1000 friends of Oregon

133 SW Second Ave, Suite 201 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389
Willamette Valley Office • PO Box 51252 • Eugene, OR 97405 • (541) 520-3763 • fax (503) 223-0073
Central Oregon Office • 115 NW Oregon Ave #21 • Bend, OR 97701 • (541) 719-8221 • fax (866) 394-3089

House Committee on Land Use
State Capitol
900 Court Street NE
Salem, OR 97301

March 28, 2013

RE: Suggested changes to HB 2820-A

Chair Clem and members of the committee:

Thank you for this opportunity to present testimony suggesting changes to HB 2820-A, legislation to dramatically increase the threshold for Energy Facility Siting Council jurisdiction over utility scale solar facilities. 1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to support livable urban and rural communities, protect family farms and forests, and provide transportation and housing choice.

This bill has a long history. Up until 2011, DLCD had something called the 12/20 rule. It allowed solar installations of up to 12 acres on high-value farm lands without taking an exception to Goal 3 and installations up to 20 acres without an exception on all other farm use lands. In 2010, DLCD established a rulemaking advisory committee (RAC) to look at wildlife provisions dealing with utility scale solar siting and to examine the 12/20 rule. LCDC ultimately adopted new wildlife language and a new 12/20/100 rule that we supported. This allowed siting without an exception on 12 acres of high-value lands, 20 acres of "arable lands" (those of quite good soil quality and traditionally cultivated), and 100 acres on "non-arable lands" (which are poorer soils or not cultivated).

At the same time, the thresholds for jurisdiction by the Energy Facility Siting Council (EFSC) were a little confusing. There are two thresholds in law for siting solar arrays – one at 100 acres and one at 105 MW (about 735 acres). DLCD and 1000 Friends both interpreted the law so that both thresholds apply. Today, that would mean jurisdiction for EFSC at 100 acres. In the future, as solar cells get more efficient and over 105 MW can be sited on 100 acres, the 105 MW threshold will eventually apply.

During the 2011 session, Obsidian Finance brought legislation to change both the threshold in land use law and the EFSC threshold. Richard Whitman negotiated an agreement between Obsidian, Renewable Northwest Project (RNP), and 1000 Friends to change the 12/20/100 rule to 12/20/250. After conceding 80 acres per installation (when the threshold went from 20 acres to 100 acres) we conceded an additional 150 acres (when the threshold went from 100 acres to 250 acres). This means that for most of the lands east of the Cascades, the threshold for an exception went from 20 acres before the RAC, up past the 100 acre agreement to 250 acres in the new agreement. This was a huge concession on our part and was not met by any corresponding concessions.

So now we had a new threshold for taking an exception and Obsidian, RNP, and 1000 Friends all testified in front of House Energy, Environment and Water that 250 acres was acceptable. This still left the EFSC threshold at 100 acres and Obsidian had concerns with the wildlife language in the LCDC rule.

In an attempt to address continuing concerns by Obsidian, House Energy and Environment held workgroup meetings in the interim to work on the wildlife language from the new LCDC rule and to

address the EFSC threshold. Agreement was reached on the wildlife language, but there was not agreement on the EFSC threshold. 1000 Friends first advocated mirroring the LCDC rule (at 12/20/250). However, after discussions we agreed to 100 acres for high-value and arable lands (since we interpret that to be the threshold for EFSC jurisdiction today) and 250 acres on non-arable lands – a 100/100/250 threshold. At the final meeting of the interim workgroup, Obsidian announced it wanted a full section (640 acres which equals one square mile) on non-arable lands. There was significant dissatisfaction on the work group with this proposal.

In House Energy and Environment a placeholder bill was gutted and stuffed with new language that instituted a 100/100/640 rule and contained problems, some of which were fixed. However, we feel there is still at least one practical problem with the bill and that *the thresholds adopted for EFSC jurisdiction are too high to protect agriculture.*

So why protect agriculture in the barren wasteland of Eastern Oregon? It turns out that Eastern Oregon is not a barren wasteland. Much of it is very productive agricultural land. Of Oregon's top five producing agricultural counties, three are in Eastern Oregon. The top five are Marion County at $616.9 million, Umatilla County at $503.2 million, Morrow County at $477.1 million, Clackamas County at $332.9 million, and Malheur County at $296.1 million.

How is this possible? Because six of the eight highest grossing agricultural commodities in the state have a strong nexus to Eastern Oregon. The top eight are Cattle and Calves at $779.8 million, Nursery/Greenhouse at $641.1 million, Dairy at $523.9 million, Wheat at $521.5 million, Hay at $413.6 million, Grass seed at $294.9 million, Potatoes at $165.2 million, and Onions at $132.6 million.

Agriculture is the economic driver for Eastern Oregon. Covering over productive farm land with solar panels takes the land out of production and costs jobs in agriculture. We should not trade solar jobs for agriculture jobs when we can have both by implementing commonsense changes to this bill.

→First, as the bill is currently written it is possible for lands to fall between the cracks. The definitions of arable lands and non-arable lands are such that some lands may be neither.[1] For those lands, EFSC would never get jurisdiction. We suggest removing the definition for non-arable land and changing the reference on page 2, line 32 from "non-arable land" to "any other land." This would simplify the bill and fix this problem.

→To address concerns regarding agricultural land, we request changing the threshold on page 2, line 32 to 320 acres. This is a half section which equals half of a square mile. Obsidian and RNP have testified that 250 acres is enough to pencil, we all agreed on 250 acres in the LCDC rule, and it is entirely appropriate for larger facilities to go through more process at EFSC. However, land in Eastern Oregon is often in 160 or 320 acres parcels so going to 320 acres for EFSC jurisdiction makes some sense.

We have worked in good faith in the discussions. We ask that you incorporate these suggestions into the bill. For the reasons above, 1000 Friends of Oregon opposes HB 2820-A as currently written.

Respectfully submitted,

Steven D. McCoy
Farm and Forest Staff Attorney

[1] For example, lands made up of predominantly class V-VIII soils that are 50-50 cultivated and uncultivated would not fall under either definition.