



DAVID EVANS  
AND ASSOCIATES INC.

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## MEMORANDUM

**DATE:** May 2008  
**TO:** Kelly O'Brien  
**FROM:** Dana Siegfried  
**SUBJECT:** Addendum to Exhibit E  
**PROJECT:** Golden Hills Wind Project  
**PROJECT NO:** BPOC0000-0005  
**COPIES:**

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Section E.6 Third Party Permits of the EFSC permit for the Golden Hills Wind Project has been revised as specified below:

### E.6 THIRD-PARTY PERMITS

**OAR 345-021-0010(1)(e)(E)** *If the Applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:*

- (i) *Evidence that the Applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;*
- (ii) *Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit; and*
- (iii) *An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the Applicant relies to comply with any applicable Council standard.*

Previous Response: The Applicant will not rely on any third party permits in order to construct or operate the Project.

Revised Response (March 28, 2008): The project transmission line will connect with the third party permitted sub-station and transmission line associated with the Hay Canyon Wind Farm developed by Pacific Wind Development LLC, a wholly-owned subsidiary of PPM Energy, Inc. Hay Canyon Wind Farm has received a conditional use permit (CUP) from Sherman County. A signed copy of the CUP is attached. No impacts to permits held by the Hay Canyon Wind Farm project are anticipated to result from this agreement.

**SHERMAN COUNTY PLANNING  
COMMISSION ORDER**

IN THE MATTER OF A CONDITIONAL  
USE PERMIT APPLICATION FOR HAY  
CANYON WIND FARM, PPM ENERGY

SHERMAN COUNTY PLANNING  
COMMISSION FINDINGS AND DECISION

**SECTION 1. PROCEDURAL FINDINGS**

- 1.1 Pacific Wind Development LLC (“Applicant”), a wholly-owned subsidiary of PPM Energy, Inc., filed a conditional use permit (“CUP”) to allow the construction and operation of up to a 105 megawatt (“MW”) wind energy generation facility in Sherman County, Oregon (“County”) (known as the Hay Canyon Wind Farm and hereafter referenced as “Hay Canyon” or the “Project”).
- 1.2 Hay Canyon is proposed for property located seven miles southeast of Wasco, Oregon and near highway 206 and Baseline Road, and more specifically described as Tax Lots 4900 and 6300 in Township 1 North, Range 18 East and Tax Lots 700, 800, 900, 1000, 1700, 1900, 2000, 2100, and 3100 in Township 1 South, Range 18 East, Sherman County, Oregon (the “Project Site”).
- 1.3 The Project Site is zoned Exclusive Farm Use (“EFU”). Hay Canyon would occupy approximately 34 total acres, including new roads.
- 1.4 The application for the requested CUP was deemed complete, and the Planning Staff subsequently issued a Staff Report dated September 10, 2007, recommending Conditions of Approval if the Planning Commission approves the CUP, with proposed conditions. Notice of the Planning Commission hearing was advertised in The Dalles Chronicle on August 29, 2007, and mailed to surrounding property owners prior to that date. The Planning Commission held a public hearing on September 17, 2007. The record was held open for additional written evidence and arguments until September 24, 2007, and additional rebuttal evidence and arguments until October 1, 2007. The Applicant submitted additional nonevidentiary arguments pursuant to applicable statute by October 8, 2007.
- 1.5 Article 5 of the Sherman County Zoning, Subdivision, Partitioning, and Land Development Ordinance of 1994 (“SCZO”) establishes the approval criteria and procedural requirements for approving a CUP. The application must meet the following general criteria in SCZO 5.2:
  - A. The proposal is compatible with the County Comprehensive Plan and applicable Policies.

- B. The proposal is in compliance with the requirements set forth by the applicable primary Zone, by any applicable combining zone, and other provisions of the SCZO that are determined applicable to the subject use.
- C. For a proposal requiring approvals or permits from other local, state, and/or federal agencies, the Applicant must provide evidence of such approval or permit compliance can be assured, or is established, prior to final approval.
- D. The proposal is in compliance with specific standards, conditions and limitations set forth for the subject use in Article 5 and other specific relative standards required by this or other County ordinances.
- E. No approval may be granted for any use which is or expected to be found to exceed resources or public facility carrying capacities, or for any use which is found to not be in compliance with air, water, land, and solid waste or noise pollution standards.
- F. That no approval be granted for any use violation of this Ordinance.

