



Oregon

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April 28, 2020

Ann Beier, Crook County Planning Director
Community Development
300 NE 3rd Street, Room 12
Prineville, OR 97754

RE: Conditional Use – Crook Flat Solar Energy Facility Number 217-20-000320-PLNG

Dear Ms. Beier,

The purpose of this letter is for the Oregon Department of Fish and Wildlife (ODFW) and the Oregon Department of Land Conservation and Development (DLCD) to provide formal comments to the Crook County Planning Commission on Record Number 217-20-000320-PLNG, Crook Flat Solar Energy Facility (Project). The Project is a 156-acre photovoltaic solar power generating facility and associated transmission line designed to operate for up to 40 years.

Project Site Description

The Project site is located in biological, mapped pronghorn winter range. It is adjacent to two County approved (Tango, Millican) solar facilities and within ½ mile or less of the approved TSR North and Ponderosa solar facilities all within pronghorn winter range (Figure 1). Comprised of a juniper-sagebrush shrubland mosaic with some disturbance, it serves an essential and important function for wintering pronghorn. In addition, the site provides a valuable connection between patches of higher-quality habitat for pronghorn on Powell Butte. Pronghorn are known to have used the site in recent years as evidenced by recent observations.

DLCD's Solar Rule and Wildlife Standard

OAR 660-033-0130(38) includes provisions to protect farm and ranch lands from the possibility of conflicts generated from the presence of a utility scale photovoltaic solar development. The applicant is responsible for demonstrating compliance with the criteria to address conflicts, such as farm practice compatibility, soil erosion and compaction, as well as weed abatement. The applicant is also responsible for demonstrating compliance with OAR 660-033-0130(38)(j)(G), which includes criteria and standards to address conflicts with wildlife habitat, including compensatory mitigation. The intent of DLCD's wildlife standard was to address potential impacts of solar development to wildlife, including a broader set of wildlife habitats than those currently identified in a county's acknowledged Goal 5 inventory. Permitting land use and

