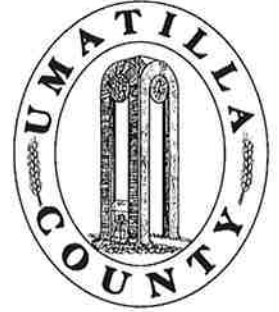


Umatilla County

Department of Land Use Planning



DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

MEMO

TO: Umatilla County Board of Commissioners

FROM: Carol Johnson, Senior Planner

DATE: April 7, 2016

RE: Open Record

APPEAL of Chopin Wind Project, Substation & Transmission Line

Conditional Use Permit Request, #C-1252-15

Land Use Decision, #LUD-194-15

The County Board of Commissioners Hearing held March 28, 2016, on Appeal of the Chopin Wind Project resulted in a request to hold the Record open. The Board granted the request and the Record was allowed to remain open for additional testimony until April 4, 2016. The applicant likewise was allowed seven days in which to respond to the new information. This period ends April 11, 2016. The materials received during the Open Record, to date, are listed in the table below and attached to this memo. Additional responses from the applicant may be accepted through April 11, 2016, and would be forwarded at that time.

Date Received	Commenting Party
March 29, 2016	Comment Letter with Photos hand delivered by Cindy Severe
March 30, 2016	Email Comments sent from Cindy Severe
March 31, 2016	Comment Letter with Photos hand delivered by Jess and Granella Thompson
April 4, 2016	Comment Letter with Aerial Map hand delivered by Jess and Granella Thompson
April 4, 2016	Additional Findings and Conditions of Approval provided via email from Attorney Jeffrey Kleinman representing Blue Mountain Alliance
April 5, 2016	Three Letters via email from Richard Nerzig, Project Manager for Chopin Wind, LLC, Applicant
April 6, 2016	Letter via email from Richard Nerzig, Project Manager for Chopin Wind, LLC, Applicant
April 7, 2016	Letter via email from Attorney Patrick Greg representative for Chopin Wind LLC

Memo

Open Record on Appeal

Chopin Wind Project, Substation & Transmission Line

Conditional Use Permit #C-1252-15, Land Use Decision #LUD-194-15

Next Step

The next step by the Board of Commissioners will be to adopt the additional testimony presented during the open record period prior to closing the record and commencing deliberations on the final land use decision.

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MAR 29 2016

PLANNING DEPARTMENT
UMATILLA COUNTY

Appeal of the Chopin Application to the UC Board of Commissioners

March 29, 2016

Please enter this document and my comments on the record.

The Umatilla County Planning Commission Hearing, Jan. 28, 2016, and the Appeal to the Umatilla County Board of Commissioners, March 28, 2016, examined the dollar amount of de-commissioning the Chopin turbines. In both cases, Mr. Richard Nerzig, stated that the reason the amount was set at that dollar value, is because turbine scrap metals are so valuable. He stated there will be more gain from the salvage values. He also stated that someone may want to scrap them at no charge. Both, the Planning Commission, and the Board of Commissioners are right to be skeptical of this claim. This is asking the County to take a leap of faith on promises that simply have no facts to back them up. Also, rightly pointed out, what is the future to hold for salvage values? No one can determine what 20 years from now this will be. To engage a crane to a de-commissioning site is at minimum over \$15,000.000. Not to mention the labor and time it will take. The amount offered by Mr. Nerzig is an non-starter in the event of de-commissioning. I have also included on the record, abandoned turbines in Mr. Nerzig's home state of California. If someone wanted to scrap these at no charge- they can start in California. But as it stands, these turbines in Tehachapi and Altamont are a rusting eye sore.

Please review this discrepancy in monies for de-commissioning and insist that the BayWa show the proof of de-commissioning fees (cranes, labor, trucks, etc) and what scrap metal values of turbines actually is at present.

Thank you for your consideration,

**Cindy Severe
82422 Vansycle Rd
Helix, OR 97835**

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 3,512 FACTORY RECALL IN DELTA MSRP
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 - \$1,699 TRADE ASSISTANCE - \$2,100 TOTAL ALLOWANCE
 = \$8,262 TOTAL VALUE

KenWare
Offer Details

Chopin Appeal 3/29/16
 Submitted by
 Cindy Severe
 8242 Vanoyland
 Melix, OK 97835

Abandoned Dreams of Wind and Light

by [Jeremy Fugleberg](#)

May 08, 2014

493

Email This Article

From

To

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Abandoned Solar Two Tower (photograph by [Marcin Wichary](#))

Like the vanished, money making dreams that spawned them, it can be hard to find abandoned solar and wind farms.

The most impressive are in the United States, where investors slammed up wind turbines and solar panels in the aftermath of the 1970s energy crisis. Everyone expected oil to get even more expensive, and government subsidies and tax breaks for renewable energy were easy to get. But oil prices didn't climb as anticipated, and as the subsidies went away, so too did many developers of wind and solar farms, no longer interested when the money wasn't right. Projects were sold, or left in the sun and wind.

Solar panels and wind turbines are not brick, concrete, or stone. They're relatively easy to remove, and most are built with a plan to tear them down at some point. But there are a few places you can still go to wander among abandoned dreams of wind and light.

THERE FOR ALL TO SEE

Tehachapi and Altamont Wind Energy Areas California



Tehachapi wind turbines (photograph by [TomSaint11/Wikimedia](#))

Tehachapi and Altamont are the granddaddies of them all — sites of a 1970s-1980s wind energy rush gone wrong. Federal subsidies sparked developers into action, crowding what are now considered antique, poorly functioning turbines into particularly windy areas of California.

At [Tehachapi](#) in hapless Kern County, north of Los Angeles, officials had no provision in law requiring developers to cover the future tear-down costs of the wind turbines. At first, that may not have seemed like a big deal. But the federal tax breaks soon dried up and the developers vanished, leaving behind thousands of rusty, cranking turbines standing in rows like soldiers on the windy plain outside Tehachapi.



Tehachapi Pass Wind Farm (photograph by [Ikluft/Wikimedia](#))

Estimates vary on how many of the turbines in the Tehachapi area are defunct. Some range as high as 4,000, but others are lower. No matter how many are abandoned, Tehachapi is definitely a wind turbine boneyard.

