



# Oregon

Kate Brown, Governor

## Department of Fish and Wildlife

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## Department of Land Conservation and Development

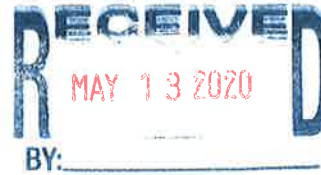
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May 13, 2020

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



RE: Conditional Use – West Prineville Solar Energy Facility Modification Number 217-20-000375-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 217-20-000375-PLNG, West Prineville Solar Energy Facility Modification (Project). The Project is proposing to increase the size from the 320 acres previously approved to a 654-acre photovoltaic solar power generating facility. The expansion of this project triggers the provisions of 2019 Oregon House Bill 2329.

### Project Site Description

The Project site is directly adjacent to pronghorn winter range (Figure 1) and within an important elk movement corridor and generally serves as important habitat for a variety of wildlife including reptiles, small mammals, and migratory birds. The properties are uncultivated and non-irrigated and are comprised of sagebrush and juniper steppe woodland. The Project has a linear power line easement that splits the project roughly in half.

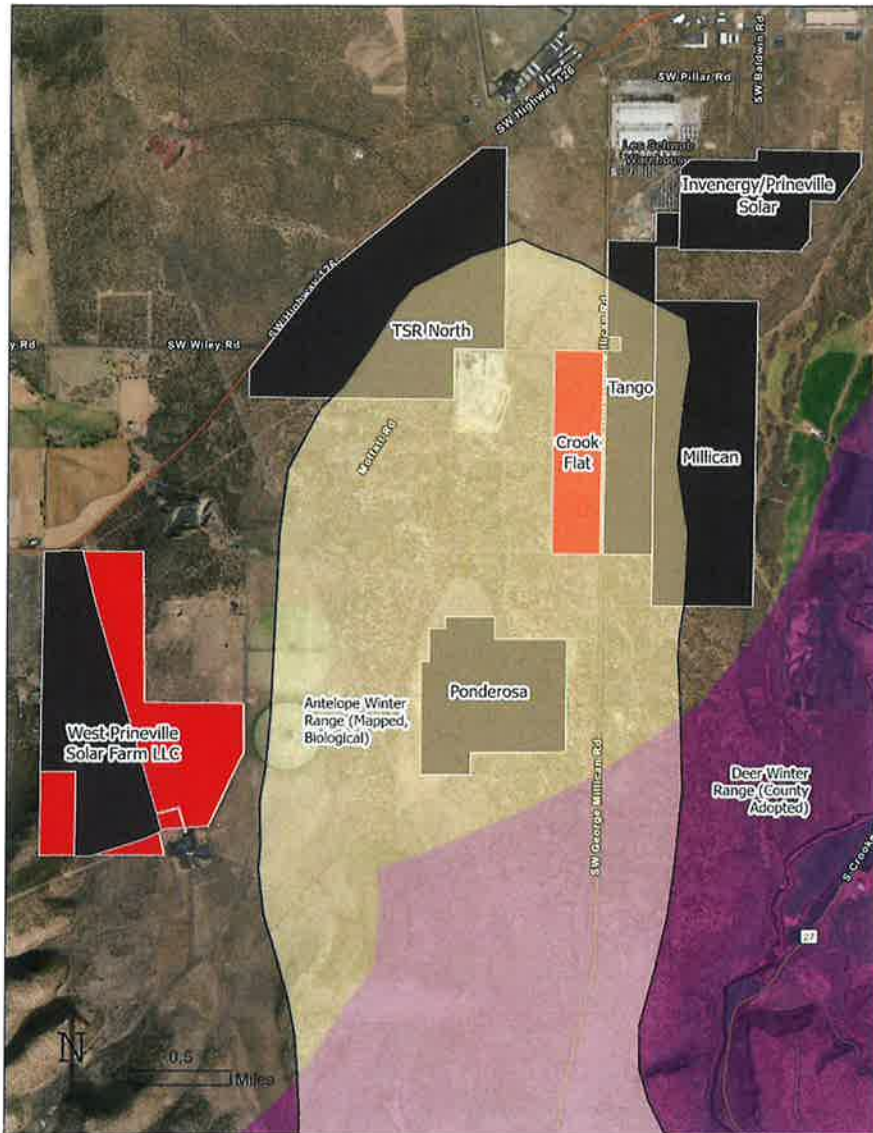


Figure 1. Map of Recently Proposed (Red) and Surrounding County Approved Solar Facilities (Gray).

