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GOVERNOR

October 24, 2012

Commissioner Tim Josi, Chair, Territorial Sea Plan Advisory Committee
c/o Department of Land Conservation and Development
via: email delivery

Subject: Considerations in Developing TSPAC Recommendations for Siting Marine Renewable Energy

Dear Commissioner Josi:

On behalf of Governor Kitzhaber, I wish to extend profound thanks to you and all the members of the Territorial Sea Plan Advisory Committee (TSPAC) for your hard work to develop recommendations to the Land Conservation and Development Commission (LCDC) on planning for marine renewable energy. The challenge before TSPAC is to balance the many vital interests of our coastal communities, the State of Oregon, and our country in the responsible development of future marine renewable energy in Oregon's Territorial Sea. Marine renewable energy is coming to Oregon. We have a critical opportunity to manage where it comes, how quickly it comes, and how to best integrate it with our resources and existing uses in Oregon's Territorial Sea. Given our priorities for both renewable energy development and fostering our existing coastal industries and communities, we cannot afford to let this opportunity pass.

The issue of marine renewable energy development frames a number of priorities for the Kitzhaber Administration. These include protecting the jobs, economic contributions, and way of life provided by our vital commercial and recreational fishing industries, and the tourism and recreation that depend on the spectacular scenic qualities of the Oregon coast. We also seek to control our economic and environmental destiny and create jobs in new industries by fostering our energy independence. Last but not least, we wish to ensure, to the maximum extent possible, that federal actions defer to Oregon's priorities, and give Oregonians a full voice in decision-making that affects our citizens.

I recognize that there is tension among these priorities. However, I am confident that we can encourage both an emerging marine renewable energy industry *and* avoid unacceptable effects on ecological resources and the fishing, tourism, recreation, and other existing uses that rely on Oregon's territorial sea. The Oregon Ocean Policy Advisory Committee's (OPAC) April 2012 recommendations to TSPAC establish an appropriate framework for planning where and how marine renewable energy should (and should not) be developed in Oregon. This is accomplished by identifying four types of areas relative to marine renewable energy development in the

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Territorial Sea: exclusion areas (generally occupied by already-permitted uses), conservation areas (where the priority is protecting existing resources and uses), management areas (where standards for locating marine energy avoid significant adverse effects), and development areas (where smilar standards apply, but we anticipate the least amount of conflict or impacts on other uses and resources are).

TSPAC and its subcommittees have built on OPAC's framework over the past six months. Outcomes to date include the elaboration of standards, refinement of the resource and use maps that help to identify the general extent of existing Statewide Planning Goal 19 (Ocean Resources) protected uses, and the opportunity for state agencies and stakeholders to raise a range of practical concepts to shape the Territorial Sea Plan amendment. Importantly, TSPAC has included information about the areas with the highest potential for various types of marine renewable energy, and has recognized that this planning process must involve both a careful analysis of existing uses, resources, and values, *and* analysis of what areas are most likely to work from the marine renewable energy perspective.

TSPAC must now integrate these components into a recommendation to LCDC. Not surprisingly, this juncture serves to highlight disagreements among stakeholders, but also has led to fruitful discussions of "sideboards" that can provide assurances to protect the interests of stakeholders on all sides. Drawing upon TSPAC information and its OPAC antecedents, I offer the following suggestions to help bring TSPAC's and LCDC's work to closure.

Draft Proposals to LCDC

At the conclusion of its October 25, 2012 meeting TSPAC should produce one or more alternative proposals that follow the OPAC framework and identify a limited number of development areas (ideally, 5 to 7 in number). These alternatives are important to solicit meaningful public comment during the TSPAC public work sessions to be held in November 2012. The areas, together with the standards concerning all types of areas (development, management, and conservation) should reasonably meet the needs of the marine renewable energy industry, respect the protection of Goal 19 resources and uses, and reflect the principles and sideboards that follow.

Designate 5 to 7 Development Areas

The development areas may include a proposed Camp Rilea development area as well as the existing Reedsport Ocean Power Technolgies area.