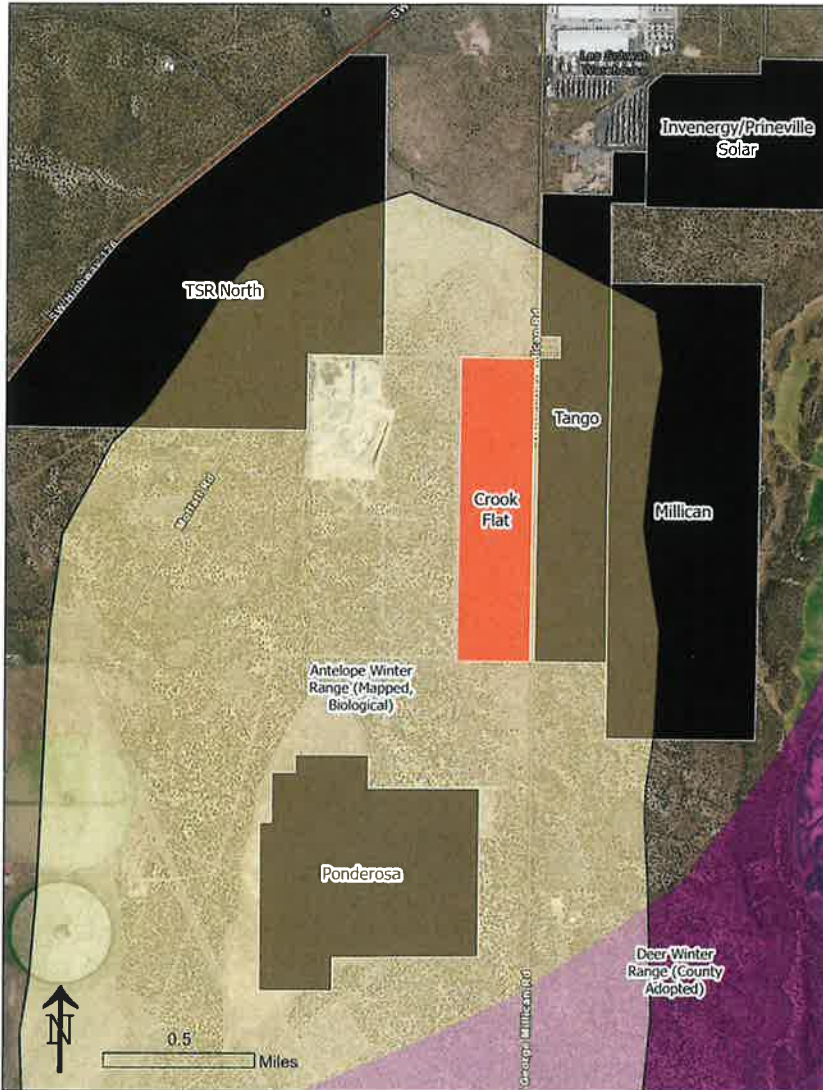


Figure 1. Map of Crook Flat Project Site and Surrounding County Approved Solar Facilities.

development actions that remove either the function or the existence of those wildlife habitats is counter to the intent of the rule, and therefore appropriate compensatory mitigation for unavoidable impacts, consistent with the wildlife standards, is necessary.

Agency Consultation

The property owner’s agent (Applicant) discussed the Project as well as potential mitigation options with ODFW on March 2 and 19, 2020.

During those calls:

ODFW:

- Explained the Project site’s wildlife value.
- Indicated that mitigation would be recommended due to the loss of pronghorn habitat associated with habitat removal within the solar array, fencing and any ancillary facilities and transmission lines, consistent with the DLCD solar rules (OAR 660-033-0130(38)(j)(G)).

- Recommended that mitigation be at least equal to the acres impacted such that there should be no net loss of habitat quantity or quality, as well as a net benefit in habitat quantity or quality (consistent with the Category 2 mitigation goals of the ODFW Fish and Wildlife Habitat Mitigation Policy OAR 635-415-0025).
- Explained that mitigation should address risk of failure in habitat mitigation actions (for example, unintended weed invasion in areas of juniper treatment).
- Described the past precedent for approved solar projects in Crook County used a 2:1 mitigation ratio to offset potential adverse effects and buffer against potential failure or decline in the mitigation site's habitat value.

The Applicant:

- Explained they were considering a traditional, permittee-responsible mitigation project involving juniper treatment but did not have a specific site identified, as well as a payment-in-lieu option to ongoing conservation projects in the region (such as the Aspen Valley Ranch project managed by the Deschutes Land Trust).

ODFW:

- Shared the recently completed "Wildlife Conservation Strategy, Millican Solar Energy Project" as a template for a successful payment-in-lieu mitigation option.
- Conceptually agreed that the Applicant's proposed mitigation approaches could work, but made clear that more specific information (consistent with OAR 635-415-0020(8)) would be needed to determine whether potential adverse impacts would be offset, including:
 - A map of potential mitigation sites, for all options under consideration,
 - Demonstrated willing landowner(s),
 - Demonstration of how mitigation will remain durable for the life of the Project's impacts,
 - Clearly-defined habitat restoration/improvement actions using reliable methods,
 - A monitoring plan with clear, measurable success criteria and a reporting schedule.

Note: ODFW and the Applicant did not discuss impacts of the proposed transmission line, be they temporary or permanent, during the March calls.

Review of the Wildlife Conservation Plan

On the evening of April 23, after the Crook County Planning Department published their Staff Report, ODFW received the Applicant's Wildlife Conservation Plan (Plan). It is ODFW's understanding that the Plan is serving as the Applicant's wildlife habitat mitigation plan. ODFW feels obligated to point out the inadequate time the Applicant provided for review and consideration of the Plan (6 days), especially given the discrepancies between what ODFW discussed during the March calls and what the Applicant ultimately represented in the Plan.

Nevertheless, ODFW provides the following preliminary review of the Plan, focusing on the DLCDD Division 33 solar rules (OAR 660-033-0130(38)(j)(G)), which state that the county must find that the applicant's proposed mitigation offsets potential adverse effects to wildlife habitats (as described in subsection G). In addition to the primary issues discussed below, ODFW has attached its tracked comments in a pdf version of the Plan.

