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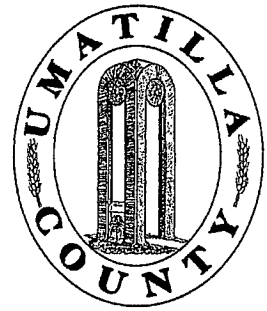
NOV 04 2011

UMATILLA COUNTY
PLANNING DEPARTMENT

Umatilla County

Department of Land Use Planning

216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252



Notice of Appeal

Process taken from UCDC 152.766

APPEALS

(A) An appeal from a ruling of the Planning Director. An appeal of an administrative review decision or a ministerial action on a land use request made by the Planning Director or authorized agent shall be made to the Planning Commission. Such appeals must be made within 15 days of the date of the ruling or decision.

(B) An action or ruling of the Planning Commission pursuant to this chapter may be appealed to the County Board of Commissioners within 15 days after the Planning Commission has signed its findings of facts and conclusions of law.

(1) If the appeal is filed it shall be in writing stating the reasons for appeal pursuant to the criteria for review.

(2) The County Board of Commissioners shall receive the written findings of the decision and the minutes from the Planning Commission hearing and shall hold a public hearing on the appeal.

(3) The Board may amend, rescind, affirm or remand the action of the Planning Commission.

(C) All appeals shall be made in writing, accompanied by the appropriate fee, and shall state the reasons for the appeal and the alleged errors made on the part of the Planning Director or authorized agent or the Planning Commission. If the decision being appealed utilized criteria for review established elsewhere in this chapter, the reasons for the appeal shall be stated pursuant to these criteria.

(D) All appeals shall be on a de novo basis. The body hearing the appeal shall be able to receive any additional testimony presented by the applicant or proponent.

(E) Appeals of a Board of Commissioners decision shall be made to the Land Use Board of Appeals within 21 days of the date of the decision. Such appeals shall not be based on issues that are not raised at the local hearings with "sufficient specificity" as to afford the decision-makers and parties involved an opportunity to respond to the issue.

FILING FEE

Filing of an Appeal - \$800.00

(Effective July 1, 2007 via Ord. #2007-06)

It is the responsibility of the applicant to submit a complete application with all necessary attachments. Planning staff can refuse an incomplete application.

Version: February 20, 2009

File Location: H:\shared\Forms_Master\Appeal_Notice.doc

Section 1: Request and Description of Application

This information deals with the Land Use Request Application that an Appeal is being filed against.

THE REQUEST IS FOR... (Check the one that applies)

- an Appeal to the Planning Commission from a decision of the Planning Department
 an Appeal to the Board of Commissioners from a decision of the Planning Commission

DESCRIPTION OF THE LAND USE REQUEST APPLICATION IN QUESTION:

- Land Use Request Application File Number: #C-1188-11
- Type of Land Use Request Application: Conditional Use Permit
- Decision-Making Body: Planning Director or Planning Commission
- Date of Decision (date on Findings): 10/20/2011
- Date you received notice of the decision or learned of the decision: 10/24/2011

Section 2: Contact Information

Name of Appellant(s): NORMAN F. KRALMAN
Address: 52151 Fruitvale Road
City, State, Zip: Milton-Freewater, OR 97862
Telephone Number & Email Address: 541-938-7390 Norm@KralmanSteel.com

Date of Submittal for the Appeal: Nov. 4, 2011

Section 3: Basis of Appeal

Complete only when appealing a decision made by the Planning Department or Planning Commission.

The Appeal is based on the belief that **certain** policies and/or procedures of the Comprehensive Plan and/or provisions of the Development Code were not properly administered or followed. Please specify the chapter, section and page numbers of the Comprehensive Plan and/or Development Code where the policies and/or procedures are found; as well as a narrative explaining the issues that the Appeal is based upon (*use additional pages if necessary*):

See Attached document - 3 pages

Section 4: Certification

The signatures below represent Blue Mountain Alliance

I/We, the undersigned, swear under penalty of perjury that the above responses are made truthfully and to the best of my knowledge.

x [Signature]
Signature of Appellant

10/29/2011
Date

Debbie J. Kelley
Printed Name of Applicant

x [Signature]
Signature of Appellant

10/28/11
Date

NOEMAN F. KRALMA
Printed Name of Applicant

x [Signature]
Signature of Appellant

10/28/11
Date

Dave Price
Printed Name of Applicant

x [Signature]
Signature of Appellant

10/28/11
Date

Richard Jolly
Printed Name of Applicant

x Arka J. Rethven

x [Signature] JAMES M. BURNS

10/28/11 Arka J. Rethven 10/28/11

Office Use Only

Date this paperwork was received: _____

Accepted by: _____
Signature of Planning Staff & Printed Name

Fee Paid? Yes No

Receipt Number: _____

Reference Tentative Approval Letter for WKN Chopin Wind Project Conditional Use Permit #C-1188-11 Dated 10/20/2011.

Blue Mountain Alliance (BMA) with the attached document is **appealing** the Planning Commission decision of October 10, 2011 and as stated in the above noted **letter of October 20, 2011, outlining "Conditions of Approval"**.

