

## Hannah Elliott

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**From:** Hannah Elliott  
**Sent:** Wednesday, March 17, 2021 5:46 PM  
**To:** Katie McDonald; Plan  
**Subject:** FW: TSR North Solar CUP Modificaiton Supplemental Information  
**Attachments:** 2021-03-17 - Applicant Response to ODFW COA no. 20v2.pdf



**From:** Paul Stern <ps Stern@newsunenergy.net>  
**Sent:** Wednesday, March 17, 2021 5:36 PM  
**To:** Ann Beier <Ann.Beier@co.crook.or.us>  
**Cc:** Hannah Elliott <Hannah.Elliott@co.crook.or.us>; Moeller, Merissa A. <merissa.moeller@stoel.com>; Jake Stephens <jstephens@newsunenergy.net>; Mark Boissevain <mark.boissevain@easeengineers.com>  
**Subject:** TSR North Solar CUP Modificaiton Supplemental Information

Hello Ann,

Please see the attached document that we would like added to the record.

It covers:

1. Some Factual Corrections we noticed in the Staff Report
2. Highlights and discusses some of ODFW's new requests that they included in Exhibit 9 (Proposed additions to COA No. 20)
3. Our proposed recommendations for COA No. 20

We have included proposed recommendations to the conditions of approval in item 3 at the end of the document, should you wish to include these for the planning commission to consider tonight.

Thank you for the opportunity to comment and for your consideration,

Paul

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Paul L. Stern  
303-442-4259  
303-579-2015 (cell)

Hello Ann,

For inclusion in the planning commission discussion tonight we would like to submit the following three items:

1. Some Factual Corrections we noticed in the Staff Report
2. Highlight and discuss some of ODFW's new requests that they included in Exhibit 9 (Proposed additions to COA No. 20)
3. Our proposed recommendations for COA No. 20

#### **1. Factual Corrections/Clarifications to the Staff Report**

- P.22. *"The Project will be accessed by an existing driveway extending south from State Highway 126. The access has been permitted by the Oregon Department of Transportation (ODOT) (Permit number 10435306 issued in 1995)."* The project will be accessed via an existing private access road that crosses the south side of the property off of Highway 126, which is an ODOT permitted access point.
- P. 26 *"However, the site does have an area that appears on the State of Oregon's wetland inventory".* This is incorrect. There are no areas of the site that contain wetlands on the OR Statewide Wetland Inventory Map. The Applicant provided a Wetland Determination Report that stated: "The National Wetlands Inventory (NWI) (USFWS 2020) does not show any wetlands or waters within the study area" and furthermore, "No wetlands or waters were documented within the study area."
- P. 35 *"Because no development will occur within the setback area, the Applicant would not be responsible for mitigating for impacts within the setback area."* This is incorrect. The reason the Applicant would not be responsible for providing compensatory mitigation for development within this setback buffer area is that ODFW and Applicant agree that this area is not "Cat 2" habitat used by Pronghorn due to its proximity to an active aggregate mine. Development may occur within this setback area.
- P. 38 *"The Applicant has not yet entered into an agreement with a conservation organization or identified a specific mitigation project that will be funded by the payment under this Option."* This is incorrect. The Applicant has identified a site proposal for Option 2 that was developed with SWCD which has been submitted as Exhibit 6 (part 4 of 5).
- P. 42 COA 5. *"The solar field and transmission line will be placed within the site boundary on the site plan submitted with the application."* The Applicant would like to clarify that any associated transmission line (ATL) may be located outside of the property boundary of TL 1223, as shown on p.3 of the site plan (ATL Options).

#### **2. Response to ODFW's Proposed additions to COA No. 20 (Exhibit 9)**

The Applicant has reviewed the proposed additions to the staff report and specifically condition no. 20 submitted by Greg Jackle, ODFW on March 16, 2021.

ODFW has proposed a number of additions/changes to COA no. 20 which are new requests (highlighted in yellow). Applicants response is in Red:

**Location**—The Applicant shall provide location information (map and tax lot number) for a juniper removal project located within pronghorn winter range identified on ODFW's maps within Crook County. The Applicant shall identify the Project acreage.

