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To: Senate Committee on Energy and Environment
From: Blue Mountain Alliance
Re: **SB 1034** amending ORS 469.504 - Energy facility land use compliance and approval
Date: March 31, 2025

Chair Stollman and Committee Members:

I represent the Blue Mountain Alliance (“BMA”), a community advocacy group based in Milton Freewater and focused on land use compliance by energy facilities through the state siting process. BMA has been involved in local land use matters and energy facilities for many years in Umatilla County, and before the Oregon Energy Facility Siting Council (“EFSC”) and Oregon’s appellate courts. SB 1034 will amend ORS 469.504 (Facility compliance with statewide planning goals; exception; amendment of local plan and land use regulations; conflicts; technical assistance; rules) in response to the Oregon Supreme Court’s decision in *Umatilla County v. Oregon DOE (In re Site Certificate for the Nolin Hills Wind Power Project)*, 372 Or. 194, 204, 547 P.3d 804, 811 (2024) – the *Nolin Hills* case.

In *Nolin Hills*, the Court upheld EFSC’s approval of a site certificate for the Nolin Hills wind project despite the applicant’s refusal to comply with one of Umatilla County’s lawfully adopted local siting standards that it found was problematic for 8 of the 112 proposed wind towers. Basically, EFSC and the Supreme Court nullified Umatilla County’s local land use standard under ORS 469.504 because the local standard was not also contained within any of the Statewide Planning Goals. The Supreme Court found that ORS 469.504(1)(b)(B) allowed EFSC to ignore a local applicable substantive standard that was not met so long as it otherwise complies with the applicable statewide planning goals. This interpretation ignored all of the procedures for obtaining local participation in the energy facility siting process and the identification of the applicable local substantive standards to nullify that local participation entirely. According to the Supreme Court, ORS 469.504(7) required local governments to amend their local land use criteria to conform to what EFSC has approved through the site certificate process, not the other way around.

SB 1034 is intended to inject an element of local control into the energy facility siting process consistent with Oregon’s statewide land use program that was lost in the *Nolin Hills* case. This amendment clarifies the three distinct and separate paths in the energy facility siting process for obtaining land use approval for energy projects under the Statewide Land Use Planning program – ORS chapters 197, 215 and 227. The current energy facility siting statute in ORS chapter 469 was adopted in 1993 as SB 1016 to end super-siting of energy facilities and to integrate the state’s energy facility siting process with Oregon’s locally implemented statewide land use planning program. As originally written, ORS 469.504 gave project applicants three alternative paths for obtaining land use approval: (1) obtain local land use approval under the

local government's acknowledged comprehensive plan and land use regulations; (2) obtain EFSC land use approval by applying the local siting standards identified by the affected local government sitting as the Special Advisory Group or (3) obtain EFSC land use approval by applying the Statewide Planning Goals directly.

The 3 paths in ORS 469.503 and 469.504 worked relatively well since its adoption, with wind projects complying with all identified local substantive standards until 2023 when a wind power project (Nolin Hills) sought approval for a 112 turbine wind project in Umatilla County. The applicant did not select the local land use approval path (Path One), but opted for EFSC as the decision maker (Path Two). The applicant selected the Second Path, and EFSC established the local Special Advisory Group, which identified the applicable substantive siting criteria from the Umatilla County Development Code. However, instead of applying those criteria as identified, EFSC rejected one of the local criteria because 8 of the 112 proposed wind turbines were unable to meet that standard, which required a 2-mile set-back from existing residences. For the first time since the adoption of ORS 469.504, EFSC determined that application of, and compliance with, the local substantive criteria under the Second Path was merely optional. Even though the applicant had selected the Second Path, wherein EFSC applies the local siting standards identified by the Special Advisory Group, EFSC switched to the Third Path, skipped the 2-mile setback standard, and held that simply complying with the Statewide Planning Goals was sufficient.

An amendment to ORS 469.504 is warranted to make clear that the 3-path system originally envisioned in the energy facility siting standards means 3 exclusive pathways that do not allow mixing and matching of the three paths or the avoidance of the local land use standards when the Second Path applies. Moreover, where the local government participates as the Special Advisory Group, land use approval means EFSC must require compliance with the applicable substantive standards identified by the Special Advisory Group. After *Nolin Hills*, the statute needs revision to make clear that, when the Second Path is selected and the Special Advisory Group identifies the applicable substantive criteria, EFSC must apply those criteria, and the applicant must comply with them. The effect of the Supreme Court's decision in *Nolin Hills* is to lure local governments into participating in the EFSC process with the promise that the local standards matter and then nullifying those local standards when the applicant decides to not comply with some of them. This is the essence of a super-siting program, which ORS 469.504 was supposed to end. The energy facility siting program should not be allowed to revert back to a super-siting process that skips the substantive local criteria.

ORS 469.504 needs amendment to give voice to the original promise of local participation through EFSC's Second Path to integrate the statewide planning program in energy facility siting by applying the applicable substantive criteria identified by the Special Advisory Group with no exceptions. Please forward SB 1034 with a "do pass" recommendation. Thank you.