To [get there](#):

For a loop drive with great view of the area's turbines, drive south from Tehachapi on Tehachapi Willow Springs Road, hang a left on Oak Creed Road heading east to Mojave. Take Highway 58 north and west back toward Tehachapi to complete the loop.



Altamont Pass Wind Farm (photograph by [David J Laporte](#))

In Altamont, one hour's drive east of San Francisco, California, there are approximately 5,000 wind turbines. All were installed in the early 1980s in the wake of generous federal and state subsidies for renewable energy. Subsequent decades have brought larger, more efficient wind turbines, but there are plenty of aged turbines in the Altamont area, with their telltale lattice-work towers.

The older, smaller turbines are unfortunately efficient bird slicers, and will soon get upgraded by operators in the area to larger, slower speed turbines under a deal to avoid more bird deaths.



Altamont Pass Wind Farm (photograph by [David J Laporte](#))

To get there:

For a good view of the Altamont area wind turbines, drive east from Livermore, California, on Interstate 580. Take the West Grant Line Road exit and either go north to make a left and head east on Altamont Pass Road, or

better, go south to wander among the turbines that stretch between the interstate and Patterson Pass road that runs east-west to the south.

**Solar One/Solar Two
Daggett, California**



Solar Two tower (via eerenmultimedia.energy.gov)

The Department of Energy's [Solar One](#) plant was based on a simple if somewhat wild idea: line up nearly 2,000 mirrors to reflect sunlight on a focal point to heat water, make steam, and generate power.

The plant was completed in 1981, in cooperation with Southern California Edison, L.A. Dept. of Water and Power, and the California Energy Commission. It spread across 126 acres 10 miles east of Barstow, California, generated about 10 megawatts of power, and was in operation from 1982 to 1986. In 1995, additional mirrors were added to the site, which now heated a molten salt solution that could store energy while clouds passed overhead.





Solar Two heliostat (via [Wikimedia](#))

Solar One proved the viability of the molten salt energy storage concept. The site was decommissioned in 1999 and converted by University of California-Davis into a kind of telescope that measures gamma rays hitting the atmosphere.

To [get there](#):

Drive on Interstate 40 east of Barstow, take the Daggett exit, skip past historic Highway 66 and instead take Santa Fe Street east for about three miles. Solar One/Solar Two will be on your left, to the north.

THE DEARLY DEPARTED

Kamaoa Wind Farm
Hawaii's Big Island, Southern tip



Kamaoa Wind Farm in 2006 (photograph by [Rebecca Stanek](#))

A cluster of 37 wind turbines formerly marked [the spot of the Kamaoa Wind Farm](#), at the far south end of Hawaii's Big Island. The small wind farm opened in 1987 and was decommissioned 20 years later after a deal for the turbines' power expired.

Yet the Mitsubishi turbines cranked on, became an ever-worse eyesore, and maddened those who wanted good views of the coast and Pacific Ocean. The farm's owner, Apollo Energy Corp., finally [removed the turbines in 2012](#) and sold them as scrap to China.





Kamaoa Wind Farm in 2007 (photograph by [Christian Razukas](#))

**ARCO Carrizo Plain Solar Farm
San Luis Obispo County, California**



Abandoned Carrizo Plain's solar power plant (via [Center for Land Use Interpretation](#))

There's nothing left of an ambitious plan to generate power from the sun at one of the sunniest places in California, about [70 miles west of Bakersfield](#). But for 11 years — from 1983 to 1994 — Carrizo Plain hosted a 5.2 megawatt solar farm built by Atlantic Richfield Company (ARCO).



Welcome to
Umatilla County

Carol Johnson <carol.johnson@umatillacounty.net>

Re: Chopin Appeal comment for the record

2 messages

Tamra Mabbott <tamra.mabbott@umatillacounty.net>

Wed, Mar 30, 2016 at 6:51 AM

To: ROBIN SEVERE <severe@wildblue.net>, Carol Johnson <carol.johnson@umatillacounty.net>, Tierney Dutcher <tierney.dutcher@umatillacounty.net>

Hello Cindy - Yes, we will add these comments to the record. Carol is out of the office the rest of this week but we will print it and add to the record.

Cordially, Tamra

On Wed, Mar 30, 2016 at 4:27 AM, <severe@wildblue.net> wrote:

Hi Tamra,

Will you add my comments to the record?

This in regards to the letter submitted on the record by Tyson Raymond and his comments about farming impacts w/ wind turbines. Wind leases and noise easements require land owners to sign a gag clause in regards to complaints about the project and monies received.

Since Raymonds have leased several of their tax lots that are farm fields to FPL wind leases, it would seem reasonable to assume that any negative impacts they have experienced with the wind farm being sited on their farm fields would be impossible for them to express. Many wind leases expressly say that the once the land owner has signed, they must be supportive of the wind industry and their practices.

Thank you,

Cindy Severe

82422 Vansycle Rd

Helix, OR 97835

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MAR 30 2016

UMATILLA COUNTY
PLANNING DEPARTMENT

Tamra Mabbott, Planning Director

Umatilla County Department of Land Use Planning

216 SE 4th ST | Pendleton, OR 97801

Phone: 541-278-6246 | Fax: 541-278-5480

<http://www.umatillacounty.net/planning> - Visit our website for copies of planning documents, permit applications and other helpful information.

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

Comments to the Board of Commissioners March 30, 2016

We have 4 points we would like to make regarding the use of Staggs Road vs. Ferguson Road.

1. Tom Fellows, road master, submitted a letter stating Staggs Road was better suited than Ferguson Road. On February 9, Jess Thompson, Jeff O’Harra, Richard Nerzig, and road construction contractor Rod Anderson (who would be doing the work for Chopin and has an extensive background in road building) met on Staggs Road. The road was soft enough due to heavy rain that driving on it left small ruts. Rod Anderson said to all present that Staggs Road needed up to 6 inches of base rock as it was too soft to handle the load of the construction equipment, trucks and tower transports. Ferguson Road was not soft to drive on. At the Planning Commission hearing, Rod Anderson said Ferguson Road was doable when asked by Mr. Rinehart whether Ferguson Road could be used for access to the tower site.

