

ORDINANCE #67

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

In the Matter of Authorizing the Creation
of the Tillamook Intergovernmental
Development Entity by
Intergovernmental Agreement

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}

ORDINANCE #67

FILED
11:20am
APR 11 2007
TASSI O'NEIL
COUNTY CLERK

WHEREAS, the Tillamook County Board of Commissioners ("County") desires to enter into an Intergovernmental Agreement pursuant to ORS 190.010 with Tillamook People's Utility District; and

WHEREAS, the Intergovernmental Agreement creates the Tillamook Intergovernmental Development Entity (TIDE) IGA; and

WHEREAS, the County desires to ratify its participation in the Intergovernmental Agreement and the creation of the TIDE IGA.

NOW THEREFORE, the Tillamook County Board of Commissioners ordains as follows:

Section 1. It is the intent of the County to create the TIDE IGA pursuant to ORS 190.003 through 190.085 by an Intergovernmental Agreement with the Tillamook People's Utility District and such additional parties as may join subsequently.

Section 2. The effective date of the Intergovernmental Agreement is as indicated in the TIDE IGA.

Section 3. The public purposes for which the TIDE IGA is created is to study, design, permit, construct, own, operate and maintain a wave energy network facility (the "project") for the benefit of the people of Tillamook County.

Section 4. The powers, duties and functions of the TIDE IGA are described in the Intergovernmental Agreement attached as Exhibit "A" (available in the Commissioners' office) to this Ordinance.

Section 5. The creation of the TIDE IGA pursuant to an Intergovernmental Agreement, substantially in the form of Exhibit "A" is hereby ratified and approved.

Section 6. Immediate action being necessary to carry out the TIDE IGA public purposes with a timely filing of an application for the project with the Federal Energy Regulatory Commission, an emergency is declared to exist and this Ordinance shall take effect immediately upon its execution by the Board.

This Ordinance was duly and regularly passed and adopted by the Tillamook County Board of Commissioners this 28th day of February, 2007 and shall be effective immediately.

Date of First Reading: February 14, 2007.

Date of Second Reading: February 28, 2007.

DATED this 28 day of February, 2007.

**BOARD OF COUNTY COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON**

Mark Labhart
Mark Labhart, Chair

Charles J. Hurliman
Charles J. Hurliman, Vice-Chair

Tim Josi
Tim Josi, Commissioner

Aye Nay Abstain/Absent

<u>✓</u>	<u> </u>	<u> 1 </u>
<u>✓</u>	<u> </u>	<u> 1 </u>
<u>✓</u>	<u> </u>	<u> 1 </u>

ATTEST: Tassi O'Neil, County Clerk

By *Susan L. Beckett*
Special Deputy

APPROVED AS TO FORM:

William K. Bargent
William K. Bargent, County Counsel



EXHIBIT "A"

**INTERGOVERNMENTAL AGREEMENT
CREATING THE TILLAMOOK INTERGOVERNMENTAL DEVELOPMENT ENTITY**

This Intergovernmental Agreement ("Agreement") creating the Tillamook Intergovernmental Development Entity ("TIDE") is entered into by and between the Tillamook People's Utility District, an Oregon people's utility district formed and existing pursuant to the Oregon Constitution and ORS Chapter 261 ("TPUD") and Tillamook County, a political subdivision of the State of Oregon, formed and existing pursuant to the Oregon Constitution and ORS Chapter 203 ("County"), (each of which is referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

