CITY OF
ASHLAND

December 2, 2008

Chair of the Land Conservation and Development Commission
c/o Bryan Cruz Gonzales
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540

RE: Amendment of LCDC rule to clarify review process for wind projects on farmland

Dear Chair of the Land Conservation and Development Commission:

I'm writing to request that the Commission consider including siting standards requiring an evaluation of the aesthetic and environmental impacts of wind power generation facilities on farmland. Tourism is a significant element of Ashland's economy, and the success of the industry is partly based on the character of the town, the surrounding vistas and the variety of natural environments, fish and wildlife in the Rogue Valley. The City of Ashland fully supports the development of alternative energy resources, but respectively requests that a mechanism is included in the proposed rule amendments that provides an opportunity to consider aesthetic and environmental impacts in addition to the quality of farmland in the siting of future wind power generation facilities.

Thank you for the opportunity to submit comments.

Sincerely,

Maria Harris
Planning Manager

Community Development Dept.
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Ashland, Oregon 97520
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November 25, 2008

Mr. Richard M. Whitman, Esq., Director
Mr. Hanley Jenkins, Advisory Group Chair
Oregon Department of Land Conservation and Development
635 Capitol Street, NE, Suite 150
Salem, OR 97301

RE: Wind Energy Advisory Committee—Industry Comments to Draft Rule

Dear Messrs. Whitman and Jenkins:

Attached to this letter are comments I am submitting as a wind industry representative and member of the Wind Energy Advisory Committee, concerning the agricultural land use issues addressed by the committee, and the draft rule now submitted for consideration by the Land Conservation and Development Commission (LCDC). The attached "redline" version of the proposed rule identifies my concerns, and also includes those raised by PacifiCorp and Horizon Wind Energy—both key members of the wind energy development and utility communities.

First, we applaud the hard work and efforts made by the committee, and generally support the direction of the proposed rule. However, as noted in the attached document, while the committee conceptually agreed to an approach for the final draft rule, the actual language in section (a) was not presented to the committee for consideration. In some respects, the language as described below departs from the conceptual framework that we understood from the final committee meeting. In summary, I have the following concerns:

1. **(37)(a)(A)**. As we discussed at the last committee meeting, we reached a "conceptual" accommodation to "lift" certain standards from ORS 215.275, adopted by the legislature primarily to address siting standards unique to linear utility facilities necessary for public service. While this approach has merit, the proposal itself needs to be revised. First, the adaptation of Section (i) from ORS 215.275 to a focus on wind energy facilities proposed on high value farmland should not simply focus on the "necessary wind resource," and a concept of "reasonableness" needs to be incorporated for a determination of "necessity." The "function properly" verbiage is subjective and will be very challenging to implement. In general, the "locational dependency" focus is highly subjective, lacking the objectivity deliberately incorporated into ORS 215.275. It will be subject to controversy and debate in its implementation, and is an awkward adaptation from a legislative standard intended primarily to

address linear facilities with "unwilling" landowners. Please consider the proposed changes in the attached "redline" draft, which aim to rationalize the "locational dependency" standard for wind energy facilities.

2. **37(a)(B)**. While ORS 215.275 does not include a standard to implement an "environmental, economic, social, and energy consequences" ("EESE") test, that test is proposed for incorporation into this new standard for wind energy facilities. If a "locational dependency" test is imposed in tandem with the "feasibility" criteria in (A), it is a redundant and highly subjective test to impose an EESE requirement on top of the "locational dependency" requirement. Moreover, as noted, there is no EESE test in ORS 215.275, and this test is a vestige of a goal exceptions process which the committee agreed should be abandoned for wind energy facilities. I am very concerned that the combination of the rigid, subjective "locational dependency" test, combined with a redundant EESE standard will likely put added pressure on lands with wildlife and habitat value, in contravention of the process we recently completed to adopt clear siting guidelines for wildlife and habitat protection.

Moreover, the EESE standard is aimed at requiring a comprehensive justification for *removing land from agricultural protection under Goal 3*. As proposed, lands occupied by wind energy facilities will continue to have all protections afforded by Goal 3 and all applicable statutes and rules adopted to implement Goal 3. The EESE standard is a particularly inappropriate and irrational tool where there will only be minor impacts of certain components on a relatively small portion of a particular agricultural site having high value soils. I recommend that the EESE requirement be removed in its entirety.