2. As the enclosed picture shows, Staggs Road is a closed road, no one lives on it, there is no need to plow when snow drifts in the road. Anywhere they bust drifts on our road (Johnson Road) and pile them on the fields, it kills the wheat underneath. We do not have any such problem now on Staggs Road, but making this road become an all-weather road would result in this loss of wheat in those spots, a problem we don’t have now. We want Staggs Road kept closed in winter.

3. The entrance to Staggs Road lacks safe visibility as seen in this picture. The corner is square, not real wide, and headed up a slight hill that does not allow you to see what is coming. Previous pictures we entered at the hearing were from the top of that slight hill to show the lay of the road. Farmers use CB radios to make sure no one is coming to keep it safe. On Staggs Road, 7 of the 10 fields have ONLY Staggs Road for access. Any drivers not used to the road could be a hazard. For safety sake, Ferguson Road should be the only road used.

4. When the towers come in corners will undoubtedly be driven on at several locations. Staying on right of way is necessary, even though it is common practice to farm right of way areas. Crops damaged should be compensated, and corners restored. Being farther into a farmer’s fields that the right of way should be in the category of significant increase in cost as well as disturbed land does not produce well for years. Staggs Road entrance is the tightest corner on the planned route. Ferguson Road is a much nicer entrance, with good visibility, a wider road, with a better foundation. While 4 farmers CAN access Ferguson Road (two of these can access and prefer to use Staggs Road), only ONE farmer HAS NO OTHER ACCESS other than Ferguson Ranch, which is self-contained.

Thank you very much for your consideration of our point of view.

Jess and Granella Thompson

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MAR 31 2016

UMATILLA COUNTY
PLANNING DEPARTMENT



Entrance to Staggs Road off York Road

Road Closure sign, Dec 1-March 31

Comments to the County Commissioners regarding Staggs Road usage for Chopin Wind project

April 4, 2016

We would like to make a few further comments on the selection of Staggs Road for use as the construction road, location of the underground transmission line, and maintenance road for the Chopin Wind project. We are also including a map showing the field entrances, as there were questions about that in the hearing.

Staggs Road should NOT be used at all in any way related to the wind development on Ferguson Ranch, known as the Chopin Wind project. There are significant negative impacts to our farming operation in both accepted farming practice and cost as well as all the other farmers using this road. According to the development code 152.061, this is disallowed.

1) Field access will be challenging with all the traffic from the 5 farmers using this road plus 30 construction workers daily plus road building equipment, rock and gravel trucks, crane, 36 tower trucks, 75 cement trucks. Most of the fields on this road have NO OTHER ACCESS. After the construction is over, maintenance vehicles will continue to travel the road, and if equipment is needed for maintenance, that will be coming as well. Access is critical to our farming, therefore this is a significant negative impact to our farming operation.

2) The road entrance onto Staggs Road off of York Road is unsafe if small vehicles like pickups and cars are traveling fast as visibility over the hill just past the corner is not far enough and everyone tends to drive in the middle of the road. Large equipment can surprise you too if you turn onto the road and something appears suddenly. We do not need our farm equipment and employees at risk of a head on collision.

3) If we lose the closed road status that currently exists on Staggs Road, the county will have to begin plowing the road when the snow drifts. Drifts piled up on the fields kill the wheat. Unnecessary loss of a part of our crop is a significant negative cost to our farming operation.

4) The corner from York Road to Staggs Road is so tight that trucks will not make that corner using only right of way land. It is standard farming practice to farm right of way areas, so that should be compensated. To go beyond that right of way into the farmer's field is a significant negative impact. Soil is a living ecosystem with not only dirt, but also microbes, insects and worms, air pockets, organic material, water, nutrients that when disturbed take years to build back to as good a soil as it once was, so restoring does not take away from the significant negative impact of the damage to the corner on the farming operation.

Jeff O'Harra (a farmer/landowner on Staggs Road), testified at the Planning Commission meeting, but did not turn in a written statement so you have to listen to the recording to hear

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APR 04 2016

**UMATILLA COUNTY
PLANNING DEPARTMENT**

what he said. He mentioned he had gone to the road department to visit with them about Staggs Road and they refused to talk with him, referred him to the planning department. Obviously that did not work both ways, the County Road Department was not a neutral county entity on this matter. Road Master Tom Fellows did not have a comment at the Planning Commission hearing, his written testimony supporting Staggs Road was submitted to the County Commissioners by Mr. Nerzig. No studies were mentioned at the hearing on the worthiness of the roads or any explanation for the conclusion given, from what we heard his comments seemed to be only his opinion with no provable expertise presented of an engineer behind it.

Through this process, we have received 22 emails, which we responded to, plus phone calls since filing the appeal from Mr. Nerzig and from his attorneys through our personal attorney trying to get us to settle and then seemingly wanting us to work on the rest of the interests (BMA) in this case pitting part of the group against the other. One email dated March 3 about a phone call from Pat Gregg, from the firm representing Bay.Wa-re, to our personal attorney and forwarded to us offered to move the power line and construction road, but fails to mention anything about a maintenance road. Most offered a solution of some sort, some the construction road but not the power line and not the maintenance road forever after. Why separate the roads and build another road through excellent farm ground west and then north of Staggs Road plus improve the existing field road on Ferguson Ranch when one road should serve all purposes related to this project? The application is for everything on one road. This defies logic to the landowners along the road. We could not speak for the other interests in this case (BMA) so could not pursue a settlement in any case. We represent the landowners, especially those whose land we farm and Charles Doughdrill, we are not speaking only for ourselves. We do own one field on Staggs Road and one field on York Road, so we speak as both a landowner and farmer. Settling would not result in relief from the significant negative impact this project would have on our farm, particularly points 2,3, and 4 if maintenance ends up being repair equipment, although that has been sometimes offered to be on Ferguson Road as well.

In view of all of our points, added together, we feel we have proven this development represents a significant negative impact on our farming operation both in practice and in cost, as well as the rest of the farmers along Staggs Road, and respectfully request Staggs Road NOT be the road used for any part of this project.

Thank you so much for your consideration of our position.

