

Date: 3/31/25

To: Senator Janeen Soilman, Chair; Sen, David Brock Smith, Vice-Chair; and Senate Committee on Energy and Environment Members.

From: Irene Gilbert, Citizen and representative of the Public Interest

Subject: Comments regarding SB 1034 Public Hearing scheduled for 3:00 p.m. Senate Committee on Energy and the Environment.

I would like to voice my strong support for SB 1034 for the following reasons:

According to the Oregon Statewide Planning Goals and Guidelines published July 2019 by the Department of Land Conservation and Development, Oregon established the Land Use statutes to provide for the protection of Oregon resources including farm and forest lands as well as other resources identified in a set of 19 statewide planning goals. These statewide planning goals are umbrella regulations establishing state policy in land use planning. Most goals include a set of “guidelines”. While the goal is mandatory, the guidelines are optional. Cities and counties are required to adopt local comprehensive plans which are consistent with the state Land Use Goals. Once LCDC approves a local plan, the plan is “acknowledged” as consistent with the goals. The local plan then becomes the controlling document for uses in the area the plan covers. State agencies must comply with these local comprehensive plans and zoning.

The statewide planning goals establish broad policy objectives, while the “applicable substantive criteria” counties were required to develop describe how the goals will be met in the area they cover and provide the framework for protections of local resources. The law requires local counties to identify resources within each county that warrant and require protection under the LCDC goals. It is a mandate included in the law to provide specificity regarding resources requiring protection under the LCDC Goals.

ACTIONS BY THE OREGON DEPARTMENT OF ENERGY AND ENERGY FACILITY SITING COUNCIL INCLUDE MULTIPLE INSTANCES WHERE THE LOCAL COUNTIES SUBSTANTIATIVE CRITERIA FROM THEIR RULES AND ORDINANCES ARE NOT FOLLOWED. FAILURE TO REQUIRE COMPLIANCE WITH THE LOCAL RULES AND RELYING ON BROAD STATE GOALS MEANS THAT THE IMPLEMENTATION OF REQUIREMENTS ARE SUBJECTIVE AND DO NOT NECESSARILY PROVIDE THE PROTECTION THE RESOURCE SHOULD BE RECEIVING. THIS HAS BECOME SO COMMON THAT IT THREATENS TO UNDERMINE OREGON’S LAND USE GOALS ENTIRELY

Item 1: In a recent article entitled “Solar Farms Exploit Oregon Law to Claim High-Value Farmland” it reports that the last 34 Solar projects approved by the Oregon Department of Energy were given exceptions to the Agricultural Goal.

Item 2; The recent approval of the Site Certificate for the Boardman to Hemingway Transmission Line includes multiple instances where exceptions occurred. Many of the exceptions were objected to in the more than 100 requests for Contested Cases regarding the development. Most of the cases were denied access to an agency held contested case either through procedural errors or Summary Determination requests from Idaho Power and the Oregon Department of Energy. Of those that were heard, all were denied. The site certificate includes exceptions to the Agricultural and Forest Goals as well as not requiring substantial criteria identified from local land use plans. In failing to require compliance, the Site Certificate claims that “county rules cannot be more stringent than state goals.” Given the general nature of the goals, virtually all of the county rules will be more stringent than the goals.

Item 3: GOAL 2 requires public involvement in development of the plan and zoning regulations which implement the plan as well as any instance when the permit decision involves an act of discretion. The Oregon Department of Energy is unwilling to provide an opportunity for the public to review and be involved with the finalization of the monitoring and mitigation plans which outline the requirements the developer must meet in order to comply with the counties LCDC rules. The public is only provided an opportunity to review “Draft :Plans” prior to the issuance of a Site Certificate. The final plans are completed and approved by the Oregon Department of Energy absent public participation.

Item 4: The Oregon Department of Energy has over time made the public’s access to a legitimate judicial review of decisions of the agency increasingly difficult to obtain. The currently proposed HB 3681, if approved, will require citizens objecting to agency decisions to go directly to the Oregon Supreme Court with appeals without the benefit of a contested case hearing. Since the Oregon Supreme Court is required by statute to limit their review to the material in the agency file, there will be no arguments in that file which support the citizen’s objections.

Item 5: “Goals” are by their nature very broad and allow for multiple interpretations. Basing decisions on the goals rather than the rules results in a lack of consistency in what is required of developers, and what is allowed.

When Counties approve the siting of energy developments, they do not have the option of ignoring their rules and basing their evaluations on State Land Use Goals. Currently the Oregon Statutes allow the Energy Facility Siting Council and Oregon Department of Energy

to ignore local rules and instead use the State Goals. This is a significant difference which results in a lack of consistency and predictability regarding what criteria developers are actually going to be required to meet.

Please support SB-1034 and Oregon's Land Use Laws.