

CROOK COUNTY PLANNING COMMISSION MEETING

March 17, 2021

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

Crook County Planning Commission Chair Michael Warren II called the meeting to order at 6:01 p.m. The meeting was conducted by WebEx, a call-in service and at the Crook County meeting room. Commissioners attending the meeting in person were Chair Warren, Susan Hermreck, Linda Manning, and Gary Bedortha. Commissioners George Ponte, Laquita Stec, and Bob Lundquist attended via phone/WebEx. The following County staff was present at the meeting: Community Development Director, Ann Beier, Assistant County Counsel; Jon Eisler; Senior Planning Tech, Hannah Elliott; and Outside Legal Counsel, Peter Watts ; Planner, Katie McDonald participated via WebEx.

Parties in Attendance:

Jake Stephens, New Sun
Mark Boissevain, New Sun
Max Yoklic
Greg Jackle, Oregon Department of Fish and Wildlife
Rachel Davee, Crook County Soil and Water Conservation District

Participating via phone WebEx:

Merissa Moeller, Stoel Rives LLP on behalf of West Prineville Solar Farm
Paul Stern, New Sun
Holly Burnett, PBS Engineering
Greg Swenson, PBS Engineering

ITEMS NOT ON THE AGENDA

- NA

APPROVAL OF MINUTES

- February 24, 2021; Chair Warren asked if there were any comments on the minutes. Commissioner Lundquist stated that the minutes didn't have a vote recorded for him. Commissioner Hermreck moves to approve the minutes as presented. Commissioner Bedortha seconds the motion.

No Discussion

Commissioner Manning - abstained

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Ponte - aye

Commissioner Lundquist - aye

Chair Warren - aye

Motion Passes 6 -0 -1

PUBLIC HEARING

Chair Warren called the Public Hearing to order.

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

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

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

Crook County Code, Title 18 - Zoning, Chapter 18.16.020

Crook County Code 18.160 (Conditional Uses

Crook County Code 18.161(Commercial Power Generating Facilities)

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

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

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

Crook County Comprehensive Plan

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

Commissioner Manning -no

Commission Hermreck -no

Commission Bedortha - He stated that he sits on the Crook County Soil Conservation District and does not feel it will influence the decision.

Commissioner Stec - no

Commissioner Ponte - no

Commissioner Lundquist - no

Chair Warren responded - no

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

Commissioner Manning -no

Commission Hermreck - no

Commission Bedortha - no

Commissioner Stec - no

Commissioner Ponte - no
Commissioner Lundquist - no
Chair Warren responded - no

The Chair then asked if any member of the public, including those participating by phone, wished to challenge any member of the Commission. Staff identified another call in user on the line, but that user chose not to identify. No members of the public stated a challenge.

Chair Warren asked to hear from staff.

Ann Beier, Crook County Community Development Director, stated that a key criterion that is always considered is the County's Comprehensive Code, which is always the background for zoning decisions. She ensured that all of the Commissioners had received Exhibits 9 through 12, which came in today. All Commissioners affirmed they had received it. Beier stated that they would have the Applicant walk through their comments.

She then described the original application approval from 2019 and was going to increase the acreage to 520 acres, hearings have been postponed due to circumstances in our control and out of our control but we are now hearing the modification. The project is now over 320 acres which triggers the new House Bill which requires notifying other state agencies and to take a Goal 3 exception.

She stated there is a new Transportation Analysis with specific conditions, updated Emergency Management and Weed Control plan, no change in their Interconnect location. It is still in mapped Pronghorn habitat. There are also conditions of approval which were added based on the experience.

The applicant has pointed out errors in the staff report which is Exhibit 12. She added that the Commissioners could advise staff to revise staff report to correct those errors. She also asked the Commission to make a specific finding for non-arable soils; the state defines non-arable soils as class 6 and greater.

Discussion of Goal 3 in greater detail will happen a little later, the applicant will also discuss how they meet the exception. She then detailed other property that was considered and determined not feasible.

The applicant has provided 3 Mitigation plan options – (1) Juniper removal, (2) payment in lieu of, (3) flexible option. There were comments received on the conditions regarding mitigation from the Applicant and Oregon Fish and Wildlife. She then described the mitigation options with more detail.

Chair Warren asked each Commissioner if there were questions.

Commissioner Ponte –no
Commissioner Lundquist – no
Commissioner Manning -no
Commission Hermreck - no

Commission Bedortha asked about the 12 to 15 years for the recut where in the report is the NRCS specific.

Beier stated that she would find the NRCS specifics.