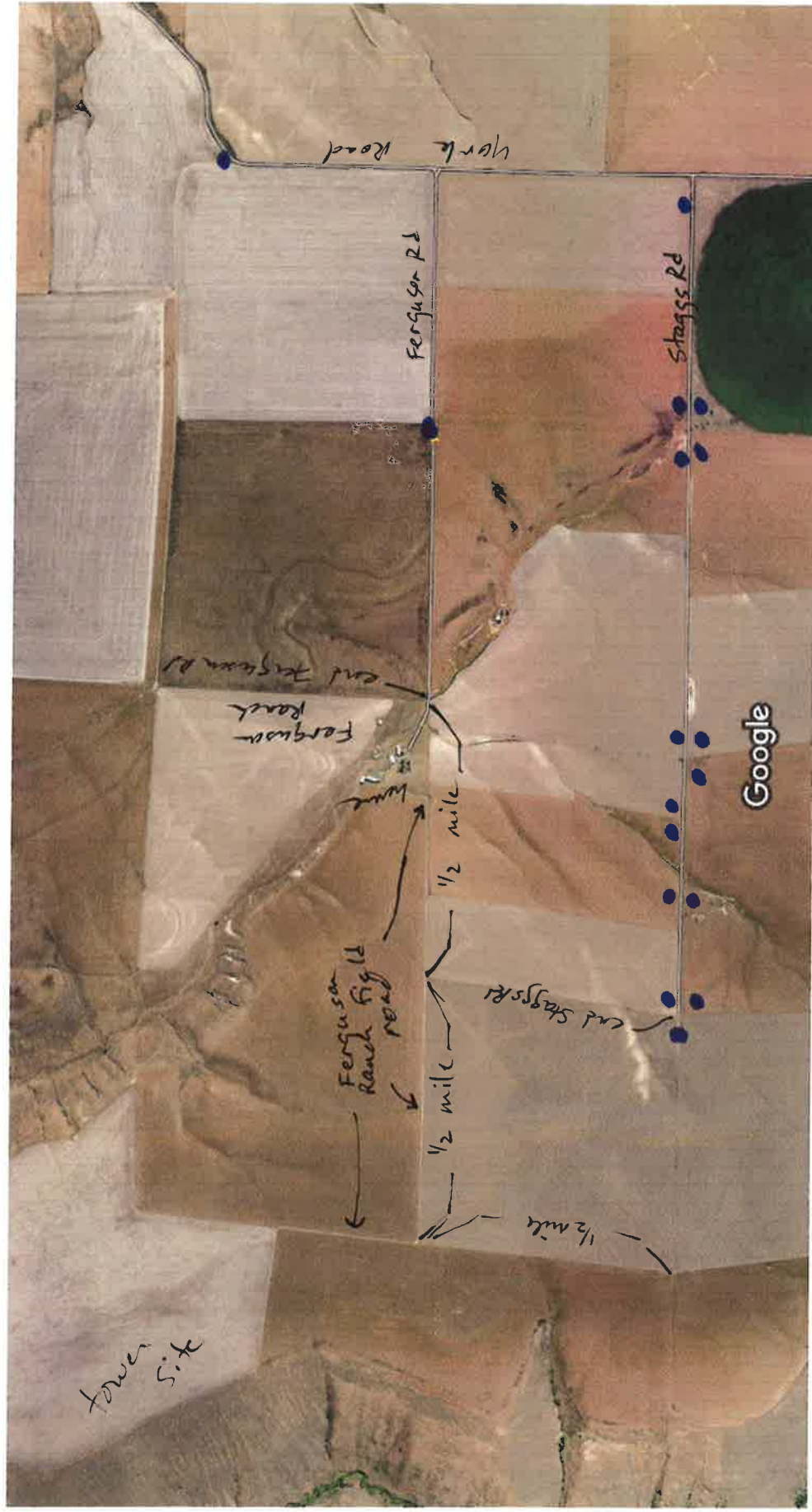
Jess and Granella Thompson

51949 Johnson Rd

Weston, Oregon 97886

541-566-2475

Google Maps Field entrances on Staggs and Ferguson Roads



Imagery ©2016 DigitalGlobe, State of Oregon, USDA Farm Service Agency, Map data ©2016 Google 1000 ft

Google Maps

field entrances •

ADDITIONAL FINDINGS AND CONDITIONS OF APPROVAL APR 04 2016

Blue Mountain Alliance

April 4, 2016

UMATILLA COUNTY
PLANNING DEPARTMENT

1. This approval is limited to a maximum of six (6) wind turbines. Any increase in the number of turbines will require a subsequent application and conditional use permit approval by Umatilla County.
2. *(Finding, not Condition:)* The two-mile setback between a wind turbine and residences required by UCDC 152.616(HHH)(6)(a)(3) is a requirement that must be met in addition to compliance with the applicable State of Oregon noise standards in OAR Ch. 340, Div. 035 as required by UCDC 152.616(HHH)(6)(a)(7). To merit approval, an applicant must demonstrate compliance with both standards. After commencement of operation, the operator must maintain compliance with the applicable State of Oregon noise standards as required by UCDC 152.616(HHH)(6)(a)(7).
3. To assure that all of the wind turbines comply with the applicable State of Oregon noise standards in OAR Ch. 340, Div. 035 as required by UCDC 152.616(HHH)(6)(a)(7) or any directly applicable successor standards (collectively, the “noise standards”), measurements to test for compliance shall be conducted at the applicant’s expense as follows:
 - (a) The applicant and Blue Mountain Alliance (“BMA”) shall agree upon a qualified, neutral acoustical consultant or contractor (the “consultant”). The consultant’s work shall be paid for by the applicant, and the consultant shall report the results of its work directly to the County.
 - (b) The consultant shall determine the worst-case noise circumstances occurring at the site during six consecutive winter months commencing in the year of installation of turbines on the site. (Winter months shall be generally defined as the period between September of one year and the following March.) Measurements shall be taken at two residences selected by BMA, which shall not include the residence on the subject site. The specific methodology of the testing shall be as reasonably determined by the consultant. In the event that one or more wind turbines, singly or in combination, fails to meet the noise standards at either or both of those residences, such turbine or turbines shall immediately cease operation, and operation shall not be permitted to resume until compliance is fully achieved and confirmed to the County by the consultant.
 - (c) The process described in subparagraph (b), above, shall be repeated three years after the year the turbines are installed on the site, and again eight years after the turbines

are installed on the site. All of the provisions of subparagraph (b) shall be applicable in each such instance.