**Response:** Requiring the mitigation site be within pronghorn winter range, rather than general winter range, limits the availability of mitigation sites. For example, it would exclude the proposal that was prepared by SWCD, that was reviewed by ODFW and that SWCD indicated was an acceptable location to ODFW for mitigation for impacts to mapped pronghorn winter range. Improvements to mapped big game winter will benefit pronghorn as well.

**Juniper Treatment Plan**— Prior to site clearing and grading, the Applicant shall provide a juniper treatment plan for County review and approval. The plan shall include a baseline assessment of juniper (size class, density), noxious weed prevalence on the mitigation project site, the proposed treatment prescriptions and removal methods, and a noxious weed monitoring and treatment plan.

**Response:** This is already addressed within the Applicant's WMP.

**Timing**—Mitigation shall be implemented and completed either prior to or concurrent with development impacts.

**Response:** This is a new request. If the planning commission chooses to include this addition, Applicant proposes to include the language in the Applicant's proposed COA below. (...or subject to a binding contractual agreement to perform the mitigation, as per prior ODFW approved and monitored mitigation projects in Lake County, that Applicant's affiliates have performed.)

**Scale** —The Applicant shall perform juniper removal at a ratio of 2:1 (mitigation acres: impacted acres) for impacts in Habitat Category 2 (mapped pronghorn winter range) and at a ratio of 1:1 for impacts in other habitat categories. Impacts to acres in the transmission line corridor that occurs within the approximately 220-acre portion of the site within mapped pronghorn winter range shall be included in the mitigation acreage requirement. The area within 500 feet of the boundary of the adjacent aggregate site shall be excluded from the acreage requirement.

**Response:** As Applicant has discussed in the WMP and in supplemental submittals, a ratio of 1.5:1 meets ODFW's policy goal of "no net loss and a benefit" and is consistent with other recently approved solar projects in Crook and other Counties.

**Maintenance** —The Applicant agrees to revisit and conduct additional juniper removal as needed within 12 years of the original juniper treatment. Noxious weed monitoring and treatment will also be maintained on a biennial basis.

**Response:** This is a new request and places additional burden on both the Applicant and the County to implement. Juniper treatment involves cutting juniper, not grading the soil and therefore should not introduce noxious weeds more than any other typical activity already occurring on the mitigation sites.

Monitoring —The Applicant shall submit a monitoring plan prior to site clearing and grading to demonstrate the efficacy of the one-time juniper clearing project. This shall include "before" and "after" photos of the site and reports on juniper regrowth during the initial 12-year period. Applicant shall submit biennial report on noxious weed monitoring and treatment.

**Response:** This is a new request and places additional burden on both the Applicant and the County to implement. This assumes a noxious weed problem at the mitigation site for what is essentially a one-time treatment (juniper cutting, not clearing/grading) with a revisit 15 years later to retreat any juniper that has re-established.

c. Implement Mitigation Option 2 (One-time Fee-in-lieu payment). If the Applicant elects to implement Option 2, the Applicant shall make a one-time mitigation payment to a qualified conservation organization using the calculator in Applicant's Wildlife Mitigation Plan (Exhibit 3) before site clearing and grading at the TSR north site.

**Response:** If the planning commission chooses to add this language, Applicant proposes to use the term "formula" rather than calculator as that more accurately reflects the way by which a one-time fee-in-lieu payment is proposed to be calculated within the Applicant's WMP.

### **3. Applicant's Proposed Revisions to Conditions of Approval March 17, 2021**

5. The solar field will be placed within the site boundary of TL 1223 as on the site plan submitted with the application. Any associated transmission line (ATL) may be located outside of the property boundary of TL 1223, as shown on p.3 of the site plan (ATL Options). It is possible that the exact configuration of the solar field array and accessory structures (e.g., substation, operation, maintenance building, ATL) may change as the Project design is finalized. If these changes occur within the approved site footprint, the Applicant does not need to request an amendment. Otherwise, a revised site plan shall be filed with and approved by the Crook County Community Development Department. The Applicant will provide a final site plan showing the location of project components, including the associated transmission line, prior to beginning site clearing and grading.