- ODFW appreciates the Applicant's commitments to avoiding potential impacts to state- and federally-listed and sensitive species. The Plan states that no listed species or nesting raptors were found in the Project area. However, it does not provide a description of survey methods, so it is unclear what information the Applicant's consultant used to make this determination, and ODFW cannot confirm that it accepts the survey methods
- The Plan incorrectly used the ODFW COMPASS Habitat Mapping Tool. Habitat Categories (as defined in OAR 635-416-0025) are not mapped in the ODFW COMPASS Habitat Mapping Tool. Perhaps the Applicant's consultant applied the scores from the Crucial Habitat Assessment Tool (CHAT) as equivalent to the Habitat Categories in the Mitigation Policy. However, this is not correct. Nor are the Project site's habitat functions and values consistent with a Category 6 determination, which is reserved for paved parking lots, industrial brownfields, and heavily-tilled agriculture monocrops. As discussed above, the site is still intact and functions as essential and important pronghorn habitat.
- The Plan proposes three options for mitigation of the 156-acre Project site, to be decided at a future date, prior to construction:
 - Option 1 – Juniper Treatment Mitigation Project in Crook County.
This would involve juniper thinning or 'treating sagebrush/bitterbrush habitat next to juniper stands', however the Applicant does not list the site-specific methods and prescriptions to benefit pronghorn. The Applicant indicates the work would take place within Crook County winter range of similar habitat type, but does not provide a map of potential sites. Option 1 lists a number of potential methods for assuring site protection, however some of those are not clearly defined and may not be adequate (for example, 'other contractual restriction' is not defined, 'reasonably expected' is not defined), and this list alone does not provide any assurance or evidence of durable mitigation. The term of the protection is also not defined but should include the life of the Project's impacts (including decommissioning and reclamation). Demonstrated willingness from potential landowners is also not provided. While we appreciate the effort and cooperation from the applicant, the Plan does not provide sufficient information to demonstrate that Option 1 will offset potential adverse effects.
 - Option 2 – One-Time Payment.
This would involve an in-lieu mitigation payment to Deschutes Land Trust to advance their working lands conservation initiatives in Crook County. The Applicant provides a mitigation cost calculation similar to that used in the Millican Solar Wildlife Conservation Strategy (approved by Crook County in January 2020). ODFW accepts most of calculation except the reduction of the mitigation ratio from 2:1 (Millican) to 1:1. ODFW recommends a 2:1 mitigation ratio (see above for ODFW's reasoning). And while the Plan mentions Aspen Valley Ranch in its cost calculation, it does not identify that property by map or by description to demonstrate that the offsets will be in-kind and in-proximity and capable of being tracked over time. ODFW recommends a specific project area be included for which the mitigation payment would benefit [OAR 635-415-0020(8)(c)]. The Applicant also does not provide documentation of Deschutes Land Trust's willingness to accept responsibility. ODFW recommends documentation be provided. A plan for monitoring and reporting to ensure the

mitigation is maintained for the life of the Project's impacts are also not described, nor are responsible parties defined. ODFW recommends a monitoring and reporting plan be described, subject to finalization with Deschutes Land Trust prior to payment and prior to construction [OAR 635-415-0020(8)(e)].

- Option 3 – Alternative Mitigation Measures Agreed to by ODFW
This does not demonstrate how potential adverse effects would be offset, therefore it is not consistent with the LCDC solar rules. ODFW recommends this Option be omitted in the final approval.

- The Plan does not address permanent impacts associated with the Project's transmission line. Furthermore, ODFW expected to see a revegetation and noxious weed plan to minimize the temporary impacts associated with construction however none was provided. ODFW recommends the Plan address the impacts of the transmission line, as well as objectives for revegetation and noxious weed treatment and monitoring.

ODFW & DLCD Recommendation

At this time, the Plan does not provide the specific mitigation for this CUP. Therefore, we lack sufficient information to concur with the Applicant. Without the information recommended above, there is no evidence to support a determination that potential adverse effects on big game winter range will be offset. For this reason, ODFW and DLCD recommend Crook County either deny the application or delay its decision on this CUP until the Plan is amended with the necessary information.

Thank you for the opportunity to comment, and for your continued commitment to protecting Crook County's fish and wildlife habitat resources. Should you have any questions or require additional information, I can be reached at (541) 447-5111 x26 or by email at greg.s.jackle@state.or.us. For questions regarding the DLCD rules please feel free to contact Jon Jinings at (541) 325-6928 or by email at jon.jinings@state.or.us.

Sincerely,



Greg Jackle
District Wildlife Biologist
ODFW – Ochoco District



Jon Jinings
Community Services Specialist
DLCD

cc. Sarah Reif, Joy Vaughn, Sara Gregory, Mike Harrington – ODFW
Erin Donald – ODOJ
Scott Edelman – DLCD