(d) In addition, prior to the commencement of turbine operations on the site, the consultant described in subparagraph (a), above, shall recommend a high-quality and appropriate hand-held noise measuring device (the “device”) to the county, and the applicant shall purchase that device for the county at the applicant’s expense. The applicant shall promptly provide training in the use of device for the county’s designated code enforcement or compliance official (the “official”) at the applicant’s expense. In the event of a complaint about noise from the applicant’s turbines, the official shall promptly perform a noise test at the location at which the noise is complained of to determine whether any turbine is violating the noise standards. In the event the official finds there to be a violation of the noise standards, the consultant shall be engaged at the applicant’s expense to retest in a reasonable manner. Should the consultant find a violation of the noise standards to exist, then the offending turbine or turbines shall be shut down immediately until such time that they are repaired and the applicant demonstrates that they are no longer in violation. The applicant shall have 180 days from the date of any determination of noncompliance by the consultant to initiate repair intended to achieve full compliance of the noise standards to the satisfaction of the consultant.

If such compliance is not demonstrated within 365 days of the date of any such determination of noncompliance, the county shall promptly order the decommissioning and removal of the offending turbines, to be completed within 180 days of the issuance of said order. If said decommissioning and removal have not been completed within 180 days, the within Conditional Use Permit shall automatically be deemed null and void and the applicant shall be ordered to shut down all turbines and fully decommission and remove the project within 365 days of the order therefor.

(e) The applicant agrees to post a bond in an amount sufficient to cover the costs of additional testing to occur beyond the eighth year after turbine installation. Said bond shall be posted no later than the commencement of the ninth year after such installation, and shall be in the amount of \$50,000 or the actual cost of the eighth-year test described in subparagraph (c), above, whichever is greater.

4. Consistent with UCDC 152.616(HHH)(6)(m), the applicant shall provide a bond or financial guarantee (collectively, “bond”) in a form acceptable to Umatilla County Counsel, and in an amount sufficient to pay the full cost of decommissioning all turbines and restoring the site as provided in UCDC 152.616(HHH)(7). The county shall obtain a minimum of two competitive bids from qualified demolition/decommissioning contractors for the purpose establishing the initial bond, with no credit given for salvage

value, and with the higher of those bids to be used for that purpose. However, in no event shall the initial bond be less than that set out in Exhibit 54. With the exception of the procedure for the setting of the initial bond, the methodology set out by the applicant in Exhibit 54 is accepted (with no credit for salvage value). In addition, immediately after the expiration of 15 years following the date of this Order of the Board, the county shall again obtain a minimum of two qualifying competitive bids for such decommissioning and restoration from qualified demolition/decommissioning contractors, with no credit for salvage value. The amount of the required bond shall then be increased to the higher of those bids if it exceeds the amount of the then-required bond. Thereafter, the bond shall be increased from year to year in the manner set out in Exhibit 54.

5. To ensure compliance with the approval criteria in UCDC 152.061 and ORS 215.296, to avoid transportation conflicts between turbine construction traffic and farm traffic, and to avoid conflict between transmission lines serving the facility and accepted farm practices, ingress to and egress from the wind facility shall be taken as follows:

(a) All vehicular and equipment traffic shall be routed exclusively via Ferguson Road and not Staggs Road.

(b) The applicant will not use or request use of any portion of Tax Lot 000003000 located at Township 4N 35 (at the corner of York and Johnson Roads) or Tax Lot 000004400 located at Township 5N 35 (at the corner of York and Staggs Roads).

(c) The applicant's transmission line shall be submerged at least three feet beneath the surface of Ferguson Road, and shall at all times remain submerged (as shall the remainder of the applicant's transmission line up to its planned substation in Weston).

6. Post-construction wildlife monitoring on the wind energy project site will be conducted pursuant to the Avian Impact Monitoring Plan submitted as part of the applicant's Conditional Use Permit application, modified as follows:

(a) The June 8, 2017 search is moved to September 25, 2017, to provide a more accurate snapshot of potential bird and bat fatalities during migration.

(b) All turbines shall be searched each month.

(c) The TAC shall be informed of all bird and bat mortality whether incidental or detected during planned searches.

(d) The TAC shall at all times include a representative selected by Blue Mountain Audubon Society.

(e) The TAC shall meet at least twice the during the first year of turbine operation. It shall also meet twice during the second year of turbine operation if, in its discretion, it determines that bird or bat mortality warrants a second meeting.

(f) In addition to other search requirements, WEST shall search for bird and bat fatalities at the two north turbines at least twice a year between August and October, following the crop harvest.

(g) Bird and bat mortality along Ferguson Road shall also be searched for and added to the count of overall project mortality.

7. These conditions of approval are and shall be binding upon the applicant and its successors and assigns.



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APR 05 2016

UMATILLA COUNTY
PLANNING DEPARTMENT

April 5, 2016

Umatilla County Courthouse
ATTN: Board of County Commissioners
216 SE Court Avenue #121
Pendleton, OR 97801

Re: Chopin Wind Response to Additional Testimony

Dear Commissioners,

We take this opportunity to respond to the additional testimony submitted dated March 30, 2016 by Jess and Granella Thompson.

The Thompsons state that "Staggs Road is a closed road". Perhaps this is true in their view. In reality however, Staggs Road is a public road and fully open to use by the public. Furthermore, as we have shown, the County itself (Department of Public Works) believes that Staggs Road is the best choice for the Chopin project.

At the February 9th meeting on Staggs Road with the Thompsons, Mr. O'Hara, and Mr. Anderson, Mr. Anderson stated that Staggs Road was already sufficiently wide for hauling equipment and as such no further widening would be required. He noted that six inches of new gravel would have to be added to either Staggs or Ferguson Roads, (an improvement to be paid for by Chopin). Lastly, any temporary turnouts created (for safety) would be located in the shoulder which is not farmed ground.

Other than the initial few yards, the slight incline along the entire length of Staggs Road actually provides excellent visibility of nearly the entire length of the road for vehicles traveling in both the east and west directions. This will allow vehicles to anticipate oncoming vehicles from far away, and plan accordingly. This feature was commented on by all those present on the 9th of February on Staggs Road. In addition, traffic controllers will accompany each delivery to ensure coordination and minimize disruption of farming activities.

With respect to turning corners, we have and will continue to offer compensation to landowners who are temporarily inconvenienced during hauling activities. Such areas will be promptly restored to their original condition in accordance with the landowner's specifications.



