

CROOK COUNTY PLANNING COMMISSION MEETING

April 29, 2019 – DRAFT MINUTES

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, in addition to Chair Warren were Linda Manning, Gary Bedortha, Laquita Stec and Bob Lundquist. Commissioners Susan Hermerck and George Ponte was not present and did not participate. County staff Ann Beier, Hannah Elliott, and Katie McDonald were also on the phone. Chair Warren 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)

- Jon Jinnings – Department of Land Conservation and Development (DLCD) submitted written testimony with Oregon Department of Fish and Wildlife. His contact information is on the submitted letter.
- 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 – Crook Flat Solar Farm - Applicant- New Sun Energy – contact information is on application
- Mark Boissevain – Crook Flat Solar Farm- New Sun Energy – contact information is on application
- Paul Stern – Crook Flat Solar Farm-Applicant- New Sun Energy – contact information is on application

APPROVAL OF MINUTES

March 11, 2020 – Commissioner Manning moved for approval of the minutes. Commissioner Bedortha seconded. The Commissioners present approved the motion by a vote of 4-0. Lundquist abstained, as he had not been present at the March 11, 2020 hearing.

April 8, 2020 – Commissioner Steq moved for approval of the minutes as corrected (stated on record with an acknowledgement that the Final Decision had a typo in the appeal language – it read as this decision was approved when in fact the application was denied). Commissioner Bedortha seconded. The Commissioners present approved the motion by a vote of 4-0. Lundquist abstained, as he had not been present at the March 11, 2020 hearing.

PUBLIC 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. The Planning Commission did not conduct a site visit to the subject property. Chair Warren asked if any member of the public on the phone wished to challenge any member of the Commission. Staff unmuted the phone lines and no member of the public raised any challenges.

The Chair asked staff to present. Ann Beier, Community Development Director, provided an overview of the project, key criteria, and process to date. The project is a commercial photovoltaic solar facility, 156 acres, it is west of Millican Rd almost directly across from the Tango project previously approved. This property meets the criteria for soils, non-arable soils with no irrigation, limited seasonal grazing, properties to the north are zoned industrial, and there is the Portay gravel pit to the northwest. Several powerlines runs through it including a large PacificCorp line.

The Crook County code language in 18.16 which was updated with the model code adopted state language and criteria and mirrors the state language and ordinances. The Conditional Use criteria can be used to balance this use with other outright allowed uses and mitigate impacts to address criteria. Also the specific criteria for commercial power generating facilities in 18.161. Once the initial construction phase is completed there is not much impact for the duration of the project. There are not residential properties in the area, the uses in the surrounding area are zoned for more intensive uses.

Staff received a couple of exhibits on Monday that are not reflected in the staff report. They include: a Traffic Impact Analysis, some additional potential routes for the associated transmission lines. When approving the commercial facility staff also makes finding for the associated transmission lines as they have different statutory criteria. The Traffic Analysis shows that the anticipated impact after construction of 4 trips/day. Construction traffic will not have a permanent impact on infrastructure. Bob ONeal the County Roadmaster has reviewed this project and there is an existing road access for the Portay gravel pit and this project will be using a shared access off of Millican. A letter from Oregon Department of Fish and Wildlife (ODFW) and Department of Land Conservation and Development (DLCD), was received and added to the record, it raises some concerns regarding the mitigation plan for this site as it is in mapped pronghorn wildlife winter range for the entire property. The mitigation

plan requirement is consistent with what we have done with other projects, most recently the Millican site, being developed by Invenergy.

Beier then called the Commissioners attention to a few of the Conditions of Approval:

Condition of Approval #11, a condition of approval related to Oregon Department of Fish and Wildlife, this condition was added prior to the receipt of their letter.

Condition of Approval #22 would be removed as the applicant has submitted the Traffic Impact Analysis.

Condition of Approval #20, related to a vegetation removal plan. This condition provides the applicant options for removal of Juniper trees. A previous developer ran into trouble regarding Juniper disposal and approval needed from Department of Environmental Quality to burn the Juniper. This condition is to provide the applicant options for Juniper removal prior to getting into a permitting situation for burning Junipers.