- A. WHEREAS, the Parties hereto are authorized to enter into this Agreement creating an Intergovernmental Agency pursuant to ORS 190.003 to 190.265;
- B. WHEREAS, TPUD is engaged in the provision of retail electric service within the County;
- C. WHEREAS, TPUD desires to promote economic growth and the expansion or addition of business and industry within the County through the development of electric generation facilities;
- D. WHEREAS, the County is engaged in the provision of general local government services within the County;
- E. WHEREAS, Tillamook County's overall objectives for its Comprehensive Plan Goal 13 (Energy) includes the utilization of renewable energy resources. To that end, one of Tillamook County's Goal 13 policies is to promote and facilitate the use of renewable energy resources. The Implementation Methods for this policy include the directive to work with appropriate local and State institutions and agencies to identify and protect sites for renewable energy resource use;
- F. WHEREAS, pursuant to ORS 190.010, an intergovernmental agency may perform any or all functions and activities that a party to an intergovernmental agreement, or its officers or agencies, has the authority to perform;
- G. WHEREAS, the Parties to this Agreement desire to form an intergovernmental agency known as the Tillamook Intergovernmental Development Entity, or TIDE, in order to study, design, permit, construct, own, operate and maintain a wave energy network facility ("Project") for the benefit of the people of the County; and
- H. WHEREAS, the concept of operations is to seek and develop public/private partnerships that would undertake and operate the Project in a way that will:

1. Maximize the use of private venture capital, resources and expertise; and
 2. Minimize the expenditure of public funds while achieving the goals and objectives of the parties to develop alternate energy sources in a sound land use, environmental, economic and social manner.
- I. WHEREAS, each of the Parties has taken all legal actions required to authorize the execution and performance of this Agreement;
- J. WHEREAS, the Parties intend by this Agreement to set forth the terms and conditions pursuant to which TIDE may act;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

TIDE

1.1 There is hereby created the Tillamook Intergovernmental Development Agreement. The Parties to TIDE are TPUD and the County.

1.2 Effective Date

The effective date of this Agreement is April 12, 2007.

1.3 Powers

TIDE shall have the following powers:

- 1.3.1. To adopt such bylaws, rules, regulations and policies necessary to further the purposes of this Agreement;
- 1.3.2. To study the best method to permit, design, finance, construct, own, operate and maintain the Project;
- 1.3.3. To perform and exercise all powers granted to TIDE or to each respective Party by ORS Chapters 190, 203 and 261 or any other applicable Charter, ordinance or State or Federal law as may be necessary or desirable for TIDE to permit, design, finance, construct, own, operate and maintain the Project;
- 1.3.4. To purchase, own, hold, appropriate, condemn, grant and receive security interests in, and/or sell real property, fixtures to real property, personal property, intellectual property and rights-of-way, whether within or without the boundaries of TPUD and the County, either in its own name or in the

name of the Parties hereto, as may be necessary or desirable for TIDE to permit, design, finance, construct, own, operate and maintain the Project;

1.3.5. To enter into agreements with other public or private entities as may be necessary or desirable for TIDE to permit, design, finance, construct, own, operate and maintain the Project;

1.3.6. To enter into all legal agreements or transactions as may be necessary to issue, sell or otherwise dispose of bonds, securities or other forms of indebtedness, including the power to issue revenue bonds under ORS 288.805 to 288.945, as may be necessary or desirable for TIDE to permit, design, finance, construct, own, operate and maintain the Project;

1.3.7. To hire and discharge contractors and consultants as necessary or desirable for TIDE to permit, design, finance, construct, own, operate and maintain the Project;

1.3.8. To hire and discharge employees as necessary or desirable to operate TIDE and to further the purposes of this Agreement; and

1.3.9. To buy, sell and trade electric energy, capacity, transmission rights and/or environmental attributes as necessary or desirable in connection with the development and operation of the Project.

1.4 Meetings

TIDE shall conduct regular meetings, no less than once per calendar quarter, in accordance with the provisions of this Agreement and the Oregon Public Meetings Law, ORS 192.610 to 192.710.

1.5 Business Records

To the extent allowed by law, TIDE shall hold in confidence any sensitive business, commercial or financial information concerning the Project, if designated by agreement as "confidential", that is received from a Party, received from another person or entity, or generated by TIDE.

1.6 Offices

The principal offices of TIDE shall be located at Tillamook People's Utility District, 1115 Pacific, Tillamook, Oregon 97141.

1.7 Budgeting

The Board shall provide for and approve an annual work plan and an estimate of administrative and other expenses for the next fiscal year.