He also asked if Option 3 was chosen, could the Commission assign sideboards and then could the Applicant and ODFW come to an agreement and come back for a public hearing?

Beier stated that County Court was not comfortable with that option during the West Prineville appeal.

Peter Watts then stated that Commissioner Brummer, in particular, was concerned because they didn't know what it was and how could neighbors be involved. So far LUBA has not set precedent, but their language questioned whether it could meet the Goal of public participation. He then stated that when House Bill ORS215.466 was introduced a member specifically identified Crook County as an area that got it right. Watts

continued that through this process and working with the Applicant and others there have been some best practices identified and learned which are reflected in this decision.

Beier added that Commissioner Brummer chaired the Planning Commission for a number of years, has a special understanding of the role of public participation, and was looking out for the Planning Commission role.

Commissioner Stec - no

Commissioner Ponte - no

Commissioner Lundquist - no

Chair Warren had no questions.

Watts commented that it was an excellent summary of a lengthy report. He added that there would be time limits for testimony, 20 minutes per applicant, 20 minutes for agencies and then 10 minutes for applicant rebuttal.

Chair Warren reminded everyone that the testimony must address the criteria and asked for any state agency.

Greg Jackle, District Wildlife Biologist, in Prineville, for Oregon Department of Fish and Wildlife, thanked the Commissioners for their time. He wanted to make a distinction between this project with the HB2329 and where previous applicants had come in and cut a check then they were able to do the work or partner with an agency such as Deschutes Land Trust to provide mitigation.

He said he had not read the Applicants' proposed changes to Condition 20. He then went through Exhibit 9 which was submitted and highlighted changes are in yellow. He commented that the first concern would be location they would like the Mitigation be identified and be in Pronghorn Winter range.

Next he talked about the Juniper treatment plan and they would like to have more specificity like how will that be done? He also recommended biannual monitoring for invasive species.

They would like to have timing, concurrent with development and then described the ask for scale, 2-1 and ratio 1-1 for Category 4 habitat. They like the durability component and no conflicting uses for the future, such as trails, parks.

Jackle then spoke to Option 2, would like to clarify the calculator which has been a preferred method. He mentioned working with Rachel and Paul Stern regarding a proposed project and did a great job.

Commissioner Ponte asked what defines a qualified organization.

Jackle responded that there were some specific examples but did not have a definition and he provided examples.

Commissioner Ponte asked if the mitigation area needs to be contiguous.

Jackle responded that it did not need to be contiguous, it would be better if it was a larger block of land but it doesn't need to be.

Commissioner Lundquist had no questions.

Commissioner Hermreck asked what the previous two fees were specifically used for.

Jackle responded that the formula was less with the Gala 112k and expect the cost to go up in the future. Then they worked with the land owner and Deschutes Land Trust and applied for a Working Land Conservation Easement then ODFW used different funds to satisfy the mitigation for Mule Deer Federal Mitigation site. Gala was on the hook for 640 acres, but the Conservation is about 3,000 acres.

Commissioner Bedortha stated that he is a rancher and takes a note of the last sentence on page 2 of the exhibit submitted. Then he asked if there is Juniper on the property where this project site is to gauge mitigation.

Jackle responded that there is Juniper and openings.

Commissioner Bedortha asked if a bi-annual weed management plan is a bit strenuous. He then provided example from his own ranch.

Jackle responded that it was a starting point and he could be comfortable with every 5 years.

Commissioner Stec had no questions.

Commissioner Manning asked within the 585 acres how much is in Pronghorn range.

Jackle said he thought it was around 220 acres. He also added that there would be an added buffer around the gravel pit.

Chair Warren had no questions.

Commissioner Lundquist asked about the buffer zone and is the acreage fenced?

Jackle responded that the area will be fenced and that they are not asking for any mitigation from that area.

Lundquist responded that if it is fenced the animals can't use it anyway.

Rachel Davee with Crook County Soil and Conservation District stated that they submitted a plan with Option 2. In response to some comments on Option 1, they support some annual grass monitoring as a part of the proposal.

No questions from Commissioners.

No other agencies were identified.

Chair Warren then asked for the applicant to speak.

Merissa Moeller, for New Sun started with a thank you to everyone and would like to highlight a key few elements. They would like to concentrate on a few items – key issue is the Applicant's Mitigation, their professional biologists that did the site work are available for questions, and then address concerns from ODFW's most recent round of comments and conditions of approval that achieves the level of mitigation. Lastly we speak to the comments that were received regarding the Goal 3 analysis.