## **SECTION 2. CUP FINDINGS**

2.1 The applicable Comprehensive Plan goals and policies are found in Section VIII (Public Process), Section XI (Physical Characteristics), Section XII (Social Characteristics), Section XIV (Economics), and Section XV (Energy). For the following reasons, the Project is consistent with the applicable Comprehensive Plan goals and policies and satisfies SCZO 5.2(1).

2.1.1 The Project is consistent with Section VIII, Finding 1, Goal I as there has been a public process that has allowed citizens and effected agencies to participate in the planning process. Notice of the proposal was published on August 29, 2007, and mailed to surrounding property owners prior to that date. Public testimony was received during the September 17, 2007 Planning Commission meeting, and the public was given an opportunity to submit additional written testimony before September 24, 2007.

2.1.2 Section XI goals and policies address the importance of maintaining the existing quality of the physical environment and preserving its attributes as well as ensuring that statewide planning goals, specifically Goals 3, 5, 6, and 7, are satisfied. Construction will be conducted pursuant to an NPDES 1200-C and Applicant will implement best management practices for minimizing erosion potential during construction. The Project requires less than 5,000 gallons per day of groundwater and qualifies for an exempt groundwater well. The limited groundwater use will have no permanent impact to groundwater resources. No upland tree habitat will be permanently or temporary affected and all impacts will be avoided. Finally, avian and biological studies demonstrate that the project will

not significantly impact fish or wildlife habitat. On this basis, the applicable Section XI goals, including Goal I, Goal V, Goal VI, and Goal VII are met.

- 2.1.3 Section XII goals and policies address public facilities and services, transportation, and cultural and historic resources. Roads will be located to minimize disturbance and maximize transportation while avoiding sensitive resources and unsuitable topography. All roadwork will be conducted in accordance with the Project's NPDES 1200-C permit under which appropriate erosion control measures will be implemented. The permanent roads will be up to 20-feet wide and constructed in coordination with County road master. Development of the Project increases the County's economic diversity. Applicant proposes to utilize local construction companies and aggregate resources during construction. The Project will also result in substantial annual tax revenue for the County. A cultural resource survey demonstrated that there are no resource sites previously identified on the Project Site or adjacent properties. The Project will not impact the Oregon Trail. For these reasons, Section XII goals and policies are satisfied.
- 2.1.4 Section XIV addresses economics, specifically diversity of the economic base and conservation of agricultural lands. The Project is consistent with the Exclusive Farm Use (EFU) zone, which allows for the construction and operation of commercial utility facilities as a conditional use. The Project will result in only 34 acres of EFU land being removed from agricultural use. The minimal loss of farm income based on the limited amount of the land the project proposes to withdraw from farm production will be more than offset by revenue to local farms from wind turbine leases. Additionally, a number of temporary construction jobs may be filled with local personnel. The County's tax base will increase significantly by revenues generated from the Project and approximately 6 to 10 permanent operations and maintenance jobs will be added to the community. For these reasons, Section XIV goals and policies are met.
- 2.1.5 Section XV addresses energy, and the County has recognized that it has solar and wind resources that have not been utilized. Wind facilities do not emit greenhouse gases or particulates, do not produce hazardous wastes, and will not deplete other natural resources. The Project involves the development of renewable resources. Thus, Section XV energy goals and policies are satisfied.
- 2.2 The Project is consistent with the applicable provisions set forth in the EFU-base zone. The Project Site is not subject to overlay or combing zones. The Project falls within the definition of commercial utility facility, which is permitted in the EFU zone as a conditional use. The EFU zone sets forth specific dimensional standards that apply to all development. The Project satisfies all the dimensional standards, including setbacks, because the turbine pads and turbines will be placed at least 400 feet from each property line. The current applicable setback provisions require 30 feet from the property line for front and rear yard setbacks (or 50 feet from the front property line when from an arterial or major collector), and 25 feet from the property line for the side yard setbacks (or 50

feet when the adjacent lot involves a non-farm residential use). Applicants propose 400 feet setbacks for the turbines (measured from the property line to the turbine-pad center), which is sufficient to ensure that the project does not result in adverse impacts to adjacent properties. The maintenance facility will also comply with required setbacks. In addition to the specific EFU criteria, the Project is subject to applicable state and federal rule and regulations. Applicant has filed a notice of proposed construction or alteration with the Federal Aviation Administration (FAA) and will provide the County with the FAA's response. Applicant also has consulted with the Oregon Department of Fish and Wildlife ("ODFW") about potential impacts on birds and wildlife species, although such consultation was not specifically required. The Project will comply with all applicable Oregon noise rules. For these reasons, the Project is consistent with the applicable criteria in SCZO 3.1, governing uses in the EFU zone, and SCZO 4.9, requiring compliance with all state and federal agency rules and regulations. SCZO 5.2(2) is satisfied.