1.8 Allocation of Expenses

Except as otherwise agreed in writing and subject to Section 2.3.2 below, each Party shall contribute an equal share of the funds required to pay the budgeted expenses as approved by the Board. Each Party may provide in-kind services to further the purposes of TIDE as each Party deems necessary or desirable. Such in-kind services shall not be reimbursed from TIDE or other Parties, unless otherwise agreed.

1.9 Allocation of Benefits

Except as otherwise agreed in writing, each Party shall be entitled to an equal share of the revenues generated by TIDE and each Party shall be entitled to an equal share of the assets of TIDE.

1.10 Liability to Third Parties

Except as otherwise expressly agreed in writing, there shall be no joint and several liability of the Parties either in contract or tort and all obligations of TIDE or the Parties shall be several only. Without limiting the foregoing, no Party shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act of another Party. In such case, the Party causing damage by its sole negligent act, omission or wrongful act shall be individually liable.

1.9 Tax

Except as otherwise expressly agreed in writing, any tax liability or incentive incurred or received by TIDE with respect to its ownership or operation of the Project shall be shared by the Parties in proportion to their respective benefits received from the Project notwithstanding the fact that such tax liability or incentive may be solely attributable to the participation of one or more Parties.

ARTICLE II

OWNERSHIP AND MEMBERSHIP

2.1 Board of Directors

TIDE shall be governed by a four (4) member Board of Directors ("Board").

2.1.1. The governing body of each Party shall appoint two (2) representatives to the Board and two (2) alternate representatives.

2.1.2. An alternate representative shall act in a Board capacity only during the absence of that Party's representative. Representatives and alternate representatives shall serve at the pleasure of their respective governing bodies. In the event of a vacancy, the governing body of the Party that appointed the departed representative shall appoint a successor.

2.1.3. In the event that additional Parties join TIDE, as provided in Section 2.3.3, or a Party withdraws, as provided in Section 3.2, then the number of Board representatives shall be adjusted accordingly to ensure that each Party is represented by two (2) Board members.

2.2 Officers

Within 30 days after the effective date of this Agreement, the Board shall elect from its membership a President, a Vice-President and a Secretary/Treasurer (collectively, the "Officers") who shall serve a term consisting of the remainder of 2007 and the following calendar year. Thereafter, within 30 days after the beginning of each calendar year, the Board shall elect from its membership Officers who shall serve until the next annual election of Officers. Officers shall serve at the pleasure of the Board or until their successors shall be appointed and take office. In the event that a Party whose representative is an Officer of TIDE withdraws from TIDE or removes or replaces its representative, then the Board shall, within 30 days of such action, call a special election to elect a replacement Officer who shall serve until the next annual election of Officers.

2.2.1. Duties of the President

The President shall call and preside at all TIDE meetings and shall submit such recommendations and information as she or he may determine appropriate to discuss at TIDE meetings. Wherever necessary and appropriate, the President shall perform the duties and responsibilities of TIDE in accordance with the obligations and limitations set forth in this

Agreement. The President shall otherwise not have the authority to bind the members of TIDE to any financial or other obligations and shall not hold herself or himself out as such.

2.2.2. Duties of the Vice-President

The Vice-President shall perform the duties of the President in the absence or the incapacity of the President until such time as the President is able to resume performance of such duties or the Board elects a new President.

2.2.3. Secretary/Treasurer

The Secretary/Treasurer shall keep the minutes and the official records of TIDE and perform such other duties required of a Secretary/Treasurer. The Secretary/Treasurer shall be responsible for the fiscal administration of all funds of TIDE. The Secretary/Treasurer and either the President or the Vice-President shall act as co-signers of checks drawn upon the accounts of TIDE. The Secretary/Treasurer may delegate the administrative functions of her or his office to another qualified person or to other qualified persons who need not be on the Board.

2.2.4. Additional Duties

The Officers of TIDE shall perform such other duties and functions as may from time to time be required by TIDE's bylaws or by applicable law.