Jake Stephens, Applicant thanked everyone for their time and reviewed the modification. He wanted to direct the attention to a table included in the material of New Sun's projects in Oregon. He spoke to their track record with other mitigation plans and doesn't see why they are being questioned on this mitigation plan. He then described their efforts for meeting mitigation specificity and previous projects. Stephens then discussed about the change with the HB2329 regarding a change for the role of agencies. He also discussed mitigation ratios. Stephens finished up with assurances that New Sun is a good citizen and will do good work.

Watts gave a time Check 10 minutes.

Greg Swenson with PBS Engineering stated that they are the Environmental Specialists doing work and conducting Wildlife studies. He explained how they get to Category 6 and that is not New Sun's approach for no mitigation. He addressed the question earlier to the coverage of Juniper, stating that the property is about 80% Juniper. When they were onsite, they noticed busy roads, gravel pit, airport, and geometry of the site and there is heavy grazing on the site. He then spoke to the qualitative assessment they had of the site and compared it to ODFW mitigation and classification.

Moeller asked to have the issue of the setback addressed. Swenson asked Holly to speak to that.

Moeller then responded to the comments received earlier this afternoon regarding the Goal 3 exception. She stated that the Planning Commission needs to make findings with reasons that justify why the State policy embodied in Goal 3 should not apply. Why this solar project on more than 320 acres are met. In OAR 660-004-00221, it identifies some reasons why this may be appropriate with other reasons as well. As Beier had laid out earlier in her summary, Moeller added a summary of the criteria for siting land for solar and the Crook County policy to implement Statewide Goal 6, the Crook County policy to diversify and increase economic diversity development of the County and forward Goal 9, and the Crook County policy affirmatively encourage Comprehensive Goal 13, which all support the Goal Exception. She then stated that solar energy is encouraged in Crook County which has large land close to transmission. One other finding will be to address OAR 660-004-

020 that finds other areas that do not require an exception were considered, which she states the staff report speaks to that analysis.

Holly Burnett spoke to the buffer zone; she had researched Pronghorn and specifically the distances to disturbances. Her findings were that Pronghorn generally avoided disturbance at 200 to 300 meters and she went with the more conservative 200 meters.

Watts then gave a time check of 21.16 and asked if there is no opposition did the Commission want to give the Applicant more time.

Chair Warren said it sounded like they still wanted to speak.

Stephens outlined what they would still like to speak to.

Beier added for the record that the County received an exhibit from Central Oregon Land Watch today regarding the Goal 3 exception along with an exhibit from the Teddy Roosevelt Organization. She summarized their concerns.

Stephens stated that there was some disagreement with ODFW around shifting baselines and to keep the mitigation to Pronghorn winter range. He spoke to the shifting baselines from ODFW through mitigation. He then reviewed the options and the differences that they found through mitigation consultations. He provided responses to the comments provided by ODFW regarding the specific conditions of approval. Stephens also reiterated the reason this project met the Goal 3 exception.

Chair Warren then asked for any questions from the Commissioners.

Commissioner Ponte had none at this time.

Commissioner Lundquist asked about the distance of Hwy 126 frontage.

Stephens responded that it was approximately a mile and a half.

Commissioner Lundquist stated he was unable to locate information regarding ODOT wildlife collision report. He clarified that the applicant has proposed mitigation for the entire acreage with different Categories.

Stephens responded that they are offering mitigation on the entire acreage, subject to the buffers around the gravel pit.

Beier then responded that the information was in the ODFW December 16th letter and there is crash data from that area, as a migration corridor that the applicant and ODFW acknowledge.

Stephens then responded that this is why the applicant is asking for Option3.

Commissioner Lundquist then clarified which agency submitted the information. He asked the applicant at what ratio they were proposing mitigation and on how much acreage.

Jake then responded that they were proposing 1.5:1 for mapped habitat and 1:1 for the other area. He stated this has been consistent.

Commissioner Lundquist stated that the wildlife maps are outdated and asked if they had found any other sign of wildlife on the property.

Swenson responded that they did see droppings and tracks, but that is not a method for determining habitat categorization. He then went on to describe the methodology as to how they determined the categorization.

Commissioner Lundquist then asked how they can consider it a Category 6 when there is obviously wildlife and a migration pattern.

Stephens responded that even though the professionals disagreed on the categorization, they are proposing mitigation for the entire site with scale.

Commissioner Hermreck had no questions.

Commissioner Bedortha had no questions.

Commissioner Stec had no questions.