BMA **appeal points** are as follows:

1. **BMA disagrees with processing this application under the Standards and Criteria listed in UCDC 8/3/2010.** It should have been processed under Standards and Criteria UCDC 6/28/2011.

The WKN Chopin "Application Requirements" that shall be part of the application were not complete until July 22, 2011 and August 3, 2011.

We believe that the document received from WKN Chopin on February 23, 2011 does not meet the application requirements stipulated in UCDC 152.616HHH Section 2, 8/3/2010. These requirements were deemed complete by the Umatilla County Planning Director on July 22, 2011 for CUPA #C-1188-11 and the LUD application on August 3, 2011. Therefore, **the decision to process this application under UCDC 152.616HHH 8/3/2010 rules, is in error.**

2. **Decision-Appeal of Subsequent and Precedent Conditions – Final Noise Rules**

The Umatilla County Planning Commission at their October 10, 2011 hearing approved WKN Chopin Wind Project. This was approved on Final Findings and Conclusions for the approval of WKN Chopin Land Use Request C-1188-11.

This is an Appeal of Subsequent Conditions stated in Umatilla County Tentative Approval Letter of October 20, 2011.

At the Planning Commission Meeting of 10/10/2011 written and oral testimony was presented to demonstrate that the **WKN Wind Analysis was flawed and did not meet the Standards set forth in OAR 340-035-0035** for establishing pre-project Ambient Noise Levels for Noise Sensitive Properties within the affected areas of the project.

The Planning Commission agreed as was stated by Commissioner Reeder and as part of the approval process, the standard of **26 dba for the noise base and a maximum of 36 dba** measured at Noise Sensitive Properties was made a condition of approval by the Planning Commission.

Subsequent Condition #26 as stated, does not specifically nor clearly state the Noise Requirement of 26 dba – 36 dba. **It must be corrected to meet the factual decision of the Planning Commission.**

In addition, **Precedent Condition #11** requiring a noise easement for one resident, which is based solely on WKN Chopin Noise Analysis. Questions and issues regarding the validity of the Noise Analysis have not been satisfactorily answered and therefore, noise sensitive properties shown to be **borderline to the 36 dba requirement** have not been adequately analyzed.

3. BMA believes that the currently approved project by the Umatilla County Planning Commission is in conflict with the current Umatilla County Comprehensive Plan and Technical Report.

Specifically, **page D110 in the technical report** identifies the following “Highway 204 – from Weston to Elgin is an important scenic, historic and recreational route through Tollgate and Spout Springs”. The technical report states that “**historically, this highway follows the early route of the Oregon Trail to Whitman Mission**”.

The acknowledged plan designates the two highways as a **Goal 5** significant features and **the plan required 3C protection of the features**. See pages **D104 and D107** in Umatilla County’s Comprehensive Plan – Technical Report where the following is specified for areas classified as 3C such as Highway 204 and Highway 11.

4. BMA is challenging the completeness and credibility of the Cultural Report of the WKN Chopin Application.

The study for the **Cultural Historic Review** of this area was incomplete in the fact that it failed to address the significance of **the historical trail system within the project area**.

5. Socioeconomic Impact Assessment:

BMA challenges the **Socioeconomic Assessment** submitted by WKN for the Chopin Wind Project. The assessment is incomplete, lacks detail on the benefits to Umatilla County and impacts on affected landowners.

The assessment expresses economic benefits only in a general way and gives no estimate of revenues to Umatilla County that can be expected to be used in the decision making process. In addition, there is no mention of socioeconomic impacts on the affected landowner. There is no identification of issues like socio changes that might be expected nor **issues such as loss of property values, out of pocket costs to deal with noise or health problems should a problem occur**. These can be detrimental issues to affected

5. (continued)

landowners and should be addressed and given serious consideration in the Application Approval Process.

Even though written and oral testimony was given to identify this issue and was specifically discussed by the Planning Commission, no consideration was given to these critical matters in the decision or tentative approval of 10/20/2011.

6. The Aviary Section of WKN Wildlife Baseline Study Report does not adequately address the Cumulative Effects on certain aviary species that is a result of all existing wind projects from the Columbia River to the Blue Mountains. The specific impact of the WKN Chopin Project is limited to onsite project impacts specific to this project and compares to other information obtained from individual projects within the area. No information was presented as to the impact from the existing projects collectively.

Therefore, assumptions given for this project regarding habitat, migratory and anticipated mortality rates are inadequate. They do not represent the total anticipated aviary impacts that will contribute to Cumulative Effects of ALL Wind Projects in the area.

Conclusion:

Blue Mountain Alliance has identified **6 Appeal Points pertaining to the Planning Commission's approval of the WKN Chopin Wind Project**, as stated in their Tentative Approval Letter of 10/20/2011. BMA believes that **Points #1 and #2, specifically must be resolved before the Application Process can proceed.** These issues are pivotal to the Planning Commission decision and the WKN Chopin Application moving forward. **BMA requests that a stay be granted on the approval process until such time as a resolution is reached.**