Based on the letter received from ODFW & DLCD and because the planning commission has not seen the mitigation plan, (staff received mitigation plan today), staff requests that the record be kept open to allow staff to revise the staff report to reflect the additional information received, including the Traffic Impact Analysis, transmission line findings and to address the Mitigation Plan. The applicant also would have more opportunity to work with ODFW, so that we can be comfortable that the big game habitat is addressed. Tonight you could continue to take testimony and then leave the record open for those very limited items. Beier then asked for questions from the commissioners.

Chair Warren called on each Commissioner for questions of staff.

Commissioner Manning had no questions.

Commissioner Bedortha asked staff about Condition 11- wildlife habitat. Beier responded that Condition 11 has to do with the Wildlife habitat and considering the applicant is still working with ODFW staff wanted to make the Commission aware that the condition may be revised. The Commissioner comments that the condition as written addresses the bird and water but is not explicit with the Big Game habitat. Beier responded that the Big Game condition would be updated to reflect the mitigation with ODFW. Commissioner Bedortha acknowledged that the written letter received from ODFW & Jon Jinnings also addresses the need for Big Game mitigation, going so far as asking for a denial if not addressed. The Commissioner then asked staff if it would appropriate to ask the applicant to limit the number of proposed transmission lines to their top 3. Staff responded that they could make findings on all of the routes to give the applicant options, but it would be an appropriate question to ask of the applicant. Commissioner Bedortha asked if it was appropriate to discuss conditions of approval at this time. Staff responded that yes, that way it would give staff the time to make changes to the staff report if the commission kept the record open to capture any further revisions.

Commissioner Bedortha then asked about Condition #7 which concerns lighting. He stated that as light pollution is becoming a more present item in our area, is 24/7 lighting needed? Could it be limited to only when staff is there or if there is a safety concern? Next he asked about Condition #10 which is fencing, he would like to see a corner gate for wildlife emergency exit. Already addressed Condition #11.

Commissioner Stec asked staff to clarify what exhibits were received on Monday and which received today. Staff responded that the Traffic Impact Analysis was received on Monday and the Mitigation Plan today. Commissioner Stec then asked about Condition #11 which is related to Wildlife and will be addressed with the Mitigation plan and Condition #22 is related to Traffic Impact Analysis (with #22 be removed). Commissioner Stec asked about Condition #20 and why it was needed. Staff responded that they have found that giving options for Juniper removal provided more guidance if DEQ permitting was necessary. Commissioner Stec offered support for Commissioner Bedortha's comments on lighting and the staff recommendation is to leave the record open so there is time to review everything and get it back to the commission for review.

Commissioner Lundquist offered support for Commissioner Bedortha's comments on lighting. He then asked about Condition #11 and recognized that there is an Elk herd in that area, even if it is not mapped habitat. He would like to have elk recognized as a part of the discussion and staff agreed that it could be a part of the discussion and ask the applicant and ODFW to work through the mitigation that they might identify things that would work for both pronghorn and elk as big game. Staff suggested that adding corner gates could benefit all big game. Commissioner Lundquist said that the commission has approved many of these applications and this one seems to merit approval like the others just need to take care of some of the issues.

Chair Warren asked about Condition of Approval #14, regarding Fire and Rescue and submission of a plan. Beier responded that the applicant has submitted a plan and Russ prefers to have the submittal be a tentative plan so if there are changes based on the final layout, design or product that there is more flexibility knowing that it will be fine tuned in time.

Chair Warren called for any state or local agency to testify.

Greg Jackle, ODFW. Most of the concerns are listed in the letter and agrees with staff to leave the record open to continue to work through those issues. He would like to agree with Commissioner Bedortha's comments regarding side gates. If there are a chance to have big game get into the facility, then having gates would be a good way to funnel them out. Comments on the Juniper removal, there is potential that the Crooked River Watershed Council may be interested in utilizing them for restoration if they have an attached root ball. He agrees with Commissioner Lundquist regarding a large elk herd in

that area. It is a concern with the number of approved projects in this area there is a risk of funneling and having smaller area and to keep in mind for future discussions.

Commissioner Lundquist was appreciative of ODFW's recognition that the elk are being impacted by saturation of development.