Commissioner Manning asked if the project will be built in phases and would the mitigation be done in phases as well.

Stephens responded that the project could be built in phases and they would mitigate as they went.

Commissioner Manning then asked about the life span of the solar equipment.

Stephens responded that they had a 40 year life span but that those were the panels alone.

Commissioner Manning asked if they would be coming back in 20 years for reconstruction.

Stephens responded that it would depend on timing and the mitigation would be in line with what acreage was being constructed upon.

Beier added that the panels could be replaced once the bases were set and minimize any new ground disturbance.

Stephens then spoke to the ground mitigation element in the conditions and added an example regarding monitoring for retreatment of the ground.

Commissioner Ponte asked about durability and what the duration would be from the time construction begins until the time it stops operating, and in ODFW information it includes through reclamation of the site. Can the applicant answer when would the durability or mitigation end?

Stephens then responded that it would be not less than the facility site including reclamation and there is a bond requirement. He added a comment from ODFW regarding other development of the site.

Commissioner Ponte had no further questions.

Merissa requested that the Commission decide on any of the conditions on the record.

Stephens added clarification on an Exhibit 12.

Beier then suggested taking a few minutes to allow for the Commissioners to be able to read Exhibit 12 and Exhibit 9. She added that a few things have changed with this application including the criteria under HB 2329 which includes the requirement to consult with ODFW and the mitigation is "consistent" with their policy. It is the Commissioners job to determine what that consistency is. She then reviewed previous testimony from Jackle. He referenced pronghorn for pronghorn but if there like habitat mitigation and if they know where it is, they can work it out. She added that this is a learning as we go process and will continue to learn more as we look at these types of projects.

Watts added that the next section of House Bill 2329 is about sage grouse and is very specific in using of the word comply. He then added that a representative stated that what "consistent with" doesn't mean the same but that Counties would do the right thing and get the right results.

Jake then spoke up regarding authority.

Peter then broke in and said if the applicant said anymore then ODFW would need a chance to respond.

Chair Warren then said that they needed to get on with the process and review the material which had been submitted.

Beier complimented both the applicant team and ODFW team in assisting and helping to really frame the process.

Chair Warren called for a 5 minute break.

Elliott said the time to come back would be 7:55.

Chair Warren apologized for cutting the applicant off but at this point they need to move the process forward. He then asked if anyone is in opposition for the application.

None in Opposition

Commissioner Ponte had no questions.

Commissioner Lundquist then asked if mitigation only happens for acres that are developed.

Watts then clarified that the testimony received it would have the mitigation done in phases if the project is done in phases.

Commissioner Lundquist asked for further clarification on a phased approach.

Watts answered that if it was a phased development, the mitigation would be done in phases.

Beier responded that the County has not had a phased solar development and the idea is that before clearing and grading, mitigation has to be locked in. That option is not in the conditions and the applicant is not proposing a phased development.

Chair Warren then clarified the question and the Applicant answered that this proposal is not in phases, but was answered in that manner.

Chair Warren then clarified rebuttal but not repeating prior testimony.

Stephens then clarified the state statute of HB2329.

Jackle asked for the opportunity to rebut.

Watts replied that would appropriate as the Applicant had almost an hour.

Commissioner Ponte then asked for clarification from the Applicant regarding Exhibit 12, page 2 subparagraph d. Stephens responded yes.

Jackle reiterated that because of HB2329 and the applicant's Table 6 were projects under 320 acres. A project for anything over 320 acres would have had to go to EFSEC (Energy Facility Siting Evaluation Council) which adopted ODFW mitigation policy. That is why there is the request for further specificity. He also wanted to address Mr. Bedortha's comment regarding grazing. The reason behind it was because the Applicant brought it to us in context of Category 6 habitat. Jackle has personally seen close to 20 antelope and herd of elk on West Prineville over the last week. There is definitely wildlife being impacted.

Commissioner Hermreck asked if ODFW would support option 2 and a project with Soil and Water.

Jackle responded yes, that has always been a preferred option and they have been consistent.

Commissioner Hermreck clarified where the table was in Exhibit 6.

Jackle responded that it was near the end.

Watts asked Jackle if the Commission would go with Option 2 tonight and go with Soil and Conservation. Would ODFW appeal this? No Option 1 or Option 3 only Option 2, would ODFW appeal?

Jackle then stated that it would not be likely to be appealed because there was a formula with a binding agreement. There is an understanding that the cost will increase over time.

Watts then he stated he wanted the Commission to understand where the parties stand.

