owner) and Jake Stephens (applicant) are requesting a conditional use permit to construct and operate the Crook Flat Solar Farm, LLC, a photovoltaic (PV) solar power generation facility on up to 156 acres. Commercial energy facilities are allowed as conditional uses under Crook County Code 18.16.060(3) and Oregon Revised Statutes (ORS 215.283) and are subject to review under Crook County Code 18.160 (Conditional Uses) and 18.161 (Commercial Power Generating Facilities). Oregon Administrative Rules 660-033-130(38), and the Crook County Comprehensive Plan. The property is identified as Township 15 S, Range 15 E WM, tax lot 1228.

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. Chair Warren asked if any member of the public on the phone wished to challenge any member of the Commission. Staff un-muted the phone lines and no member of the public raised any challenges. Staff then muted all lines except those of staff and Commissioners.

Ann Beier, Crook County Community Development Director stated that additional information was submitted after the original staff report and after the April 29 hearing. (The record was left open after the April 29 hearing). New exhibits include a Traffic Assessment letter describing, traffic during construction and mitigation related to construction traffic impacts. A “no hazard” letter was received from the Federal Aviation Administration. The Department received a revised a wildlife mitigation plan and comments from ODFW and DLCD. The Applicant revised their mitigation plan and submitted a final rebuttal letter. The Applicant submitted a revision for associated transmission line that showed only three routes as requested by the Planning Commission at the April 29 hearing. They included soils information for a transmission line proposed to go to the east. Staff described that the property has pronghorn habitat that has been identified by ODFW and the Crook County Comp Plan recognizes pronghorn as an important big game species, but the County has no specific code language related to pronghorn habitat. The solar code talks to general big game habitat. The applicant proposes mitigation of 1.5 to 1 to get to no net loss of habitat. The Planning Commission has accepted 1.5 to 1 and 2 to 1 mitigation ratios on other solar projects.

Beier reviewed the changes to conditions of approval as presented in the staff report.

Chair Warren asked for questions for staff.

Commissioner Bedortha pointed out a mis-numbering of page numbers and on page 30 first paragraph, to remove “is”. He also asked if staff okay with the three options for transmission lines.

Beier responded that the applicant has asked for an increase in acreage to 170 acres to account for transmission lines and staff is comfortable with the three options for transmission lines proposed by the Applicant.

Commissioner Bedortha is good with linking implementation of conditions prior to clearing and grading, the proposed checklist for conditions being met, and the 1.5 -1 ratio for mitigation. He supports the staff report as written.

Beier stated that Oregon Administrative Rule which has been adopted into our code states if the applicant and state agency could not come to an agreement then the local decision makers have the ability to make a decision regarding habitat mitigation.

Commissioner Bedortha stated that he based his decision on history of other solar farms in the area and the willingness of the applicant to work with agencies.

Commissioner Hermreck wasn’t present at the May 13, 2020 hearing and abstained from deliberations.

Commissioner Manning asked if the vegetative buffer is on the east side of the property along Millican

Beier stated that it was.

Commissioner Stec stated that she feels that precedent has been set with mitigation ratios from other projects in the area. She also asked if it will be sufficient to have in the motion that the County has the authority to accept the mitigation plan submitted by the applicant.

Beier stated that the County would make findings with provision of code and explicit in the conclusion and accepting the mitigation plan submitted by the applicants

Commissioner Lundquist stated that he agrees with the mitigation ration of 1.5, would like it noted that it is within the pronghorn winter range, close to mapped mule deer habitat and elk have been in the area. His opinion is that the mapping is not accurate, and the mitigation plan should include all three big game species. He feels there should be a minimum of 30 feet of a vegetative buffer along Millican Road.

Chair Warren clarified those items would be for deliberations and asked if there were any further questions for staff.

Commissioner Lundquist has nothing further at this time.

Beier noted that the applicant had emailed and wanted to ask some questions but reminded the public that we would not accept any questions or testimony. This public hearing is for deliberation only and the Commission will not be hearing from the applicant or other parties.

Chair Warren asked staff if this Project would be approved, the findings would be included in the final decision.

Beier would include language from the code for the decision-making authority and could include that language in the motion.

Chair warren called for a motion-

Prior to the motion Beier asked if the Commission was comfortable on the mitigation ratio as well as the three options submitted by the applicant.

Commissioner Bedortha asked staff if Exhibit 10 included updated responses to ODFW concerns. Staff responded that Exhibit 10 summarizes the Applicant's position on mitigation and responds to ODFW.

Beier responded that condition 11 could be modified to include both Exhibit 6 and Exhibit 10 for clarification of options and the mitigation ratio.

Commissioner Stec moves to approve 217-20-000320-PLNG based on finding and conclusions in the amended staff report and accepts the Applicant's request for a 1.5 to 1 ratio being consistent with other projects in the same vicinity, with special reference to Exhibit 6 and 10, and note for the record that there is a general disagreement on the wildlife mitigation measures, the county, this body is determining that Exhibit 6 is proposing adequate mitigation measures for the pronghorn habitat.

Commissioner Bedortha seconds the motion.

Chair Warren asked for comments from Commissioners.

Commissioner Bedortha has his concerns addressed and either 15 or 30 feet of vegetative buffer is adequate.

Commissioner Hermreck abstains.

Commissioner Manning would like to ensure there is vegetation in the 15 feet, if not then it should be 30 feet.

Commissioner Stec agrees with 15 feet as long as there is vegetation.