It is worth reiterating that the overall construction process is very short for a small project such as Chopin Wind. It has always been our intent to get out of the landowners' way as quickly as possible. The cable would be trenched into place in a continuous process lasting only a few days.

Over the past several weeks and months, Chopin has actively engaged with the farming community and sought feedback. We have been proactive with that feedback, moving the overhead power line underground – at significant cost to us. We will continue to communicate and coordinate with all stakeholders to ensure the project meets or exceeds the high standards expected by Umatilla County.

Sincerely,

A handwritten signature in blue ink, appearing to be "RN", with a long horizontal flourish extending to the right.

Richard Nerzig
*Project Manager –
Acquisition & Development*



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APR 05 2016

UMATILLA COUNTY
PLANNING DEPARTMENT

April 5, 2016

Umatilla County Courthouse
ATTN: Board of County Commissioners
216 SE Court Avenue #121
Pendleton, OR 97801

Re: Chopin Wind Response to Additional Testimony

Dear Commissioners,

We take this opportunity to respond to the additional testimony submitted via email dated April 4, 2016 by Cindy Severe.

Mrs. Severe questions the authenticity of the comments provided by Tyson Raymond. Mr. Raymond is one of a small number of individuals from the younger generation of farmers in Umatilla County who have distinguished themselves by their involvement in local and regional farming organizations. He is also responsible for management of a very large farming operation and comes from a family that has been actively farming in Umatilla County for over a century. His background and experience, including his experience farming around wind energy projects, demonstrate his qualifications to provide evidence regarding the negligible impacts of wind towers on established agricultural activities in Umatilla County.

Mrs. Severe also states that wind leases prevent participating landowners from speaking their minds. Having negotiated and executed hundreds, if not thousands, of wind leases in states across the United States, it is my experience that wind leases require confidentiality about the terms of the lease itself. I have never seen a lease which limited a person's freedom of speech in any other way. Furthermore, no such lease would ever require a person to speak positively about wind energy.

Thank you for the opportunity to respond to Mrs. Severe's second set of comments. I ask that this letter be placed into the record and, on behalf of Chopin Wind, LLC, reserve the right to submit further evidence into the record during the time period granted to Chopin Wind, LLC to supplement the record.

Sincerely,

A handwritten signature in blue ink, appearing to read "RN", with a long horizontal flourish extending to the right.

Richard Nerzig
*Project Manager –
Acquisition & Development*



RECEIVED

APR 05 2016

UMATILLA COUNTY
PLANNING DEPARTMENT

April 5, 2016

Umatilla County Courthouse
ATTN: Board of County Commissioners
216 SE Court Avenue #121
Pendleton, OR 97801

Re: Chopin Wind Response to Additional Testimony

Dear Commissioners,

We take this opportunity to respond to the additional testimony submitted dated March 29, 2016 by Cindy Severe.

Mrs. Severe questions the basis of the decommissioning bond proposed by Chopin Wind. The bond is based on the fact that a decommissioning contractor will offset the value of the recovered raw materials against their costs. Scrap value is a long established concept in the decommissioning of all forms of energy projects which incorporate high value materials such as steel, copper, aluminum, and cast iron. There are active markets for such commodities.

A study by Garrad Hassan America Inc. entitled "Decommissioning Study for the Pinnacle Wind Power Project" analyzed this issue in detail. Garrad Hassan is a world recognized independent engineering firm specializing in advising banks and equity investors in the risks associated with wind project design, construction, and operations. The report analyzes a 23 turbine project in the United States, utilizing turbines similar in size to those proposed by Chopin Wind. It concludes that¹:

The net salvage value of the Project components and materials is estimated to be approximately \$35,546 (or \$1,545 / WTG) higher than the cost of decommissioning. A break-down summary is shown below (costs are considered as a negative convention (-) and revenues as a positive convention (+))

Cost Item	Decommissioning Cost (\$)	Net Salvage Value (\$)
Preliminaries	-206,000	0
Grid Interface	-183,200	51,834
Turbines	-1,649,500	2,729,998
Met Mast	-2,500	26,830
Foundations	-150,851	-34,949
Site Electrics	-142,800	21,760
Site Roads & crane pads	-438,946	13,870
Total	-2,773,797	2,809,343
Net Cost/Value		35,546

Summary of decommissioning and salvage costs

¹ GL Garrad Hassan, Decommissioning Study for the Pinnacle Wind Power Project, January 7, 2011



Based upon this study by Garrard Hassan America, Inc. it is clear that salvage value is on par with, or exceeds demolition costs. While we agree that commodity costs may vary over time, that is the reason we offer that the original bonding amount be updated in Year 15 based on actual bids obtained from demolition contractors and the bond amount trued up to compensate for any shortfall or overage.

Mrs. Severe suggests that it would cost far more than the proposed bond provides for to mobilize a crane for decommissioning. This is not factually accurate. We routinely mobilize cranes for turbine construction and maintenance. The mobilization costs for the type of crane required to decommission Chopin Wind would be approximately \$25,000.00 There a number of turbine erectors who we regularly work with in Oregon, for example, Barnhart Crane and Rigging, located in the Portland region. The salvage value of 840 tons of steel, 92,000 lbs of aluminum and 24,000 lbs of copper, plus the bond will be sufficient to cover the costs of decommissioning, including the cost of a crane.

Lastly, the Tehachapi and Altamont facilities cited by Mrs. Severe are examples of projects constructed more than 30 years ago of vastly different materials than Chopin Wind, which materials have minimal salvage value. Most importantly, decommissioning bonds were not requirements set forth by local jurisdictions for the Tehachapi and Altamont facilities which is not the case here. The bond required by Umatilla County will prevent a situation such as what occurred with the Tehachapi and Altamont projects in California.

Thank you for the opportunity to respond to Mrs. Severe's comments. I ask that this letter be placed into the record and, on behalf of Chopin Wind, LLC reserve the right to submit further evidence into the record during the time period granted to Chopin Wind, LLC to supplement the record.

Sincerely,

Richard Nerzig
*Project Manager –
Acquisition & Development*



RECEIVED

APR 06 2016

UMATILLA COUNTY
PLANNING DEPARTMENT

April 6, 2016

Umatilla County Courthouse
ATTN: Board of County Commissioners
216 SE Court Avenue #121
Pendleton, OR 97801

Re: Chopin Wind Response to Additional Testimony

Dear Commissioners,

We take this opportunity to respond to the additional testimony submitted April 4, 2016 by Jess and Granella Thompson.

