

Hannah Elliott

From: Ann Beier
Sent: Wednesday, May 20, 2020 2:16 PM
To: Hannah Elliott
Cc: Paul Stern; Mark Boissevain; Jake Stephens
Subject: FW: Crook Flat Solar Farm LLC Wildlife Mitigation Comments



Hi Hannah –

Can you give this Exhibit #10 for Crook Flat, post it to the website and email this to the planning commission? This is the Applicant's final rebuttal to evidence in the record. Thanks!

Ann

From: Paul Stern <pstern@newsunenergy.net>
Sent: Wednesday, May 20, 2020 2:08 PM
To: Ann Beier <Ann.Beier@co.crook.or.us>
Cc: Mark Boissevain <mark.boissevain@easeengineers.com>; Jake Stephens <jstephens@newsunenergy.net>
Subject: Crook Flat Solar Farm LLC Wildlife Mitigation Comments

Ann,

Thank you for the opportunity to respond to the wildlife mitigation plan concerns expressed at the last planning commission hearing for Crook Flat Solar Farm LLC (217-20-000320-PLNG). We would like this email to be included in the record.

The Applicant would like to point out that the proposed project is not within a Goal 5 resource area as inventoried by the County in the Comprehensive Plan. The proposed PV solar power generation facility is within an area *mapped* as big game winter range for pronghorn antelope by ODFW, as determined by referring to ODFW district maps. The Applicant conducted site-specific consultations for the proposed project area with ODFW on March 2, March 19 and April 29, 2020. On March 24, 2020, the Applicant completed a site-specific wildlife habitat assessment and survey of the subject property to evaluate potential adverse effects to state or federal special status species (Exhibit 1). The Applicant's habitat consultant, a professional biologist, concluded that the site does not provide optimal habitat for pronghorn. As further detailed in the Habitat Assessment, the site-specific assessment documented no threatened, endangered, or sensitive animal species at the site. Further, based on the conditions of the study area observed during the site visit and analysis following the Fish and Wildlife Habitat Mitigation Policy flowchart, the Applicant's professional biologist concludes that the study area would be classified as "Habitat Category 6" for big game. The applicant submitted the Habitat Assessment and a draft habitat mitigation plan to ODFW for review.

On April 28 and May 13, 2020, ODFW submitted comments to the Crook County Planning Department, documenting its review of the Applicant's site-specific assessment and proposed habitat mitigation plan. ODFW did not dispute that the site is not located in an area identified in the County Comprehensive Plan's Goal 5 Inventory of big game habitat for deer or elk or pronghorn antelope and stated that the project site is comprised of a juniper-sagebrush shrubland mosaic with some disturbance, and serves an essential and important function for wintering pronghorn.

Despite the acknowledged disturbed habitat at the project site, ODFW considers the project site to constitute Category 2 ("essential") habitat, under ODFW's Habitat Mitigation Policy, as a matter of course because the project site is located within "mapped" big game winter range. ODFW agrees that fencing the site will not interfere with migration or game movement, because animals will simply move around the fenced area. Therefore, ODFW's primary mitigation concerns relate to potential impacts to forage value at the site. The Applicant's habitat consultant noted in their report that heavy livestock grazing, as evident on the site, is known to reduce grass and forb cover, the preferred forage for pronghorn. ODFW recognized that the site has "some disturbance" but maintains that it still serves an essential and important function for wintering pronghorn. In addition, ODFW states the site provides a valuable connection between patches of higher-quality habitat for pronghorn on Powell Butte. Based on those conclusions, ODFW recommended mitigation to achieve the habitat mitigation goal of no net loss plus net benefit to habitat quantity and quality, pursuant to the agency's Habitat Mitigation Policy, OAR Chapter 635, Division 412. Based on the Habitat Assessment, Applicant believes that the site habitat is more accurately categorized as lower-quality habitat than Category 2 and lesser mitigation is likely required.

Nevertheless, Applicant agrees to mitigation to achieve ODFW's recommended habitat mitigation goal of no net loss plus a net benefit.

The Applicant and ODFW consulted extensively to develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility (the Wildlife Conservation Plan, or "WCP"). ODFW and the Applicant arrived at substantial agreement on most elements of the WCP but were unable to reach final agreement. Accordingly, pursuant to OAR 660-033-0130(38), the County is responsible for determining the appropriate mitigation.