2.3 Voting Rights

Except as otherwise expressly provided in this Agreement, the Board shall exercise its voting rights in the following manner:

2.3.1. Manner of Acting

A majority of members of the Board shall constitute a quorum for transaction of TIDE business. A majority vote of the Board shall be necessary and sufficient to decide any issue on behalf of TIDE, except that a unanimous vote of the Board shall be required to decide financial matters described in Section 2.3.2, for the addition of new members pursuant to Section 2.3.3, for the hiring and discharging of employees pursuant to Section 1.3.8, for the acceptance of or amendment to the scope of work pursuant to Sections 2.5.1 and 2.5.2 and for the dissolution of TIDE pursuant to Section 3.1;

2.3.2. Financial Matters

Any decision of TIDE involving the payment for or procurement of goods or services or the incurrence of any financial obligation in excess of \$500, including the issuance or sale of bonds, securities or other forms of indebtedness, shall require the affirmative authorization of the governing body of each individual Party, such authorization to be expressed by resolution. The procurement of any goods or services that are subject to this sub-section shall be performed by resolution or separate agreement between the Parties that specifies the apportionment between the Parties of the fees and costs associated with such goods or services.

2.3.3. New Parties

Any entity eligible to do so under ORS Chapter 190 may join TIDE as a Party only if first approved by the Board and by the governing bodies of each then-existing Party.

2.4 Scope of Work

2.4.1. As soon as reasonably practical after taking office, the Board will:

- 2.4.1.1. Secure and maintain liability insurance for TIDE with D&O coverage and a surety bond for the Treasurer.
- 2.4.1.2. Appoint a Budget Officer and Budget Committee and adopt a Budget as required by Oregon Budget Law.
- 2.4.1.3. File an application with the Federal Energy Regulatory Commission (FERC) for a Preliminary Permit for the project in order that TIDE may secure and maintain priority application for a license under Part 1 of the Federal Power Act.

2.4.2. Following receipt from FERC of a Preliminary Permit for the Project, the Board will:

- 2.4.2.1. Create procedures for screening and selection of persons to perform personal services as directed by ORS 279A.070 and may enact its own public contracting rules pursuant to ORS 279A.065(5)(a).
- 2.4.2.2. Issue one or more Requests for Information (RFI) in order to assemble available data and information on current technologies, research, contractors, operators and methods for the generation and distribution of electrical power from wave energy.

- 2.4.2.3. Analyze the assembled information in order to develop one or more possible alternatives that appear to have some feasibility.
- 2.4.2.4. Utilizing Requests for Proposals (RFP), Requests for Qualifications (RFQ) or some other method of solicitation authorized under TIDE's Public Contracting Rules, further develop Project alternatives.
- 2.4.2.5. If one or more project alternatives appear feasible, negotiate one or more tentative contracts with the successful proposers for the Project.
 - (i) Such contracts may include TIDE license fees or other terms or conditions as deemed appropriate by the Board.
 - (ii) Such contracts may provide for a term of years in order for the contractor to recoup capital costs.
- 2.4.2.6. Issue a Notice of Intent to Award subject to obtaining FERC licensing any other required State, Federal or local regulatory approvals and such other conditions required under local public contracting rules.
- 2.4.2.7. Cooperate with the successful proposer in conducting required environmental studies or reviews for siting the Project.
- 2.4.2.8. Administer all contracts for the Project and monitor opportunities for developing new contracts.

2.5 Insurance

TIDE shall obtain and maintain adequate insurance to cover the directors, officers, employees, staff, agents and activities undertaken by TIDE consistent with industry standards (if any) for facilities similar to the Project.

ARTICLE III

TERM AND TERMINATION

3.1 Term

The term of this Agreement shall be perpetual unless, by a unanimous vote, the Parties act to dissolve TIDE.

3.1.1. Dissolution

Upon dissolution, each Party on the date of dissolution shall remain liable for its share of any TIDE financial obligation that has been specifically allocated to the Party in accordance with this Agreement or by separate agreement of the Parties. Upon dissolution, each Party shall receive its share of the assets and revenues of TIDE as specifically allocated to the Party in accordance with this Agreement or by separate agreement of the Parties.