7. The Applicant shall implement the following practices, recommended by Transight Consulting in the January 25, 2021 Traffic Assessment Letter:

- a. Place a "Trucks Entering Highway" temporary sign on either side of the access to warn motorist on Highway 126 of construction traffic;

b. ~~Develop a shared use agreement with the Por-Tay quarry regarding use of the access road~~ Provide evidence of a legal right to use the Por-Tay quarry access road to the Planning Director before using that road;

c. Identify separate on-site areas for passenger vehicle parking and truck staging; and

d. Coordinate with the Crook County Roadmaster on any permits required for internal site roadways and secondary access roads.

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20. The Applicant shall conduct mitigation for impacts to the Project site as follows:

a. The Applicant will implement migratory bird conservation measures to conduct vegetation removal and construction activities from August 2 — February 28 to avoid impacts to active nest sites (March 1 August 1) or to monitor for nest sites if construction occurs during normal nesting periods.

b. Implement Mitigation Option 1 (juniper removal). Prior to Site clearing and grading, the Applicant shall submit the following information for a juniper removal project:

**Location** — The Applicant shall provide location information (map and tax lot number) for a juniper removal project located within big game winter range identified on ODFW's maps within Crook County. The Applicant shall identify the Project acreage.

**Timing**— Mitigation shall be implemented and completed either prior to or concurrent with development impacts ~~or subject to a binding contractual agreement to perform the mitigation, as per prior ODFW approved and monitored mitigation projects in Lake County, that Applicant's affiliates have performed.~~

**Scale** — The Applicant shall perform juniper removal on the number of acres disturbed by the TSR North project, including the associated transmission line that occurs within the approximately 220-acre portion of the site that is within mapped pronghorn winter range ~~at a ratio of 1.5:1. The Applicant shall perform juniper removal on the number of acres disturbed by the TSR North project that occurs outside the portion of the site within mapped pronghorn winter range at a ratio of 1:1.~~ The area within ~~200 meters~~ of the boundary of the adjacent aggregate site shall be excluded from the acreage requirement.

**Maintenance** —The Applicant agrees to revisit and conduct additional juniper removal as needed within ~~15~~ years of the original juniper treatment.

**Durability** — Before site clearing or grading at the TSR North site, the Applicant shall provide Crook County Community Development with a fully executed instrument preventing development on the mitigation site including but not

limited to a working lands agreement, a deed or outright purchase agreement, or a conservation easement.

**Monitoring** — The Applicant shall submit a monitoring plan prior to site clearing and grading to demonstrate the efficacy of the one-time juniper clearing project. This shall include "before" and "after" photos of the site and reports on juniper regrowth during the initial 15-year period.

c. Implement Mitigation Option 2 (One-time Fee-in-lieu payment). If the Applicant elects to implement Option 2, the Applicant shall make a one-time mitigation payment to a qualified conservation organization using the formula included in **Applicant's Wildlife Mitigation Plan** before site clearing and grading at the TSR north site. The Applicant shall submit documentation of the payment to Crook County Community Development prior to site clearing and grading.

d. Implement Alternative Mitigation Option, Subject to Public Hearing. If the Applicant identifies an alternative mitigation proposal prior to site clearing and grading, the Applicant shall submit documentation of that alternative mitigation proposal to Crook County Community Development. The Planning Commission shall hold a public hearing, subject to the procedures in Crook County Code Chapter 18.172, solely to evaluate whether the Applicant's alternative mitigation proposal satisfies state and local approval standards pertaining to habitat mitigation in effect as of June 12, 2020. The Planning Commission shall not reconsider other provisions of this permit. The Planning Commission shall adopt findings and conclusions and shall approve, approve with conditions, or deny the Applicant's alternative mitigation proposal. If the Planning Commission does not approve the Applicant's alternative mitigation proposal, the Applicant shall implement either Mitigation Option 1 or Mitigation Option 2, as described in the Applicant's revised mitigation plan dated February 10, 2021 and this Condition of Approval 20.

Prior to site clearing and grading, the Applicant shall submit a checklist to the Planning Director to demonstrate that they have met all outstanding conditions of approval. This checklist shall include information on the option chosen for mitigation of wildlife habitat loss and information on how mitigation has been/will be implemented.