We reiterate for the record that Staggs Road is a public road, available for use by all. The Thompsons, and perhaps others, appear to believe that Staggs Road is primarily for their use, not for others. Chopin Wind leases property in Umatilla County and will pay significant property taxes while conducting its business in Umatilla County and as such it has an equal right to use public facilities such as Staggs Road and other County roads.

The Thompsons complain that the Fergusons, who would benefit from the wind turbines on their property, should therefore "pay the price" of using Ferguson Road. This is a misleading argument because the reason the Fergusons are the only land owner with turbines has nothing at all to do with the Fergusons, but rather the fact that the County wind regulations passed in 2012, which required all turbines to be set back two miles from any residence make it impossible to place turbines anywhere else than where proposed. It is not for any advantage for Chopin Wind, or for better wind resource, lesser construction costs, or anything else benefitting the Fergusons over others. When one applies all required jurisdictional permit and setback requirements, the turbines simply cannot be located anywhere else. Condemning the Fergusons as bad neighbors is therefore inappropriate when one objectively considers the overall circumstances -- they did not suggest the County change the resolutions nor do they have control over siting.

Taken as a whole, access to properties on Staggs Road will not be significantly impacted. The construction of the project will be carried out with minimal impact to these properties by specialized contractors qualified and experienced in constructing wind projects in rural and farming locations such as Umatilla County. Chopin Wind is a straight forward project with no unusual or challenging logistics. Further, most of the landowners on Staggs Road have in fact NOT commented or voiced concerns about the project. Counting both sides of Staggs Road, there are 14 parcels of land. Of these only the owners of six parcels have complaints. As a good neighbor, prior to, during, and after construction, Chopin Wind has and will continue to perform outreach, communicate and coordinate with York and Staggs Road landowners and farmers to ensure everyone's voices are heard. Our contractors observe safety programs and are courteous and careful at all times. Chopin Wind will employ on site traffic coordinators and

observe all road use regulations outlined in the Road Use Agreement. Given the small size of this particular project, the construction phase will be short. Our goal is to be efficient and complete our work safely and quickly.

The Thompsons complain that the entrance to Staggs Road from York Road is unsafe if vehicles are traveling fast. As noted above, our contractors are deeply experienced in constructing wind projects in rural communities, and given the value of the cargo and equipment they own, operate and have responsibility for, exercise the utmost care and caution at all times. If the Thompsons are suggesting that our contractors would drive irresponsibly, then this is rejected outright as factually inaccurate and inappropriate.

The Thompsons complain that Staggs Road would need to be plowed for snow if it is utilized by Chopin Wind and that this would create a burden for the County in terms of snow removal. We have checked with the Department of Public Works on this matter who have concurred that plowing would be up to Chopin Wind and not a burden on the County. We will incorporate this responsibility into the Road Use Agreement. The claim that piled up snow kills wheat is factually inaccurate and untrue.

The Thompsons complain that the corner of York Road and Staggs Road may be impacted by construction for deliveries. We agree and therefore have for months offered reasonable compensation for the temporary inconvenience to any impacted landowners. In any case, the corner of York Road and Staggs Road would only be impacted at its southwest corner, on lands owned by a participant in the project. That landowner has already agreed to allow their land to be used for this purpose. Any such areas temporarily impacted will be promptly restored to their original condition by Chopin Wind.

The Thompsons challenge the Director of the Department of Public Works with respect to his findings that Staggs Road is "the best option" for the County. This challenge is not based upon factual evidence. The Department of Public Works provided specific reasons why Staggs Road was better for the County, principally the lower future maintenance costs to the County. The Thompsons did not respond to this point directly and the Commissioners should instead base their decision on the evidence submitted by the Department of Public Works, which is unequivocal in pointing at Staggs Road as the correct choice for this project. The Commissioners should rely on this substantial evidence in the record presented by the Director of the Department of Public Works and allow use of Staggs Road.

The Thompsons state that "Staggs Road is a closed road". Perhaps this is true in their view. In reality, however, Staggs Road is a public road and open to use by the public as noted at the beginning of this correspondence. Further, the Department of Public Works believes that Staggs Road is the best choice for the Chopin Wind project. There is clear evidence in the record, in the form of the Director of the Department of Public Works' statement, for the Commissioners to find that Staggs Road is an appropriate choice for the Chopin Wind project.

The Thompsons reference a February 9th, 2016 meeting attended by Rod Anderson. At that meeting on Staggs Road with Mr. Thompson and Mr. O'Hara, Rod Anderson stated that Staggs Road was already sufficiently wide for hauling equipment and as such no further widening would be required. He stated that

six inches of new gravel would have to be added to Staggs Road. The additional gravel is an improvement that would be paid for by Chopin Wind, LLC.

A small number of temporary turnouts would be created (for safety) in the shoulder of the road, which is untilled ground. Other than the initial few yards, the slight incline along the entire length of Staggs Road actually provides excellent visibility of nearly the entire length of the road for vehicles traveling in both directions. This will allow vehicles to anticipate oncoming vehicles from far away and plan accordingly. This feature was commented on by all those present on the 9th of February meeting on Staggs Road. In addition, traffic controllers will accompany each delivery to ensure coordination.

The Thompsons suggest that Chopin Wind has been "pitting one group (Staggs Road landowners) against another (BMA). Nothing could be further from the truth. Chopin Wind has approached all parties equally and offered significant concessions to all at its own cost and effort of redesign for the greater good of all. One of those significant concessions was the redesign of the entire transmission line as an underground line; something that we believe is exceptionally rare if not unheard of on wind energy projects in the United States. In return we have received either complete unresponsiveness, flip-flopping, or one sentence emails rejecting reasonable and practical solutions.

Over the past several weeks and months, Chopin Wind has actively engaged with the farming community and sought feedback. We have been proactive with that feedback, moving the overhead power line underground – at significant cost to us. We will continue to communicate and coordinate with all stakeholders to ensure the project meets or exceeds the high standards expected by Umatilla County.

Thank you for considering our submissions. As with our prior submissions, Chopin Wind, LLC reserves the right to submit additional information into the record during the time allowed to Chopin Wind, LLC to do so.