3. **37(a)(D)**. I suggest that in the consideration of cost to restore agricultural lands, the language requiring consideration of "siting, maintenance, repair, or reconstruction" of the facility include a consideration of the temporary impacts of construction. If this standard is aimed at restoration following the retirement of the facility, it should be clear in stating that. If it is aimed at restoring lands temporarily impacted during the construction process, it should be clear in that direction.

4. **37(a)–General Comments**. Finally, generally speaking, the analysis under subsection (a) is required without regard to the opinions and plans of the effected landowner. During the committee meetings, the committee heard the comments from one agricultural operator (who was not an owner of the affected farmland), of one of the wind energy facilities currently operating in the Columbia plateau region. Neither the operator nor the landowner were invited to present any response to these comments. It was not clear to me that his comments

reflect impacts of wind energy operations in all or even most of the facilities, and industry comments suggest they do not.

ORS 215.275 was adopted both to specifically address the impacts of linear facilities, and was also largely motivated by a recognition that consent of affected landowners might not be achieved (and in fact, often cannot be achieved for projects such as underground gas pipelines and electrical transmission facilities). It is a very different scenario where affected landowners are project proponents, consulted participants in the layout of the facilities, and are compensated through mutually negotiated and agreed contractual terms. In the attached "redline" version, I propose that some level of consultation and deference be accorded to the landowners. Without such consultation, planners are asked to presume impacts, with no involvement of the landowner, and without regard to measures taken by the facility developer, in consultation with the landowner. Finally, unlike ORS 215.275, this section does not include the "objective conditions" standard, further compounding the subjectivity of the proposed rule. ORS 215.275 includes the following language, which could be adapted to use in this rule:

> *"The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(d) or 215.283 (1)(d) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands."*

I think it would add a great deal of clarity for the draft rule to be revised to indicate that conditions imposed pursuant to subsection (b) will adequately constitute "clear and objective conditions" to mitigate and minimize impacts on agricultural lands and soils.

5. **37(b)(A)**. Generally speaking, the standards under subsection (b) are acceptable, and reflect best industry standards. In subsection (D), the reference to a "long-term maintenance agreement" is somewhat vague. It is not common to have these agreements executed at the time a permit is sought, and it is typical that an owner will perform the weed control themselves. PacifiCorp has suggested that this provision be changed to require either that a permit requirement be imposed to perform a contract for noxious weed control, or in the alternative, that the language require the formation of a long-term maintenance agreement, perhaps with a term of no less than three (3) years.

Again, this was an excellent committee process, and conceptually, the outcome should be beneficial to both the wind energy industry and the agriculture community. However, given the fact that the committee did not reach consensus on the actual language of the rule, which we believe is deficient, we would appreciate the Commission strongly considering the proposed revisions, in particular, "tightening up" and the language in subsection (A) of section (37)(a) as noted above. The revised rule will have significant impacts on the permitting and operation of future wind energy facilities, and its adoption and implementation should carefully balance potential ramifications on habitat and wildlife, and the risk of impeding statewide goals to implement renewable energy strategies.

Thank you for your consideration of these comments.

Very truly yours,

Timothy L. McMahan

cc: Advisory Committee Members
Suzi Asmus, Horizon Wind Energy
Arlo Corwin, Horizon Wind Energy
Rene Braud, Horizon Wind Energy
Andrew Linehan, IBERDROLA
Sara McMahon Parson, IBERDROLA
Mark Tallman, PacifiCorp
Douglas Kusyk, PacifiCorp
Rachel Shimshak, Renewables NW Project
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LAND CONSERVATION AND DEVELOPMENT DEPARTMENT
OREGON ADMINISTRATIVE RULES
CHAPTER 660, DIVISION 033, RULE 120, TABLE 1

HV Farm	All Other	Uses
		Utility/Solid Waste Disposal Facilities
R5, 17	R5, 22	Commercial utility facilities for the purpose of generating power for public use by sale**, not including wind power generation facilities.**
R5, 37	**R5, 37**	**Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.**

660 033 0130
Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses
(current)

(5) Approval requires review by the governing body or its designate under ORS 2 15.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