#### DLCD's Solar Rule and Wildlife Standard

Because the proposed facility exceeds the 320-acre limit for photovoltaic solar power generation facilities in OAR 660-033-0130(38)(f) and (j), the proposed facility is instead governed by ORS 215.446. With respect to impacts to fish and wildlife habitat, and as relevant here, ORS 215.446(3) requires that the applicant do the following three things:

- (A) Consult with the State Department of Fish and Wildlife, prior to submitting a final application to the county, regarding fish and wildlife habitat impacts and any mitigation plan that is necessary;
- (B) Conduct a habitat assessment of the proposed development site; and

(C) Develop a mitigation plan to address significant fish and wildlife habitat impacts consistent with the administrative rules adopted by the State Fish and Wildlife Commission for the purposes of implementing ORS 496.012.

ODFW's and DLCD's assessment of the current status of these requirements follows.

#### **Agency Consultation and Habitat Assessment**

The property owner's agent (Applicant) discussed the Project as well as potential mitigation options with ODFW on March 2 and 19 and May 5, 2020 and submitted their Wildlife Conservation Plan (Plan) on May 6, 2020.

#### **Mitigation Plan Consistent with OAR chapter 635, division 415**

- The Plan does not provide reasonable justification for the classification of the Project site as Category 6 (per OAR 635-415-0025) and mistakenly applies the ODFW COMPASS Habitat Mapping Tool<sup>1</sup> for habitat assessment. The Project site's habitat functions and values are not consistent with a Category 6 determination, which is reserved for paved parking lots, industrial brownfields, and heavily-tilled agriculture monocrops. ODFW has consistently shared this with the applicant on multiple projects to date and yet this misclassification still included in the Project's mitigation plan. Based on current knowledge of the Project site, ODFW would categorize the 334 acres as either Category 3 or Category 4 habitat given its importance for a variety of wildlife including reptiles, small mammals, and migratory birds associated with sagebrush-steppe and juniper woodlands (per OAR 635-415-0025) and thus would need to be mitigated to account for the no net loss criteria (1:1 ratio). Until the Applicant provides a site-specific assessment of the habitat impacted it is impossible for ODFW to comment on whether mitigating 200 acres of the 334 acres is adequate.
- The draft Plan proposes three options for mitigation of the additional 354-acre Project site, to be decided at a future date, prior to construction:
  - *Option 1 – Juniper Treatment Mitigation Project in Crook County.*  
This option describes general habitat improvements that could serve as appropriate mitigation actions. However, the current conceptual proposal is not adequate because it lacks the components outlined under ODFW's Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0020(8)). This includes assurances that mitigation actions will offset adverse impacts, the identification of a specific mitigation site and monitoring framework, among other components. 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 be effective throughout the life of the Project or the duration of the Project impacts (OAR 635-415-0020(8)(g)). 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 meet the

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<sup>1</sup> <https://www.dfw.state.or.us/maps/compass/>

requirements of OAR 635-415-0020(8) and to demonstrate that Option 1 will achieve the applicable mitigation goals in OAR 635-415-0025 to 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 – 217-19-0012228-PLNG). 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 (example MOU/MOA). 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 what the plan for mitigation entails or how it is consistent with OAR chapter 635, division 415 as required by ORS 215.446(3). ODFW recommends this Option be omitted in the final approval.

**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 mitigation will be consistent with the requirements of OAR chapter 635, division 415 and that the application complies with ORS 215.446. For this reason, ODFW and DLCD respectfully recommend the Commission 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, Greg Jackle can be reached at (541) 447-5111 x26 or by email at [greg.s.jackle@state.or.us](mailto: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](mailto: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