3.2 Voluntary Withdrawal by a Party

Any Party may terminate its participation in this Agreement and withdraw from TIDE by giving written notice to the President and each other Party. Withdrawal shall be effective forty-five (45) days from the date the last required notice is given. The withdrawing Party shall remain liable for its share of any TIDE financial obligation, incurred prior to the Party's written notice of withdrawal, and specifically allocated to the Party in accordance with this Agreement or by separate agreement of the Parties.

ARTICLE IV

DISPUTE RESOLUTION

- 4.1 If a dispute regarding this Agreement arises between the Parties or between TIDE and one or more Parties, then the disputing Parties shall first attempt to resolve the dispute by negotiation, followed by binding arbitration if negotiation fails to resolve the dispute.

4.1.1. Negotiation

The Board Members or other persons designated by each of the disputing Parties will negotiate on behalf of the Parties they represent. The nature of the dispute shall be reduced to writing and shall be presented to each of the disputing Parties who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each disputing Party and ratified by TIDE, which resolution shall be binding upon the Parties.

4.1.2. Binding Arbitration

If the dispute cannot be resolved by negotiation within a reasonable time, the disputing Parties shall submit the matter to binding arbitration. If the Parties cannot agree upon an arbitrator within ten (10) days, the Parties shall submit the matter of determining an arbitrator to the Presiding Judge of the Tillamook County Circuit Court. The common costs and fees of the arbitration shall be born equally by the Parties. Each Party must bear its individual costs and fees including attorney fees.

ARTICLE V

AMENDMENT

- 5.1 The terms of this Agreement may be waived or amended only by written agreement of the Parties, signed by all of the Parties.

ARTICLE VI

GENERAL PROVISIONS

6.1 Integration

This Agreement embodies the entire Agreement and understanding between the Parties relating to the formation and governance of TIDE and supersedes all prior agreements and understandings relating to the subject matter hereof.

6.2 Severability

Should any provision of this Agreement be held by a tribunal of competent jurisdiction to be invalid or unenforceable, the Parties shall negotiate in good faith to restore, insofar as practicable, the benefits or protections to each Party that were affected by any provision of this Agreement held to be invalid or unenforceable.

6.3 Notice

Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received and may be given by hand delivery or by certified mail, first class postage prepaid, addressed to the Parties as follows:

General Manager
Tillamook People's Utility District
PO Box 433
Tillamook, Oregon 97141

Management Analyst
Tillamook County
201 Laurel
Tillamook, Oregon 97141

Any additional Parties to this Agreement shall provide to TIDE and to the other Parties, in writing, a designated person and address for notices required hereunder.

6.4 Audit

Each Party to this Agreement shall have the right, upon reasonable advanced notice, to review and inspect the books and records for TIDE. Such inspection shall occur during normal business hours at TIDE's principal office, or wherever such records are kept in the normal course of business.

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Counterparts

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, any one of which shall constitute an Agreement between and among the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Patrick Ashby
Patrick Ashby
General Manager
Tillamook People's Utility District

4/10/07
Date

STATE OF OREGON)
County of Tillamook) ss.

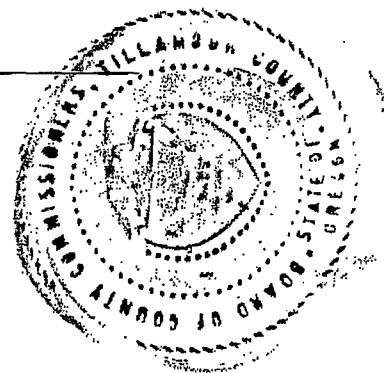
SIGNED OR ATTESTED before me on this 10th day of April, 2007 by Patrick Ashby



Terri Filosi
A Notary Public for the State of Oregon

Mark Labhart
Mark Labhart
Chair

3-6-07
Date



Tillamook County Board of Commissioners
STATE OF OREGON)
County of Tillamook) ss.

SIGNED OR ATTESTED before me on this 6th day of March, 2007 by Mark Labhart.

ORIGINAL - Return to
Tillamook Co. Commissioners
201 Laurel, Tillamook, OR 97141

Susan L. Becraft
A Notary Public for the State of Oregon