Clearly there is disputed evidence in the record regarding the habitat quality at the site. The Applicant's site-specific wildlife habitat assessment (Exhibit 1) provides an evidence-based discussion supporting the conclusion that the site habitat is of lower quality than that stated by ODFW. However, because the project will be fenced, the project will effectively preclude animals from accessing low-value forage area at the site. Therefore, although the site habitat is in an impacted area, heavily grazed and disturbed, the Applicant agrees to mitigation to offset that effect. This conclusion is consistent with ODFW's recommendation that mitigation be provided to offset that effect. Given the disputed evidence in the record regarding the habitat quality, the Applicant feels that the proposed mitigation in the WCP provides appropriate mitigation to offset potential adverse effects to big game forage habitat at the project site. Furthermore, the WCP includes sufficient commitments to ensure that the mitigation is implemented and that a Condition of Approval will ensure compliance.

The Applicant proposes a Condition of Approval as follows:

As required by Condition of Approval [xx], the Applicant will implement one of three mitigation alternatives detailed in the WCP (Exhibit 6) before construction at the project site:

(1) Option 1 - Juniper Removal Habitat Enhancement:

As detailed in the WCP, the Applicant will first implement "durability" measures to prevent development of or other substantial adverse impacts to offsite in-kind habitat, at a mitigation acreage ratio of 1:1. Those measures include acquiring mitigation property or executing conservation easements or working lands agreements and other mechanisms to prevent development or adverse impacts to the conserved habitat area.

The durability measures will ensure that Applicant identifies and secures replacement habitat for any impacted acreage at the project site, thus offsetting the facility's effect of precluding animals from accessing forage habitat at the project site. Second, the Applicant will improve offsite forage habitat, causing "uplift," as follows: The Applicant will conduct juniper-removal habitat enhancement mitigation to address juniper encroachment on sage-dominant steppe, improving the quality of forage habitat over existing conditions, recreating offsite habitat structure and function that do not currently exist and exceeding the low-quality habitat structure and function currently existing at the project site. Thus, the juniper removal program will provide an additional benefit to big game in locations where big game are known to use and rely on these habitat attributes and at times of the year when such usage can be critical to their survival.

The WCP includes specific commitments to locate the mitigation site(s) in Crook County, thereby providing a direct mitigation benefit to the herd potentially impacted by the project. The Planning Commission finds that this is consistent with ODFW's recommendation that the mitigation actions occur in Crook County or other ODFW-approved habitat in the area. The WCP also includes specific commitments to identify and secure juniper-removal habitat mitigation sites and to implement failure buffers to account for re-encroachment of junipers back into the treatment area.

As required by the WCP and Condition of Approval [xx], the Applicant shall either complete Option One mitigation or secure a binding agreement to implement Option One mitigation before construction.

The Applicant's juniper removal enhancement proposal, in conjunction with Condition of Approval [xx], satisfies OAR 660-033-0130(38) criterion (G).

(2) Option 2 – One-Time Payment: As detailed in the WCP, the Applicant may make a one-time payment to Deschutes Land Trust or other similar land trust organization for wildlife conservation and enhancement. If Applicant chooses Option 2, Applicant shall provide the County with proof prior to construction that a one-time payment, as detailed in the WCP, has been made to Deschutes Land Trust or similar land trust organization for wildlife conservation enhancement. Therefore, the Applicant's proposal to provide a one-time payment, satisfies OAR 660-033-0130(38) criterion (G).

(3) Option 3 - ODFW Alternative Agreement: As detailed in the WCP, the Applicant may propose alternative mitigation consistent with ODFW's Habitat Mitigation Policy for ODFW's reasonable approval in the future. Such mitigation, if agreed to by ODFW, would constitute a cooperative mitigation agreement between ODFW and the Applicant and would not be subject to the County's discretion. Accordingly, the Applicant's proposal to conduct alternative mitigation, subject to ODFW's future agreement, satisfies OAR 660-033-0130(38) criterion (G).

Thank you for the opportunity to provide additional clarification.

Best,

Paul Stern

For Crook Flat Solar Farm LLC

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