Commissioner Lundquist stated if there is screening either 15 feet or 30 feet would be adequate. He added that the wildlife mitigation does not address mule deer and elk and based on the age of the maps, he requested they be added.

Commissioner Stec asked if Mule deer and Elk should be added in the motion.

Beier stated that the criteria only address the mapped habitat; even though the maps are old they are what are used in response to the criteria. The intent of the mitigation plan is to address the loss of habitat generally not specific to species.

Chair Warren understands Commissioner Lundquist's concern, but we don't have the criteria to add conditions.

Commissioner Lundquist responded that he understands what the Chair is stating but doesn't understand why the local body cannot make those decisions. He wants all species addressed.

Beier stated that ODFW has only requested mitigation for pronghorn. She stated that the Commission will accept training offered by ODFW to help understand habitat classification and mitigation requirements. The record will note that there are other species in the area.

Chair Warren stated that he doesn't see a way to ask for a condition of mitigation when it is not a part of the criteria.

Commissioner Stec asked to amend motion to include other big game .

Commissioner Bedortha disagreed and recommended to stay the course.

Commissioner Manning agreed to keep to the criteria and the pronghorn mapped habitat specific

Commissioner Lundquist stated earlier that they were told they could make a decision as a local governing body; he doesn't understand why they cannot make a decision to include other big game even if they are not on the mapped habitat.

Chair Warren called for the vote

Commissioner Bedortha –Yes

Commissioner Hermreck – Abstain

Commissioner Manning- Yes

Commissioner Stec- Yes

Commissioner Lundquist - No

Chair Warren– Yes

Motion Passes 4-1-1

Chair Warren asked staff to prepare the final decision and he will sign outside of a meeting.

Chair Warren adjourned for 5 mins.

PUBLIC HEARING#2 – 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 House Bill 2329. The property is identified as Township 15 S, Range 15 E WM, tax lots 2900 and 3000.

Chair 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. Chair Warren asked if any member of the public on the phone wished to challenge any member of the Commission. Staff un-muted the phone lines and no member of the public raised any challenges. Staff then muted all lines except those of staff and Commissioners.

Commissioner Manning stated on the record that she had not been present at the May 13, 2020 hearing; but that she had reviewed the material and feels she could make a decision.

Chair Warren noted Commissioner Manning’s statement on the record and moved into deliberations.

The Chair described the motion and second that were on the table from the previous meeting, prior to closing the record for deliberation only. The Applicant did not waive their final argument and Exhibit 7 was provided by the Applicant on May 20, 2020 and entered into the record of this decision.

Chair Warren shared clarification from County Counsel regarding the applicant’s final written argument.

Chair Warren asked if the Commissioners had questions for staff.

Commissioner Bedortha– no questions

Commissioner Hermreck – no questions

Commissioner Manning – no questions

Commissioner Lundquist – no questions

Chair Warren – no questions

Commissioner Ponte could not be here to vote and submitted comments to staff in an email dated on May 23, 2020. Beier read his comments into the record. Commissioner Ponte thanked the applicant but raised concerns about the size of the project and the loss of big game habitat. He agreed with the concerns raised by ODFW and DLCDC regarding the lack of specificity of the mitigation plan and actual implementation of mitigation measures.

Beier reviewed the exhibits that were received and changes to conditions of approval as presented in the staff report.

Chair Warren asked about the corridor/easement under the powerlines. Beier stated that she did not find a current easement that reflected the total width of the power line easement.

Commissioner Hermreck called for the vote

Chair Warren asked for further discussion/questions

Commissioner Bedortha – No

Commissioner Manning – No

Commissioner Stec –No

Commissioner Lundquist stated that when he attended the original site visit and approved the original plan it was over a year ago and has a question for staff and for the deliberations. He doesn't feel that we have covered everything. He feels mitigation for only additional land and terms of mitigation are being dictated by the applicants and suggests that there could be more done to mitigate loss of habitat. He feels that area can be saturated with solar fields without hurting the wildlife and does not feel that the applicant is willing to work with ODFW.

Commissioner Hermreck asked for Commissioner Lundquist to offer suggestion for conditions on approval to meet his concerns

Commissioner Lundquist asks to include the original 320 acres in mitigation or increase the ratio of 2-1.

Beier stated that the original application was approved without any mitigation requirements from ODFW. The County cannot impose new conditions on the original approval. The additional acreage is allowing mitigation, but only on the additional acreage, because of 2019 Oregon House Bill 2329.

Discussion continued regarding mitigation and criteria.

Commissioner Bedortha asked if Commissioner Lundquist had a proposal he would like to put forward.

Commissioner Lundquist moved that the mitigation ratio be changed from 1:1 to 2:1.

No second on the motion, therefore it died for lack of a second.

The Commission returned to the motion on the floor.

Beier asked that the Commission restate the original motion

Commissioner Hermreck restated the motion: To approval 217-20-000375-PLNG with the following conditions of approval as stated in the amended staff report presented on May 27, 2020.

Commissioner Stec seconded the original motion

Commissioner Bedortha –Yes

Commissioner Hermreck – Yes

Commissioner Manning – Yes

Commissioner Stec –Yes

Commissioner Lundquist – No

Chair Warren – Yes

Motion passes 5-1-0

Chair Warren directs staff to prepare the final decision and he will sign outside of a meeting

Commissioner Hermreck moved to adjourn

Staff reminded Commissioners that the next meeting is June 10, 2020

Commissioner Bedortha second for adjournment

All Commissioner's voted aye

The meeting ended at 7:50