

Hannah Elliott

From: Paul Stern <pstern@newsunenergy.net>
Sent: Wednesday, May 20, 2020 4:20 PM
To: Ann Beier; Hannah Elliott
Cc: Mark Boissevain; Jake Stephens
Subject: West Prineville 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 West Prineville Solar Farm LLC (217-19-000029 PLNG). We would like this email to be included in the record.

The increased acreage of the proposed modified PV solar power generation facility, or that of the original application, is not within any area mapped as big game winter range for ODFW, as determined by referring to ODFW 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 26, 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, elk or deer. 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 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, nor is it within any area mapped as big game winter range for ODFW, as determined by referring to ODFW maps. ODFW stated however that the site is near pronghorn winter range 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. ODFW would categorize the additional 334 acres proposed in the modification request as either Category 3 or Category 4 habitat (despite having told the Applicant during earlier consultations that it was likely Category 5 or Category 4 habitat). ODFW agreed that fencing the site will not interfere with migration or game movement, because animals will simply move around the fenced area and the existing transmission corridor would not be fenced off, therefore it would still allow for migration or game movement. ODFW recommended mitigation, for the additional acreage resulting from the expanded solar PV facilities only, to achieve the habitat mitigation goal of no net loss (1:1 ratio), pursuant to the agency's Habitat Mitigation Policy, OAR Chapter 635, Division 412. Based on the Habitat Assessment, the Applicant believes that the site habitat is more accurately categorized as lower-quality habitat than Category 3 or 4 **but nevertheless, Applicant agreed to mitigation to achieve ODFW's recommended habitat mitigation goal of no net loss.**

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 a clear methodology 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, and disturbed by ongoing activities including the regular ongoing use as an alkali stabilized domestic septage site, 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 4) 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. This additional benefit goes beyond ODFW's recommendation of "no net loss".

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).

In Summary, some of the key points are that:

- Applicant and ODFW agree to mitigation to achieve ODFW's recommended habitat mitigation goal of no net loss for the additional acreage resulting from the expanded solar PV facilities only.
- Applicant and ODFW agree to the "ratio" for no net loss, which is 1:1
- Option 1 of the Applicant's mitigation proposal (Juniper Removal Habitat Enhancement) goes beyond ODFW's recommendation of "no net loss" by also providing a benefit.

We feel the WCP (Exhibit 4) as presented, along with an associated condition of approval as outlined above or similar, will ensure that the WCP will achieve ODFW's habitat mitigation goal of no net loss (1:1 ratio), pursuant to the agency's Habitat Mitigation Policy, OAR Chapter 635, Division 412 and that the County will have satisfied their requirements pursuant to OAR 660-033-0130(38).

Thank you for the opportunity to provide additional clarification.

Best,

Paul Stern
For West Prineville Solar Farm LLC

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