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Via Electronic Mail
Umatilla County Board of Commissioners
C/O Tamra Mabbott
216 SE 4th Street
Pendleton, OR 97801

RE: Senate Bill 258

Dear Board Chair Murdock and Members of the Commission:

A coalition of farmers and other agricultural operators, including Windy River, that own and operate agricultural operations on high value farmlands which are threatened by various energy facilities, are concerned by the extraordinary provisions in Senate Bill 258 ("SB 258") which further jeopardize the rights of these parties to protect their lands and operations. SB 258 proposes new state policy that extraordinarily, unnecessarily, and unjustifiably erodes historic farmland rights and protection under Oregon law, among other things. This coalition respectfully requests your active opposition to SB 258.

In summary, SB 258 provides that no state land use legislation, and no governing body land use ordinance, that was not in effect when the energy facility *application was first submitted* can ever be applied to an energy facility siting proposal:

(1) No matter how many years elapse between an application for an energy facility and the issuance of a site certificate;
(2) No matter how many times or how significantly an application for an energy facility has been amended;
(3) No matter how many times or how significantly a site certificate is amended; and
(4) No matter how severe the amended proposal impacts are on agricultural operations.

Energy facility siting often takes years and original applications are frequently amended over this time. Given this significant time exposure, there often are changes in state and local land use laws. Under SB 258, no such changes in the law made after the date that a facility siting *application* is first submitted would apply to the facility's siting. This is extreme, unwarranted, and illogical.

For example, and among a variety of other risks and problems, a proposed facility could avoid the application of pending legislation by submitting an application to the state, even if such application was unconsidered or incomplete. Such application could then be amended substantively, perhaps expanding a project and changing locations, but the application would still

be rewarded with immunity from legislation which was pending or enacted before the project was significantly changed.

While SB 258 says the trigger is the issuance of the "Site Certificate", SB 258 references ORS 469.504 which fixes the land use goalposts for site certificates to the time submittal of the "application". Making matters worse is that fact that it is ODOE's position that the "application" that fixes the goal posts for energy facilities, is the "preliminary application". A "preliminary application" can be a nascent, vague, and incomplete energy facility proposal that blossoms later into a large energy facility and transmission lines approved in a site certificate. Whether it should be the state's policy that an incomplete or vague energy facility proposal can become something very different and impactful and escape legislation enacted before the proposal changes is a question for the state legislature free from prior legal interpretations or court decisions. Given the considerable risks, costs, and possible adverse impacts from such a significant change in policy, SB 258 should be opposed in its current form and any further discussion of these issues should be subject to a more balanced approach following considered input from all interested parties.

We understand that SB 258 is urged by some on the premise that it is a "mere codification" of a court case called "*Blue Mountain Alliance v. EFSC*". This is wrong. The court case is a red herring. The court in *Blue Mtn.* was required, as it often is, to ascertain legislative intent based on a limited record and the facts of that particular case. The determination of legislative intent is always challenging and is often arbitrary, especially in the case of ambiguous and unclear statues when a applied to one unique case. As a result, the court gave its best guess as to what the legislature intended.

As often happens following significant court decisions, the Legislature is being asked to respond to the case. The Legislature is not constrained by the court's decision. The Legislature commonly reverses court decisions. The situation is no different here. The Legislature is free to decide how it wishes to handle the case, if at all, and such decision should be based on a full and fair evaluation of the related policy implications following input from the interested parties.

SB 258 attempts to set legislative policy in a particular way that benefits certain interested parties and the cost of others. We believe that there are more balanced alternatives which should be explored. As a starting point for discussions, a more balanced state policy could provide as follows (using the language of the current SB 258 with revisions being underlined):

> b) The site certificate and any <u>or amended site certificate</u> shall require both parties to abide by local ordinances, state laws and the rules of the council <u>including land use laws</u>, in effect on the date the site certificate and <u>any or amended site certificate</u> is executed. The council shall require compliance with local ordinances or state law or rules of the council adopted after issuance of the site certificate if there is a clear showing of a significant threat to the public health, safety, <u>high value agricultural operations</u> or the environment that requires application of

later-adopted state laws, rules of the council or local ordinances, including land use ordinances, laws or rules."

Thank you for your consideration.

Very truly yours,

Wendie Kellington

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