

# Umatilla County

Board of County Commissioners

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## Commissioners

February 4, 2015

**George L. Murdock**  
541-278-6202

RE: Senate Bill 258

**W. Lawrence Givens**  
541-278-6203

Honorable Chris Edwards

Chair, Senate Committee on Environment and Natural Resources

**William J. Elfering**  
541-278-6201

Honorable Edwards and Committee Members:

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Executive Secretary  
Melinda Slatt  
541-278-6204

County Counsel  
Douglas Olsen  
541-278-6208

Budget Officer  
Bob Heffner  
541-278-6209

Umatilla County understands Senate Bill 258 would create for the Energy Facility Siting Council two sets of standards, one for land use and another for all other siting standards. In our opinion, that is contrary to sound public policy, and contrary to Goal 1 Public Involvement of the Oregon's premiere Comprehensive State Land Use Planning Program. Already, local input in the EFSC process is limited, incorporated by process, but interpreted by the Siting Council. SB 258 would further reduce the voice of local government in permitting energy facilities by limiting the consideration of local land use standards to a time certain in the application process – at the preliminary application.

Developers argue that such a limitation provides certainty to their investment. Local communities argue the opposite, particularly given that EFSC can extend site certificates for an unlimited time. By comparison, land use permits are valid for one year with an opportunity for an additional year extension.

We understand there is an important public interest in energy development. So too is there in interest in interstate highways, yet there is not a super siting process for roads and highway development. Rather, investment in roads and highways are preceded by inclusion in a long range plan ( consistent with Transportation Planning Rule), followed by permit approval of land use permits. Both planning processes require extensive local public involvement. So too should energy facility planning and permitting.

Only two developments in Oregon are permitted in a super-siting process, energy facilities and state prisons. Historically, there may have been a need for state super-siting. That role may in fact be out dated. However, as long as the state continues to exercise its authority to have super siting, we must assure that local communities and counties have an equal footing in the process. At least equal to that of state agencies. SB 258 will result in the opposite, by embedding in statute onerous exclusions of local land use regulations.

Here is an example. If Oregon Department of Fish & Wildlife lists a threatened species after a developer has filed an application with EFSC, the new regulations for protection of that species is incorporated into the EFSC permit. If a county adopts new land use standards after the preliminary application is submitted to  
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EFSC, say to protect prime farm land or Goal 5 resources or a neighborhood, EFSC would not require that the application be subject to the new local law or ordinance.

It is not clear to us why the state would choose to limit local laws? Why would local and not state regulations be constrained equally, or not constrained? The effect of the law is to elevate the interests of the energy developers over the interests of the local government and individual citizens.

ODOE agency intentions may be to "simply" codify the Supreme Court decision in Blue Mtn Alliance. But as the legislature knows so well, the judicial branch does not establish state policy, it only interprets it. Because the legislature's siting policy is unclear, the court correctly stepped in until the legislature did decide how it thought the statutes were supposed to work. That does NOT mean the legislature should or must agree with the court decision.

We strongly urge you to reject the proposed language and adopt language that clarifies that all local and state laws and regulations, including land use laws, are subject to the same review and process for projects under EFSC review.

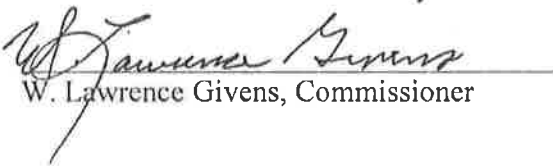
For additional legal analysis, please review the attached letter by Wendie L. Kellington, on behalf of Windy River and other farming interests in our county.

Thank you for your consideration of this important matter.

Sincerely,



George L. Murdock, Chair  
Umatilla County Board of Commissioners



W. Lawrence Givens, Commissioner

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William J. Elfering, Commissioner