Research Facility Site

Oregon State University's Northwest National Marine Renewable Energy Center (NNMREC) site (Ocean Sentinel) is a research facility that is fully supported by the State of Oregon; it is not

a commercial marine renewable energy project site. The area dedicated to NNMREC should be included in the calculation of total area used for marine renewable energy development, though the NNMREC site itself should not be counted as one of the 5 to 7 development areas.

Distribute Areas

Development areas should be located to provide a range of opportunities for future development of different marine renewable energy technologies, while also avoiding inequitable effects on any one port. Some have suggested a limit on the number of development areas within a set distance of any deep water port. I agree that this is a reasonable means of spreading the development areas along the coast, and equalizing the effects on ports.

Incorporate Caps

The development areas should include caps that limit the total area of the Territorial Sea planned as development areas, as well as caps to limit the total extent of a project within a development area, subject to certain criteria. Thresholds to consider (subject to further technical input and public feedback) should include the following:

- Development areas in total should comprise approximately six to eight percent of the Territorial Sea to allow sites that are of adequate size to allow flexibility in siting to minimize impacts to ecological resources, fishing, and other uses and values.

- Commercial projects (*i.e.*, buildouts) in total across *all* types of areas should be limited to approximately three percent of the Territorial Sea until there is more experience in demonstrating technologies and evaluating impacts.

- Caps within a development area should limit the extent of the commercial project, but must be tailored to the size and context of particular development areas; generally, the larger the area, the smaller the percentage area permitted to be developed.

Provide Adequate Size to Allow Flexibility in Siting

Development areas should be large enough to allow flexibility in siting viable projects, with appropriate input from stakeholders, project proponents, and the public, to avoid significant adverse impacts to ecological resources and existing uses. Caps within a development area make sense only if a site is large enough to allow for such "micro-siting."

Defining Development Areas

The designation of the limited number of development areas identified above (5 to 7 in number) may require the inclusion of some areas that are currently identified as management areas in the resource and use inventory maps as development area instead. *This action would not change the underlying resource inventory* (only new information about ecological resources or fishing effort

will effect such an inventory change), nor would it affect conservation areas. The delineation of larger flexible development sites, that include some resources and uses that are currently found in the management areas, will be the result of incorporating information about wave energy development needs as part of the planning framework, and will be subject to the caps and constraints above, as well as certain resource and use protection standards. Unique circumstances associated with Camp Rilea may require special designation for that development area.

Federal Approval of Oregon's Plan

The Federal Energy Regulatory Commission will honor its agreement with the State of Oregon to refrain from licensing marine renewable energy facilities in the Territorial Sea only for so long as it sees Oregon progressing toward a plan that can be approved as part of the state's Coastal Management Program. Such approval will mean federal actions relating to marine renewable energy in the Territorial Sea must be consistent to the maximum extent practicable with Oregon's plan. OPAC at its April 2012 meeting stated by consensus the importance of federal approval of a spatial plan for Territorial Sea Plan Part Five. The statement implicitly recognized the importance of this approval to Oregon being able to maximize its impact on marine renewable energy development decision making in the Territorial Sea. To approve Oregon's plan the National Oceanic and Atmospheric Administration must find it is consistent with "the state's obligation to consider the national interest in energy facility siting" under the federal Coastal Zone Management Act, among other criteria. In the present circumstances, this means the plan must provide a path to siting viable marine renewable energy projects.

It is worth underscoring the *planning* purpose of the Territorial Sea Plan amendment for marine renewable energy. From the progress you have made so far, it is clear the plan will set up a rigorous permitting process that will engage citizens and stakeholders in the state's evaluation of the benefits and effects of projects at particular locations using specific devices – in areas the state has determined are likeliest to result in the least amount of conflict or impacts on other uses and resources. I commend you for bringing us to this point, look forward to joining you at your October 25 meeting in Florence, and assure you I and my staff will remain engaged partners with you and OPAC as the work to amend the Territorial Sea Plan for marine renewable energy comes to a productive conclusion.

Sincerely,

Richard M. Whitman
Natural Resource Policy Director
Office of Governor John Kitzhaber