- 2.3 Applicant provided evidence demonstrating that the applicable approvals or permits from other local, state, and/or federal agencies can be obtained or assured prior to final approval of the CUP. Applicant submitted a notice of proposed construction or alteration to the FAA. The Project is located outside the FAA Imaginary Surfaces (defined by Federal Aviation Regulation Part 77) for the Wasco State Airport. There is sufficient evidence to demonstrate that the FAA will accept the notice for the proposal. For state approvals, Applicant will apply for a NPDES 1200-C permit before construction and ensure that all DEQ noise standards are met. This is sufficient to assure the County that the applicable state and federal approvals or permits will be obtained, and therefore, SCZO 5.2(3) is met.
- 2.4 To be approved, the Project must also be consistent with specific standards, conditions, and limitations for non-farm uses on EFU land. Pursuant to SCZO 5.8(20) non-farm uses must (i) be compatible with the farm uses described in ORS 215.203(2); (ii) not interfere seriously with accepted farming practices on adjacent land devoted to farm use; (iii) not materially alter the overall land use pattern of the area; (iv) be situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract, and availability of necessary support resources for agriculture; (v) comply with other applicable significant resource provisions; and (vi) comply with such conditions as the County deems necessary.
- 2.4.1 ORS 215.203(2)(a) defines "farm use" in part as "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops." The Project Site and adjacent property is used for wheat farming. Only 34 acres of land will be removed from farm use, none of which is classified as high-value farmland. Applicant proposes steps to minimize disruption to farming practices. Turbines and transmission interconnection lines will be placed along the margins of cultivated areas where possible, and Applicant is working with the County weed officer to develop a plan to minimize the potential invasion by weed species. The road improvements will improve access to farm uses and

the temporary increase in traffic during construction will be managed in coordination with the County road master. The Project is consistent with the purposes of the EFU zone and as proposed, is compatible with farm uses.

- 2.4.2 “Accepted farming practices” is defined in ORS 215.203(2)(c) as “a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.” The Project Site and adjacent property is used for wheat farming. Some plowing, harvesting, and crop-dusting patterns may be modified to account for the location of the turbine pads and turbines. Applicant has communicated with County crop dusters and leasehold landowners regarding aerial spraying, and the crop dusters do not anticipate any problem with continued spraying. Leasehold landowners already manually apply spray around fence lines to cover surface areas missed during crop dusting. A similar method will be used for areas near the turbines that the crop duster misses. The road improvements will not seriously interfere with accepted farming practices, including moving equipment along local roads. Applicant will coordinate with the County road master to ensure adequate coordination and new roads will improve access to farm uses. For these reasons, the Project does not seriously interfere with accepted farming practices on adjacent lands devoted to farm use.
- 2.4.3 The Project will not materially alter the overall land use pattern of the area. The surrounding area is in farm use. The Project is consistent with the EFU zone and will not significantly interfere with accepted farm uses. It will only remove approximately 34 acres from farm uses, representing a very small percentage of agricultural lands in the County. Any impact associated with the Project will not amount to a material impact so as to alter the overall land use pattern of the area.
- 2.4.4 The Project Site was selected because of its topography and the availability of the wind resource. The land is not high-value farmland, and there is an abundance of agriculture and open space in the County that provide the necessary support resources for agricultural uses. The land is more suitable for a wind-energy production site when considering the availability of wind resources and the highest and best use. Therefore, SCZO 5.8(20)(4) is met.
- 2.4.5 There are no other applicable significant resource provisions in SCZO that have not already been addressed and met. Therefore, SCZO 5.8(20)(5) is satisfied.
- 2.4.6 Conditions of approval are imposed as necessary under SCZO 5.3, and Applicant is obligated to satisfy the conditions. The Project thus satisfies SCZO 5.8(20)(6).
- 2.5 An approval may not be granted for any use which is, or expected to be found, to exceed resource or public facility carrying capacities, or for any use which is found to not be in compliance with air, water, land, and solid waste or noise pollution standards. Applicant must obtain an NPDES 1200-C permit and comply with DEQ noise standards. The Project results in no air emissions and any wastewater will be discharged to an on-site

septic system meeting applicable County standards. The Project will not exceed resource or public facility carrying capacities given the Project's limited impact on air, water and land resources and dependence on public facilities. Applicant proposes road improvements to reduce impacts to local roads. For these reasons, approval is appropriate subject to conditions of approval, and SCZO 5.2(5) is met.

