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VIA EMAIL AND U.S. MAIL

Board of Commissioners
Wasco County
511 Washington Street, Suite 302
The Dalles, OR 97058

Re: Wasco County LUDO Chapter 19 Amendments

Dear Commissioners:

On February 15, 2012, the Wasco County Board of County Commissioners (“Board”) will hold its first public hearing on the proposed land use code amendments to Wasco County Land Use and Development Ordinance (“LUDO”) Chapter 19. LUDO Chapter 19 proposes new regulations for energy-related land uses on resource and non-resource zones. Iberdrola Renewables, Inc. (“IRI”) applauds Wasco County’s (“County”) efforts in updating the LUDO and appreciates the emphasis on a thorough and transparent public process.

IRI believes that the majority of the proposed code language is workable and promotes well-planned, responsible energy development. However, there are six areas in LUDO 19.030(C) General Standards and (D) Specific Standards for Commercial Power Generating Facilities that need additional consideration in order to resolve important site development issues. The enclosed redline suggests revisions for the Board’s consideration and the following sections provide support for the suggested changes. We appreciate the Board’s consideration of this language and look forward to discussing these topics with the Board at the February 15th hearing. The following sections are ordered by LUDO subsection, not by order of importance to IRI.

Visual Impact Standard, LUDO 19.030(C)(4)

The Commercial Advisory Group recommended the Planning Commission consider three options for a possible visual impact standard. The three options were presented in the May 3 and June 7, 2011 Planning Commission hearing packets. At the June 7th hearing, the Planning Commission voted to recommend Option 3 to the Board, which is intended to mirror the Energy Facility Siting Council (“EFSC”) protected area (OAR 345-022-0040) and scenic resource (OAR 345-022-0080) standards (enclosed for reference). The LUDO 19.030(C)(4) language presented to the Board, however, is inconsistent with Option 3 and does not reflect the Planning



Commissioner's recommendation. It may be that the language was simply the result of a cut and paste mistake, but whatever the reason, it needs to be fixed.

The suggested redline incorporates the EFSC protected area and scenic resources standards into the LUDO, as modified to reflect those resources located within the County with one exception. IRI proposes to delete reference to Bureau of Land Management ("BLM") Areas of Critical Environmental Concern ("ACECs") given the fact that BLM does not universally exclude wind energy development from ACECs. See enclosed BLM Instruction Memorandum No. 2009-043. IRI encourages the Board to follow the Planning Commission's recommendation, as presented in the attached redline.

Natural Resources/Wildlife Protection, LUDO 19.030(C)(5)

IRI suggests minor revisions to this standard to reflect EFSC's current practice of developing a Wildlife Monitoring and Mitigation Plan ("WMMP"). Measures included in the WMMP should be developed in consultation with the County and jurisdictional wildlife agencies, and the language clarifies that a WMMP may be appropriate, depending on the project. Something less (such as conditions of approval in a permit) may suffice depending on the size and nature of the project. IRI also proposes changes to the wetland and stream standards to simplify and clarify the requirements. The suggested language still requires minimization of impacts and leaves the discretion with the County to determine what is adequate, but it consolidates the standards related to this requirement.

Protection of Historical and Cultural Resource, LUDO 19.030(C)(6)

The language suggested in this section is to clarify that protection measures apply to cultural resources "potentially eligible for listing in the National Historic Register" and are to be implemented in areas where there could be temporary or permanent disturbance. The suggested change is consistent with current EFSC practices, approved by the Oregon State Historic Preservation Office.

Onsite Access Roads and Staging Areas, LUDO 19.030(C)(11)

The suggested language is intended to clarify that this standard only applies to land under an applicant's control, which is accomplished by adding the defined term "Energy Facility Project Area."



FAA Lighting, LUDO 19.030(D)(1)(a)(3)

The current language in LUDO Chapter 19 states that if Federal Aviation Administration (“FAA”) lighting is required, “and radar triggered lighting is on the list of approved lighting, it shall be required.” The FAA accepts requests from sponsors of Audio Visual Warning Systems (“AVWS”) on wind turbines as an alternative to conventional lighting systems and will analyze and approve AVWS systems on a case-by-case basis. See enclosed FAA letter to America Wind Energy Association, dated November 2010. Given the uncertainty around AVWS, an applicant may not be able to accept the risk associated with installing an AVWS on a wind farm, even if the AVWS was an “approved lighting” per the FAA. Therefore, it is suggested that the County encourage consideration of AVWS but not require it wholesale. Instead, the usage can be evaluated on a case-by-case basis.

Wind-Specific Setbacks, LUDO 19.030(D)(1)(c)

IRI maintains that lesser setbacks are appropriate as long as the Oregon Department of Environmental Quality (“DEQ”) noise regulations are met. The Planning Commission’s recommended setback distances are not founded on fact, but were simply negotiated based on opinion. The Board will likely hear a variety of opinions on what amounts to safe setback distances, but no evidence in the record, including the DRAFT Oregon Health Impact Assessment, warrants greater setbacks other than what has been adopted for EFSC-jurisdictional wind energy facilities. The attached redline recommends 1,320-foot setbacks for rural residences and 3,520 feet for non-resource zone boundaries and city limits. In addition, the suggested redline clarifies what is required to comply with the recommended setback distances (e.g., how the setback is measured) and proposes a structure pursuant to which the County can authorize an adjustment to a setback development standard. Instead of using waivers to achieve a lesser setback, in light of recent case law, IRI suggests an adjustment process, as described below.

Reason for Eliminating the Waiver

As background for the suggested revision, the recent Oregon Land Use Board of Appeals (“LUBA”) decision in *Cosner v. Umatilla County*, 63 Or LUBA ___ (Jan. 12, 2012) raised questions concerning the constitutionality of setback waivers granted by landowners outside of the permitting process. There are a variety of unanswered questions related to the *Cosner* decision, but to avoid potential challenges based on the *Cosner* opinion, IRI suggests the Board adopt language to eliminate the use of a waiver. Instead, IRI recommends that the County adopt an adjustment process, specific to wind facility setback distances, and codify the process in LUDO 19.030(D)(1)(c).