Sincerely,



Richard Nerzig
*Project Manager –
Acquisition & Development*

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*Admitted in Oregon and Washington
°Admitted in Oregon and California

RECEIVED

April 7, 2016

APR 07 2016

VIA EMAIL AND HAND DELIVERY
Mr. George Murdock, Chair
Umatilla County Board of Commissioners
216 SE Fourth Street
Pendleton, OR 97801

UMATILLA COUNTY
PLANNING DEPARTMENT

Re: Chopin Wind, LLC Wind Energy Project
Conditional Use Permit #C-1252-5; Land Use Decision #LUD-194-15

Dear Chair Murdock, Mr. Elfering, and Mr. Givens:

As you know I, along with Steve Corey and our law firm of Corey, Byler & Rew, LLP, represent Chopin Wind, LLC ("Chopin Wind") in relation to Chopin Wind's efforts to construct a 10 megawatt wind energy project and associated transmission line here in Umatilla County. I offer this letter into the record to address a portion of the "Additional Findings and Conditions of Approval" submitted into the record on April 4, 2016, on behalf of Blue Mountain Alliance. This letter addresses items 1 through 3 and item 6 in that April 4, 2016, submission. Further, Richard Nerzig, Project Manager for Chopin Wind, LLC, previously submitted Exhibit 54 at the March 28, 2016, hearing, and a letter addressing item 4, in which Chopin Wind proposed an amount and an adjustment for inflation for the decommissioning bond. Further, there are precedent conditions requiring a bond acceptable to the County. The bond issue does not need to be addressed further. For the reasons set forth below I respectfully suggest that the Commissioners reject the "Additional Findings and Conditions of Approval" and affirm the decision of the Umatilla County Planning Commission.

Item 1 in the Additional Findings and Conclusions, limiting the number of turbines and requiring a subsequent application if additional turbines are sought to be constructed, should not be adopted by the Commissioners for the simple reason that it is completely unnecessary. Item 1 merely reflects the current state of the law. The project Chopin Wind seeks to have permitted is a 10 megawatt project and Chopin Wind's permit identifies that it would construct 6 turbines. Future development, either to increase the size of the wind energy site or to construct new turbines, would

be subject to the Umatilla County Development Code and require a new permit process. The condition at item 1 is unnecessary as it merely restates that existing and understood obligation.

Similarly, item 2 in the Additional Findings and Conclusions merely rephrases a legal point that is already set forth in the Findings and Conclusions adopted by the Planning Commission. No reason exists to include an additional finding that merely “finds” that the Oregon Administrative Rule governing sound and the Umatilla County Development Code § 152.616 (HHH)(6)(a)(3) set forth two different legal standards, both of which are applicable to Chopin Wind’s project. Such a proposed finding means nothing and should not be adopted.

The proposed conditions identified at item 3, which relate to noise monitoring, should be rejected because imposing such conditions is contrary to the controlling law and the conditions are not supported by substantial evidence in the record. The conditions require noise monitoring above and beyond what is required by OAR Chapter 340, Division 035 and Umatilla County Development Code (“UCDC”) 152.616 (HHH)(6)(a)(7). Such conditions violate the applicable law because, if adopted, Umatilla County would be effectively changing its code provisions to require compliance with elements not within the UCDC. Moreover, the proposed manner of handling violations of the sound standards differs substantially from Umatilla County’s adopted code enforcement procedure. Such an approach is improper and violates established principles of statutory construction in Oregon. Indeed, under ORS 197.829 (1) a local body, in this case Umatilla County, cannot interpret a local ordinance contrary to its express terms.¹ Adding the noise monitoring requirements and a new way of enforcing violations effectively adds obligations that are not required by UCDC 152.616 (HHH)(6)(a)(7). Such efforts should be rejected.

With regard to the factual support for item 3, no evidentiary support is found in the record for additional noise monitoring requested by the appellants. The only qualified expert to testify was Bruce Walker. Mr. Walker provided testimony and evidence that established that noise levels from Chopin Wind’s wind energy facility are significantly below the maximum decibel level allowed by the applicable standards even under highly conservative assumptions and inputs to the calculation. The two mile setback imposed by Umatilla County, which Chopin Wind has complied with, effectively makes it virtually impossible for any violation of the noise standard. Respectfully, the Commissioners should rely upon this substantial evidence and reject the proposed conditions within item 3.

The proposed conditions in item 6 should be rejected for similar reasons as item 3. Specifically, the proposed requirements set out in item 6 are contrary to law and are not supported by substantial evidence. The only standard that is set forth regarding a post-construction wildlife monitoring plan is contained in UCDC § 152.616 (HHH)(9)(d). That provision says nothing about the particular required elements of a wildlife monitoring plan. Therefore, requiring specific and particular elements beyond what has already been submitted by Chopin Wind would violate ORS 174.010 and ORS 197.829, which forbid interpretations of a County’s code contrary to the express

¹ See also ORS 174.010 (in construing a statute it is not appropriate to insert what has been omitted, or to omit what has been inserted).

Mr. George Murdock
April 7, 2016
Page 3 of 3

language of the code. Chopin Wind took the extra measure of meeting with both federal and state wildlife agencies and developed an avian impact monitoring plan in conjunction with them.

As to the substance of the wildlife monitoring plan, it will be administered by a recognized local expert Jerry Baker and is sufficient to meet the requirements set forth in the Umatilla County Development Code. Chopin Wind respectfully requests that the Commissioners affirm the decision of the Umatilla County Planning Commission, which adopted the proposed wildlife monitoring plan of Chopin Wind without any changes or additions.

A review of the written and oral testimony in the record including the written submissions placed into the record after the March 28, 2016, hearing, amply demonstrates that Chopin Wind's proposed wind energy facility exceeds all of the requirements set forth in the Umatilla County Development Code and under the applicable state laws and regulations. Further, substantial evidence in the record supports a finding in favor of Chopin Wind. For that reason we respectfully request that the Umatilla County Board of Commissioners affirm the Umatilla County Planning Commission's decision and approve Conditional Use Permit #C-1252-5 and Land Use Decision #LUD-194-15.

Thank you.

Sincerely yours,

Patrick M. Gregg

cc: Douglas R. Olsen
Steven H. Corey
Jeffrey L. Kleinman