Commissioner Bedortha, commented regarding wildlife- when an applicant is asked to address wildlife isn't it based on the habitat maps for the applicant to be burdened for mitigation. Jackle responded that area isn't a mapped Goal 5 area as the Ordinance 259 was not approved. ODFW has requested that it be addressed even if it isn't specifically called out in particular to pronghorn. Commissioner Bedortha expressed concern that for the applicant the playing field should be level regarding the mitigation required for wildlife habitat and other species. Commissioner Bedortha also asked Greg Jackle about the applicant's response that it referenced an amendment to the Crook County Code that had not happened. Jackle responded that they had sent historical documentation to the applicant's consultant for their information and indeed it was the Ordinance 259 that had not been approved.

Jon Jinnings added that the scope of the solar rule as it was written to anticipate the presence of wildlife and value of habitat, therefore it would be appropriate for the County to look at mitigation. They were not positioning itself to oppose the project but that there would be certainty and durability of the project to offset the impact to the wildlife.

No questions from Commissioner Manning or Commissioner Stec.

Next, Jake Stephens, New Sun Energy, applicant, Crook Flat Solar Farm, started out thanking the Commission and everyone for their time and proceeding with a public hearing during this time of COVID permitting process. He stated that the Crook Flat Solar site has many options of where to tie into the larger grid with many options. There are many studies are happening to determine the best way to interconnect looking at cost and options for offload and the need to have many different options for the transmission lines. They only expect to build one of those options and hope that it is on site, but it will depend on where they are instructed to interconnect.

He stated that the main discussion still happening is with ODFW and the mitigation for habitat. He also would like to ask some procedural questions regarding leaving the record open. He would like to make sure that if the applicant and ODFW cannot come to a 100% agreement that the application can still be approved with ongoing discussions. He said that at a very high level they had agreement with ODFW and there are some discreet points that were still being worked out. The applicant has proposed some compromises to ODFW since submitting the original mitigation plan, again he asked that the application not be denied if they could not come to a full agreement. It could be a typical condition that an agreement be in place prior to construction. Stephens stated that his proposal would substantially be in conformance precedence regarding mitigation.

Stephens mistimed the submission of the mitigation plan with ODFW and to Crook County. The site is identified as antelope range and the question of elk has been brought up. When dealing with big game mitigation it is the same types that would be used for both pronghorn and elk. The applicant is amenable to putting gates in the corner for wildlife exits.

Stephens then went on to explain a bit of history for New Sun Energy and development in Oregon. He stated they have 13 CUPS (Conditional Use) in 5 different counties and explained where those were with how much wattage.

The applicant had a group call with ODFW early on in the process and ODFW recommended mitigation of 2-1 mitigation with no net loss be approached with Juniper removal type mitigation where they do a habitat assessment, with habitat enhancement that removes juniper and restore grazing and related attributes for big game. They further recommended and specified to do that on the Aspen Valley Ranch project with the habitat enhancement project. The applicant went on to discuss specific differences and options they and ODFW had regarding the habitat, mitigation specifics for the plan.

The applicant is continuing to work with ODFW for mitigation requirements and an approved plan.

Stephens asked the Planning Commission to allow the applicant to continue to work with ODFW to get an approved mitigation plan and also recognize that they may not come to a final agreement within the timeframe of a continuance. He went on to explain further the options for mitigation which will need to be approved through ODFW. He asked again for safe harbor conditions from the Planning Commission if they were not able to get a 100% sign off from ODFW.

Stephens added that they had already submitted changes to ODFW of the mitigation plan and Paul Stern could speak to those if the Commission would like to have any further specificity.

Ann Beier said that because staff and commission had not seen the mitigation plan yet, going into details would not be a helpful at this point. Discussing the process to get to mitigation might be helpful but details would not be.

Chair Warren stated that until the commission had the plan in front of them for review, they would not be able to weigh in on it. Chair Warren also addressed leaving the record open as it would be to get the information needed to make a decision and allow staff time to reflect those items that had been received after the staff report was written. He went on to say that the commission had seen other projects get worked out and be able to move forward. Leaving the record open allows staff to do their job, get it to the commission and allow them to do their job.

Chair Warren asked if any of the other applicants would like to speak – Mark and Paul didn't have further comments. Paul did mention he had a good call with Greg and is hopeful they could resolve differences

Chair Warren then asked the Commissioners if they had any questions for the applicant.

Commissioner Manning asked about page 3 of the staff report has that a no hazard has not been received from the FAA, should we have received that.