A) Reasonable alternatives have been considered to show that siting any wind power generation facility or component thereof on high-value farmland soils is necessary due to the following factors:

(i) The proposed wind power generation facility or component thereof is locationally dependent on high-value farmland soils. A wind power generation facility is locationally dependent if the necessary wind resource can only reasonably be obtained at the proposed site. A determination of the locational necessity of the wind resource on high-value soils shall balance the following factors: (1) proximity to existing or planned electrical transmission lines and/or substations; (2) whether other locations in proximity to the proposed site would more negatively impact wildlife and habitat; and (3) feasible opportunities for other project sites of similar or better wind resource and land availability in the project vicinity. In conducting this analysis, the decisionmaker shall not require disclosure of confidential information, such as data acquired from meteorological equipment. A component of a wind power generation facility may be locationally dependent if it must be sited on high-value soils to function properly, or if a road system or turbine string must cross high-value soils to achieve a reasonably direct route; and

(ii) Technical and engineering feasibility; or

(iii) Availability of existing rights of way; or

(iv) Public health and safety.

~~(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils; and~~

(B) Costs associated with any of the factors listed in paragraph (A) of this subsection may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(~~D~~C) The owner of a wind power generation facility approved under OAR 660 033 0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are temporarily damaged or otherwise disturbed

by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660 033 0130(37)(b) are satisfied.

(b) In making findings and imposing conditions as required in this subsection, the governing body shall seek comments from, and shall accord substantial weight to the opinion of the affected landowner. For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on existing agricultural operations conducted on the subject property, now or in the future. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are significantly more difficult to farm, and placing wind farm components, such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

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(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033 0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660 033 0130(37)(b) & (c) the approval criteria of OAR 660 033 0130(37)(b) shall apply to the entire project. The provisions of OAR 660 033 0130(37)(a) shall also apply, if applicable.

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November 25, 2008

Mr. Richard M. Whitman, Esq., Director
Mr. Hanley Jenkins, Advisory Group Chair
Oregon Department of Land Conservation and Development
635 Capitol Street, NE, Suite 150
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EXHIBIT: 20
LAND CONSERVATION & DEVELOPMENT COMMISSION
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Very truly yours,

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LAND CONSERVATION AND DEVELOPMENT DEPARTMENT
OREGON ADMINISTRATIVE RULES
CHAPTER 660, DIVISION 033, RULE 120, TABLE 1

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		Utility/Solid Waste Disposal Facilities
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660 033 0130
Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses
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(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

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(B) Costs associated with any of the factors listed in paragraph (A) of this subsection may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(DC) The owner of a wind power generation facility approved under OAR 660 033 0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are temporarily damaged or otherwise disturbed

by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660 033 0130(37)(b) are satisfied.

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(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660 033 0130(37)(b) & (c) the approval criteria of OAR 660 033 0130(37)(b) shall apply to the entire project. The provisions of OAR 660 033 0130(37)(a) shall also apply, if applicable.

NOV 24 2008

WASHINGTON COUNTY, OREGON
Department of Land Use and Transportation, Land Development Services
155 North First Avenue, Suite 350, Hillsboro, Oregon 97124
(503) 846-8761 · FAX: (503) 846-2908

November 20, 2008

Land Conservation & Development Commission
Oregon Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

RE: Proposed Rules on Wind Energy Facility Siting on Farmland

Dear Commissioners:

Washington County planners have followed the state's progress on acknowledging the unique demands for alternative energy facilities, and in particular how these facilities are incorporated into the existing farmland protection rules found in Oregon Administrative Rules 660-033, et seq. We appreciate the Commission's goal to add clarity to the Rules when faced with new demands for uses on farmland and we appreciate the state's emphasis on sustainability.

Acknowledging that the new Rules for Wind Energy Facility Siting were the result of recommendations from a Task Force of knowledgeable experts, we support the general approval criteria incorporated into the proposed Rules. However, we recommend that you consider amending the following terms/definitions as detailed below.

These amendments are offered from the perspective of a local planner informing applicants of the evidence that must be collected to illustrate conformance with the proposed approval criteria.

1) 660-033-130-(37)(a): This section references ORS 195.300(10) to define high value soils, when the same term is defined for all other uses on farmland in OAR 660-033-0020 (8)(a). Why should wind energy facilities be subject to different approval criteria than other uses on high-value farmland? Inconsistencies such as this lead to implementation problems.

