



March 27, 2023

To House Committee on Agriculture, Land Use, Natural Resources, and Water

From: Oregon Association of Conservation Districts

Re: **Oppose HB 3180 - Siting Solar Facilities on Agricultural Land**

Chair Helm and Committee Members,

The Oregon Association of Conservation Districts (OACD) represents Oregon's 45 Soil and Water Conservation Districts (SWCDs), special districts governed by elected boards. The Districts protect and enhance soil quality, water quality and quantity, and habitat by supporting voluntary conservation in partnership with private landowners and managers as well as federal, state, and nonprofit partners.

OACD opposes HB 3180 which is intended to facilitate permitting of solar facilities on agricultural land. The introduced version was simply a study with which would not cause us any concern. However, the -1 amendments represent a major shift in the direction of this bill with some very significant changes to state land use and water policy. We recognize that a new amendment request has been developed and is available as testimony for the upcoming public hearing, This is an improvement on the -1 amendment, but it is not enough to move us to a neutral position on the bill.

We fully agree that we need to develop renewable energy facilities expeditiously in Oregon to address climate change. However, the concepts in HB 3180 presented to date are not the right approach.

CONCERNS WITH HB 3180-1

We oppose using water rights as a central criterion for determining the value of agricultural land. HB 3180-1 is written on the presumption that if the land is not irrigated, then it is not valuable agricultural land. *We contend that dryland farming and grazing lands can be important and should not be neglected from consideration.*

Water rights should be one factor of many in determining the value of agricultural land and the best locations for solar facilities. This determination should include all agricultural practices and other important factors such as sensitive wildlife, cultural resources, aesthetics, and how the facilities integrate into an overall plan for long term energy needs in the State. Singling out water rights now as a key criterion is premature, as all the key factors need to be balanced and weighed against each other.

Caution must be exercised in modifying definitions of high value farmland and arable land with the qualifying term "constrained land." If the criteria for

determining constrained land are truly permanent characteristics that affect all the agricultural use of the land forever, then it may be appropriate to proceed. However, the criteria for constrained land in HB 3180-1 are largely inappropriate. For example, constrained land is defined as "at the time of application," and this is inappropriate for determining the underlying value of the agricultural land because the constraining conditions can change over time, and the land might not be constrained at some point in the future. Another example is a constraint that is based on a moratorium on issuance of new water permits. This fails to recognize that 1) the moratorium could be lifted at some time in the future, and 2) there may be good agricultural use without new water rights permits.

The land use exception process should not be eliminated. Statewide planning Goal 3 sets forth the type of activities that are permitted on agricultural land statewide. If a county or the Energy Facilities Siting Council is going to permit something in conflict with Goal 3 they must go through the exception process to justify their actions. This process assures that adequate consideration has been given to the ability of the land to meet Goal 3, a rationale for not applying the goal, assurance that the proposed use could not be better met elsewhere and compatibility with surrounding uses. HB 3180-1 eliminates the exception process for solar facilities under certain conditions and would thereby eliminate consideration of the important factors in the exception process.

The amount of land that can be exempted from the exception process is too large. The bill provides that exemptions from the exception process can be granted on up to an amount equal to three percent of the total acreage of a given land use classification. Three percent of all the land zoned for agriculture in a County is huge!

Low economic value of farmland should not be a key criterion for granting an exemption. While this may be an indicator of low productivity, it may not always be true. Economics of individual farming operations can change over time.

As written, this bill applies statewide. Talk around this bill has been that it only applies to eastern Oregon, but that is not the way the HB 3180-1 is written. The definition of "constrained land" does have a qualifier that it only applies to eastern Oregon. However, the criteria for not needing to go through the exception process are not clearly tied to the definition of constrained land. Section 1 (8) lays out the criteria for bypassing the exception process and includes several possibilities for declaring that the land has low economic value for farm use (not necessarily constrained land). It is also possible to simply be near a transmission line to avoid the exception process, anywhere in the State.

ASSESSMENT OF THE RECENT AMENDMENT REQUEST

Following is presentation of how the recent amendment request compares with HB 3180-1:

Water rights as a central criterion: The amendment request lessens the degree to which water rights is a central criterion in waiving the exception process. But it remains as a key criterion and the value of non-irrigated agricultural land and range land is still not recognized in the amendment request.

Water rights as one factor of many: The amendment request is an improvement as water rights is more closely coupled with another important criterion, proximity to transmission facilities. However, that are still more factors that need to be balanced.

Constrained land: The amendment request does not use the term constrained land thereby redefining high value farmland and arable land. This is good.

Elimination of the exception process. The amendment request retains elimination of the exception process. Thus, we continue to be concerned that the important land use tests in the exception process would not be applied.

Amount of land that can be obtained without an exemption: The -1 amendment included an amount of 3%, the amendment request increases this amount up to 5%.

Low economic value as a criterion for not applying the exception process. The amendment request properly eliminates this criterion.

Applicability statewide. The amendment request clearly states that this only applies in eastern Oregon.

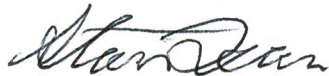
POSSIBLE IMPROVEMENTS

Following are a few suggestions for possible improvements.

1. Limit the amount of land that can be encumbered by the expedited process to something that is in line with the amount of land we need to meet long term energy goals in the State and that can reasonably be accommodated by the Counties. Such limits should provide just enough land to keep things moving until comprehensive solutions to energy facilities siting is provided through HB 3181.
2. Sunset the provisions in HB 3180 to correspond with the time when comprehensive solutions to energy facilities siting is provided through HB 3181.
3. Instead of eliminating the entire exception process, find out what are the most problematic parts of the process and try to address them individually.
4. Provide resources to Counties so that they can process applications for siting solar facilities more expeditiously. This is a known problem and one that can be fixed. It is important to recognize that many large solar projects have been sited with the existing processes.

In conclusion, we oppose HB 3180, but we agree that we need to find a way to accommodate the construction of solar facilities in the future. This is best achieved by improving our understanding of the needed type, amount, and configuration of renewable energy facilities statewide and then working at the local level to find out how those needs can best be met giving consideration to all local conditions and the permitting processes. We are confident that we can get there as a State, but it will take more conversation and work. This path forward can appropriately be accomplished with the work defined in HB 3181, and with the state energy strategy in HB 2534A.

Thank you for the opportunity to provide input.



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