Stephens responded that they have begun the process and it is not customary to have that response at this point in the process.

Commissioner Manning also asked about the life expectancy of the solar panels being about 20 -25 years and the application shows a 40-year project. Do you expect that there will be another point of major construction?

Stephens responded that the 20-25 years was like a warranty in that they would have low percentage of degradation but the life is much longer. They didn't expect to have additional major construction, just routine maintenance and perhaps replacement of the panels but not structures.

Commissioner Manning also asked about the facility being close to the gravel facility and if there would be a dust issue.

Stephens responded that it would not be an issue.

Commissioner Manning also asked about the 50 foot offset on north side of the project. She asked about an offset on the Millican road side.

Mark Boisessain responded that there is a Pacific Corp easement on the northside of the project and they would not have any structures in that easement. He stated that on the west side of the property the Pacific Corp line is on the adjacent parcel.

Ann stated that on page 28 of the staff report #19 there is a condition for a buffer and that should state it is along Millican, not along Hwy 126. Condition #19 would be updated for a 50ft buffer of existing vegetation along Millican.

Mark stated that there is easements and fiber optic line already running along the west side of Millican and should not be an issue.

Ann stated that Condition of Approval #19 will be revised and there are existing utility easements along the west side of Millican so property will not be taken away from the project.

Commission Manning confirmed that the fencing will be chainlink with no slats.

Commission Bedortha would like to have a clearer definition for the 50 foot setback, is that from right of way or utility easements. He asked the applicant to narrow down the alternate transmission lines to 3 possible routes. His other questions will wait to see how they shake out.

Stephens asked staff regarding the buffer, considering there were already right of way easements if they had to double up on the setbacks or reduce the setback.

Ann responded that the intent of the 50ft is to keep the vegetation buffer and asked the applicant to provide a map of what is present on the site and distances. The intent of the condition is have a vegetative buffer.

Stephens didn't consider that would be a criteria for every project and asked for consistency.

Boissevain asked if fencing could be within the buffered area or if it was for all structures.

Beier stated that same request of the Hwy 126 would be applied to this application as well. She also asked that the applicant show a map that would show the vegetative buffer and then determine the width. Under the Conditional Use criteria 18.160 a buffer would be an appropriate condition of approval not just for this type of development.

The applicant said they would look at that criteria and get more information to staff.

Commissioner Bedortha restated his question regarding the Transmission Lines.

Stephens responded that they would look at the options they had laid out and would narrow it down based on their cost studies.

Commissioner Bedortha clarified his position on requesting specificity on where to measure the 50ft setback from.

Commissioner Stec has no further questions

Commissioner Lundquist lost part of the discussion but he would like to have visual buffer start out of right of way.

Stephens responded that there are already utilities in the right of way and would not likely be built out.

Commissioner Lundquist restated that the buffer is for visibility.

Stephens responded that it is space that they have to pay for but can't use. The previous application there were other factors to consider and he doesn't believe that this statute or criteria based and was mutually agreed to on previous applications.

Commissioner Lundquist stated that he felt it was important to keep the 50ft buffer for the public.

Chair Warren asked about lighting for when the project is done?

Boissevain responded that the main area where lighting is required is the substation yard and may include some lighting at the entry way, for obvious reasons – the intent would be required when people are on site. Lighting would be LED and pointed down, they are really only needed when there is an emergency and where people need to be safe and work on a 115kv substation. They do not need to be lit when people are around and they would look into it. Solar fields do not require 24/7 lighting.

Chair Warren asked Chair Bedortha confirmed that the lighting does not need to be on 24/7 just a safety concern.

Chair Warren then asked for anyone in favor – Hannah spoke that the only other two on the line are state agencies and all the lines were unmuted.

Chair Warren asked for anyone in opposition – all the lines are unmuted

Chair Warren then asked for any neutral position

Chair Warren noted none.

Chair Warren then asked the application if there was anything else. He said generally they would ask for applicant remarks even though there was nothing to rebut.

Stephens referenced previous comments about keeping the record open and allowing the project even if they were not in 100% agreement with a mitigation plan from ODFW.

Ann Beier stated that there had been some corrections noted regarding the conditions and updating with staff report.

Chair Warren asked for a motion to keep the record open and provide staff with specific directions. He stated that the mitigation needed to be worked out and then asked staff to help make sure the items that needed clarification were included in the record being left open.