Commissioner Bedortha then clarified the Commissions role in being tasked with determining the best option if both parties could not agree on a plan.

Watts replied that it is the County's role.

Commissioner Bedortha said that it appears the parties are a little closer to reaching a consensus, would it be beneficial for the Commission to hold the public hearing open and have the parties work out an option and come back to them with an agreement.

Beier then stated that the Gala project did just that and worked out the in-lieu of option. The work done by the Applicant and ODFW has laid out the expectations much clearer and we are much further ahead on these, than we were last fall. The Commission could hold the record open for a week or two to a date and time certain. They could come back and say they could not reach an agreement.

Stephens asked for further comment on process.

Chair Warren then said the Applicant cannot speak out of turn.

Moeller stated that for the record they do object to keeping the record open and request that the Planning Commission make a decision tonight.

Chair Warren did not hear what Moeller had stated and was provided with a summary of what Moeller had said.

Commissioner Stec also objects to the holding the record open.

Beier stated for the record that the Planning Commission has approved a 2:1 and 1.5:1 ratio for Pronghorn habitat as that may be a little confusing at this point. She then summarized the same points for criteria and provided options for the Commission to move forward.

Commissioner Bedortha then discussed procedure options for the Commission to move forward.

Stephens asked to speak to Option 2.

Chair Warren said no the time for Applicant testimony is over.

Chair Warren then said he is struggling with Option 2.

Watts responded to the parties' positions and concerns. Previously during the County Court hearing, he stated that Commissioner Barney sees staff and the Planning Commission as a trusted body to make a decision for the County's best interest.

Beier then provided an additional option for the Commission, they have both sets of comments on staff proposed conditions, and they could close the hearing and close the record and then go through these line by line with deliberations only.

Chair Warren then asked procedurally about the Applicant's request to reply to ODFW.

Beier stated that we have always known that ODFW prefers Option 2, they did not hear that Option 1 or Option 2 were off the table. They only heard that if it was only Option 2, ODFW would not appeal.

Commissioner Bedortha added that even though that was helpful information, it should and would not influence the decision.

Commissioner Ponte asked County Counsel. Can they offer an opinion on the recommendations from the Applicant in Exhibit 12 regarding Option 1 and Option 3 being specific enough?

Watts responded that if it is located in Crook County and if it is big game winter range, in his opinion that it would be consistent with ODFW. Option 3 still gives pause because of the potential for a lack of informed public participation.

Beier then stated that Option 3 as presented by the Applicant is closer to meeting that public participation.

Watts further spoke regarding Option 3 the land use process.

Beier then stated that the discussion may not have answered the Commissioners questions.

Chair Warren then said that they had 1 through 9 come in today and it is hard to absorb.

Beier asked to confer with County Counsel and they left the room.

Commissioner Bedortha suggested that they close the public hearing to a date and time certain.

Commissioner Ponte then asked if they could close the hearing and take action on the Goal 3.

The Commissioners discussed Goal 3 procedure.

Commissioner Lundquist then stated that he thinks they have heard enough and he is ready to make a decision.

Chair Warren responded that they want to make sure that all the Commissioners have a chance to really absorb all the material that has come in. He stated that if the Commission wanted to move on the Goal 3 he would entertain a motion.

Commissioner Ponte asked if staff and Counsel were finished would the Chair entertain a motion to close the hearing.

Beier responded that there were two comments, one from Eisler and one from Watts.

Eisler provided comment regarding the benefits of Option 3, one of the issues with that one is the public participation, but it could always go through the modification process if they wanted to pursue it later down the road.

Watts provided options for the process. They could leave the record open and receive more data; close the record and debate the issues; or close the record to a time and date certain. Staff likely wouldn't prepare anything new for you but at that time you could go through the conditions.

Chair Warren replied that the Commission talked while staff and counsel were out of the room and don't need any new data, but would like to have time to digest what had been submitted.
Commissioner Bedortha said a fresh start for deliberations would be helpful.

Chair Warren then asked for motion.

Commissioner Hermreck then moved to close the public hearing to a March 31st for deliberations only, on the record.

Commissioner Stec seconded the motion.

Commissioner Manning – aye

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Ponte - aye

Commissioner Lundquist - aye

Chair Warren - aye

Passes 7-0-0

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

Commissioner Ponte said he most likely will not be attending April 14th.

Chair Warren then thanked everyone for their participation.

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

Commissioner Manning – aye

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Ponte - aye

Commissioner Lundquist - aye

Chair Warren - aye

Passes 7-0-0.

Chair Warren closed the meeting @ 8:44 p.m.