- 2.6 There is no existing violation of SCZO. The Project does not violate any use in SCZO. Therefore, SCZO 5.2(6) is met.

### **SECTION 3. DECISION**

Based upon the forgoing Findings of Fact, the requested conditional use permit is approved subject to the following conditions.

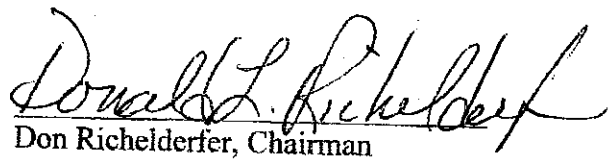
### **SECTION 4. CONDITIONS OF APPROVAL**

- 4.1 The conditional use permit approval is contingent upon the County Court adopting a Goal 3 exception for the Project Site and amending the Comprehensive Plan.
- 4.2 Applicant will submit a revised site plan of Operations and Maintenance Building to include the actual size and location of the building.
- 4.3 Applicant will record a Farm Management Easement(s) on the property on which it locates wind power generation facilities.
- 4.4 Applicant will remove from Special Farm Assessment the property on which it locates the Hay Canyon Wind Farm and will pay all property taxes due and payable after the Special Farm Assessment is removed from such property.
- 4.5 Applicant will comply with all applicable government permit and approval requirements, and:
- A. Work with the Sherman County Weed Control manager to take appropriate measures to prevent the invasion, during and after the project's construction, of any weeds on the Sherman County noxious weed list.
  - B. Comply with the Federal Aviation Administration's requirements for installing and operating lighting on the turbines.
  - C. Cooperate with the Sherman County Road Department to ensure that any unusual damage or wear caused by the use of the County's roads by the developer during the construction of the project will be the responsibility of the developer. The Road Department will provide an assessment of road conditions in the project area prior to the start of construction of the project and an evaluation of the roads following completion of the project to determine any significant change in condition. In addition, no equipment or machinery of the developers shall be

parked or stored on any county road except while in use. See item 4.8 of this section for additional requirements.

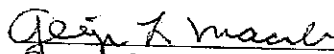
- 4.6. Within 6 months after the wind turbines, or any replacement wind turbines, are abandoned, Applicant or the property owner at Applicant's or the property owner's expense, will decommission and remove the wind turbines and wind turbine towers. Abandonment does not include temporary curtailment of operations due to market conditions, equipment repair or replacement, or other similar interruptions in operations.
- 4.7 Applicant will implement the fish and wildlife measures the Applicant proposed, which are included in the Biological Summary Report included with the CUP application and as further set forth in its September 19, 2007 letter. A subsequent letter from ODFW to Sherman County, dated September 24, 2007 acknowledges the applicant's proposal as satisfactory. Both letters are attached to this order.
- 4.8 Prior to beginning construction, Applicant will (a) designate a route or routes for the transport of wind turbine construction material (including water, aggregate, concrete, machinery, and tower pieces), with the intention of minimizing damage to non-designated roads, and provide these designations to the County Road Master; (b) provide to the County Road Master a written summary of possible, anticipated road damage to the designated route or routes, and an estimate of the cost of repair to the designated route or routes; (c) establish and maintain an escrow account for so long as construction is ongoing funded in an amount equal to the estimated cost to repair the designated route or routes consistent with the estimate provided in (b) above; and (d) conduct an inspection of the roads along the designated route or routes before and after construction with a representative of the Sherman County Road Department and an independent third party with the required expertise to inspect and evaluate paved and graveled roads. In the event a dispute arises, the third party shall be the final arbiter. The cost of the hiring of the third party shall be borne by the applicant.
- 4.9 Applicant will comply with OAR 340-035-0035 regarding noise requirements for wind projects.

**APPROVED THIS 10th Day of December, 2007**

  
Don Richelderfer, Chairman

Sherman County Planning Commission

ATTEST:

  
Georgia Macnab, Planning Director  
Sherman County