Beier stated that there would be clarification for the associated transmission lines and show alternatives so the staff report can address those lines. Recommended to remove condition #22, update staff report to reflect the findings of the traffic analysis. Talk about the process for leaving the record open and updating the staff report and the mitigation plan. The other concerns have been addressed. There is 7 days to accept new evidence (May 6th) to include getting a copy of the mitigation plan with applicants changes and comments from DLCD and ODFW, then another 7 days for review and comment on anything that was submitted during that time (May 13), then 7 days for applicant's final argument (May 20). That is the minimum to leave the record open and the Commission can limit as to what can be submitted.

Chair Warren then said with that they would close the public hearing and then leave the record open for those limited items. Chair Warren stated that he would not want to have two hearings on the same night so the 20th would be better.

Beier said it would depend on the applicants ability to provide the materials in a timely manner.

The applicant stated they would have the updated materials quickly.

Beier clarified the process for the applicant and clarified that the Commissioners could not make a decision without all of the information and an updated staff report.

Chair Warren asked that staff mute all lines except those of the Commissioners for the motion and vote.

Commissioner Bedortha asked for clarification from staff about a motion for with a continuance to May 20th at 6pm, a date and time certain. With an updated staff report for clarification of the issues we have talked about but limited to the issues talked and done through a staff report.

Beier responded that the motion is to close the hearing but leave the record open for corrections to the staff report and a revised mitigation plan.

Commissioner Bedortha, Chair Warren, Commissioner Stec and Ann Beier worked through specifics of how to word the motion for a continuation for deliberations only.

Commissioner Manning asked for clarification regarding Condition #18 and do they need the determination prior to making a decision. Staff responded that there may be a delay in response from the agency in today's climate and in the staff report it mentions that we have had projects in that vicinity that have had no hazard determinations and that there is a tall power line to the north of the project that is closer to the airport. There is reference in the record that the FAA has the paperwork for a determination and we have allowed projects to be approved prior to receiving the determination and notice was sent to the Prineville Airport.

Katie McDonald brought up re-noticing for the May 20th date. Ann responded that she will check with county counsel regarding noticing requirements. (Staff reviewed notice requirements. No re-notice is necessary).

Chair Warren called for a motion.

Commissioner Bedortha would like to make an open ended motion to close this portion of the public hearing and leave the record open to a date and time certain, which staff will confirm, May 20th @ 6pm and specify issues that need to be addressed:

1. Corrected staff report including conditions of approval, specifically #22
2. Mitigation plan finalized or have a working agreement that we can look at to approve with ODFW
3. Applicant work with staff for clarification of associated transmission lines
4. Clarification of the 50 foot setback along Millican Road
5. Leave the record open

Commissioner Lundquist seconded

Commissioner Manning would like to add the application number to the motion 217-20-000320-PLNG

Chair Warren asked for a vote

Commissioner Manning -aye

Commissioner Bedortha- aye

Commissioner Stec -aye

Commissioner Lundquist-aye

Chair Warren -aye

Motion Passes 5-0 from the Planning Commission member participating.

Chair Warren thanked everyone for participating and working with us on this.

The phone lines were open and the Chair Warren asked if anyone had any questions regarding the timelines, at a in-person hearing they normally would not ask for further questions, but with the phone in meeting if there were any questions on the timelines.

The Chair closed the hearing.

Jon Jinnings spoke up and commended the fact that hearings were being held and moving applications forward. This is tough but a tribute to the customers and folks and a good way to go.

Commissioner Lundquist asked about the hearing on the 13th and if the date for hearing this on the 20th was because of the timelines. Chair Warren confirmed that it was due to the 7,7,7-day timelines.

Staff noted that meetings will continue to be held by phone but materials are available on the website or by emailing: plan@co.crook.or.us. Beier said she would check with County Counsel and County Health department if people could meet in person with proper social distancing. Clarification if someone would like to meet in person then just let staff know to make arrangements for social distancing.

Commissioner Lundquist offered kudos to staff for setting all this up.

New Sun offered thanks for making the effort to hold hearings and move forward with applications.

Commissioner Stec made a motion to adjourn, seconded by Commissioner Manning. The motion was approved by the 5 members participating.