   Recommendation: Revise definition for high-value farmland in OAR 660-033-0020 (8)(a), or refer to that definition instead of the text in ORS chapter 195.

2) 660-033-0130(37)(a)(B): This language is associated with findings for compliance with the Goals. Hasn't compliance with Goal 3 already been established with power generation facilities, rendering this finding redundant? Additionally, it is unclear how an applicant is supposed to provide evidence to address this abstract standard.

   Recommendation: Delete this as criteria for approval.

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LAND CONSERVATION & DEVELOPMENT COMMISSION
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3) 660-033-0130(37)(b), (c) and (d) introduce the term "arable" and "nonarable" lands to the OAR's with the briefest of definitions (meaning lands that are cultivated or suitable for cultivation). As the Rule reads, if the facility is proposed on arable lands then additional criteria apply; so these discretionary terms serve as "gatekeepers" to determine whether additional approval criteria apply. We recommend that you use more clear and objective criteria for this "gatekeeper" standard. For example, if all soils in Capability Classes VII & VIII are defined as nonarable, then staff could look up the soil in the USDA Soil Survey and determine the capability class in the area where the facility was proposed to determine whether the additional criteria in 660-033-0130(37)(b) (A through D) applied to the application.

Recommendation: Delete arable/nonarable references and replace with USDA Soil Capability Classifications to determine whether criteria in the Rule apply to specific applications.

Thank you for your consideration. Please contact Terry Lawler at 503-846-8761 with any questions.

Nadine M. Smith
Interim Current Planning and Building Services Manager

NOV 24 2008

WASHINGTON COUNTY, OREGON

Department of Land Use and Transportation, Land Development Services
155 North First Avenue, Suite 350, Hillsboro, Oregon 97124
(503) 846-8761 · FAX: (503) 846-2908

November 20, 2008

Land Conservation & Development Commission
Oregon Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

RE: Proposed Rules on Wind Energy Facility Siting on Farmland

Dear Commissioners:

Washington County planners have followed the state's progress on acknowledging the unique demands for alternative energy facilities, and in particular how these facilities are incorporated into the existing farmland protection rules found in Oregon Administrative Rules 660-033, et seq. We appreciate the Commission's goal to add clarity to the Rules when faced with new demands for uses on farmland and we appreciate the state's emphasis on sustainability.

Acknowledging that the new Rules for Wind Energy Facility Siting were the result of recommendations from a Task Force of knowledgeable experts, we support the general approval criteria incorporated into the proposed Rules. However, we recommend that you consider amending the following terms/definitions as detailed below.

These amendments are offered from the perspective of a local planner informing applicants of the evidence that must be collected to illustrate conformance with the proposed approval criteria.

1) 660-033-130-(37)(a): This section references ORS 195.300(10) to define high value soils, when the same term is defined for all other uses on farmland in OAR 660-033-0020 (8)(a). Why should wind energy facilities be subject to different approval criteria than other uses on high-value farmland? Inconsistencies such as this lead to implementation problems.

   Recommendation: Revise definition for high-value farmland in OAR 660-033-0020 (8)(a), or refer to that definition instead of the text in ORS chapter 195.

2) 660-033-0130(37)(a)(B): This language is associated with findings for compliance with the Goals. Hasn't compliance with Goal 3 already been established with power generation facilities, rendering this finding redundant? Additionally, it is unclear how an applicant is supposed to provide evidence to address this abstract standard.

   Recommendation: Delete this as criteria for approval.

3) 660-033-0130(37)(b), (c) and (d) introduce the term "arable" and "nonarable" lands to the OAR's with the briefest of definitions (meaning lands that are cultivated or suitable for cultivation). As the Rule reads, if the facility is proposed on arable lands then additional criteria apply; so these discretionary terms serve as "gatekeepers" to determine whether additional approval criteria apply. We recommend that you use more clear and objective criteria for this "gatekeeper" standard. For example, if all soils in Capability Classes VII & VIII are defined as nonarable, then staff could look up the soil in the USDA Soil Survey and determine the capability class in the area where the facility was proposed to determine whether the additional criteria in 660-033-0130(37)(b) (A through D) applied to the application.

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