

## Join Us!

### LandWatch Board of Directors

Jim Babson  
Garrick Balsly  
Chris Berner, *Vice-President*  
Alice Doyle  
Pam Driscoll  
Robert Emmons, *President*  
Nena Lovinger, *Secretary*  
Deborah Noble, *Treasurer*  
Kris Okray

#### Newsletter Credits:

Editors  
Robert Emmons  
Nena Lovinger  
Layout & Design  
Chris Berner

To join LandWatch, please complete the form below and return it with your tax deductible contribution. Your contribution will help us preserve the rural character and special beauty of Lane County.

- Yes. I want to become a member of LandWatch Lane County.  
 Yes. I want to contribute to LandWatch. Enclosed is my check.

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Phone \_\_\_\_\_ E-mail address \_\_\_\_\_  
Name of gift recipient \_\_\_\_\_

Enclosed is my contribution of \$ \_\_\_\_\_

LandWatch is a 501(c)3 tax exempt, non-profit organization.  
Thank you for your generous support.

Mail to:  
LandWatch Lane County  
P.O. Box 5347 • Eugene, OR 97405

To contact LandWatch  
Phone: 541.844.6914  
Email: hopsbran@aol.com



P.O. Box 5347 • Eugene, OR 97405

Printed on 100% post-consumer paper

Place  
Stamp  
Here

# LandWatch



Winter 2020

Volume 20, Number 1



Photo: Nena Lovinger

**A** week after the Lane County Board of Commissioners second reading and hearing September 1 on floodplain regulation, fires began burning through the McKenzie River corridor a few miles east of Blue River to Leaburg, up the Mohawk Valley and into the Molalla and Santiam region east of Salem. The week before, I rafted the McKenzie from Finn Rock to the EWEB takeout just below Leaburg with Bob Spencer of the McKenzie River Water Protective.

In those 12 miles—on both sides of the river—we saw house after house fully exposed by the owners' removal of native vegetation and replacement with tiled patios, lawns to the river's edge and English ivy, maintained by sprinklers likely pumped illegally from the river and by the use of herbicides and fertilizers. Decks and houses cantilevered into the riparian zone and over the river. Several people were further removing vegetation in the buffer as we passed by.

Here and there short sections of intact riparian without structures revealed what the entire of the McKenzie had been like before the alien invasion. Here cottonwood, maple, alder, cedar and fir. There willow, mosses and ferns. Under the water: Clean rocks and gravel suitable for the 100,000 salmon Spencer said formerly spawned in the McKenzie and its tributaries every year.

Studies have shown that rivers and streams need a minimum one tree length or 200' of riparian buffer to support aquatic life and to serve as habitat and cover for birds and animals. Yet Lane County's riparian ordinance requires a mere 100' setback from a Class 1 stream's high water mark if the property is zoned F-2 (Impacted Forestland) and allows 25% of it to be removed. A property zoned RR (Rural Residential) on the same waterway is allowed to encroach to 50'. Variances for decks, revetments, appurtenances and other incursions routinely allowed in riparian buffers further degrade a stream's viability.

Lane County's proposal to prohibit development in the floodway should be the first step to broader protections for the floodplain and surrounding hillsides decimated by clear-cut logging and consequent toxic runoff and landslides. In his hearing comments Jeff Ziller, biologist with Oregon Department of Fish and Wildlife, described the need for a "strategic and informed approach that is based on science" to recover threatened species and restore ecological function by "protecting high-quality habitat and restoring or creating access to off-channel habitat in floodplains and by maintaining and restoring native vegetation throughout watersheds, prioritizing riparian corridors, floodplains, wetlands, and upland areas."

Many of the houses and associated structure and infrastructure that we passed on our recent McKenzie excursion burned in the Holiday Farm Fire. Fortunately, only one human  
*(Floodplains, Floods and Fires, continued on page 2)*

(Floodplains, continued from page 1)

fatality has been recorded. Wildlife mortality is unknown, but thousands of acres of habitat have been lost and affected by toxic ash from chemicals embedded in burned structures. Those chemicals will make their way into rivers and streams and, in the case of the McKenzie, further pollute a river already corrupted by algae blooms that covered the rocks and spawning gravels along much of the stretch we traveled. The few thousand salmon that presently return to spawn in the river, and have had to expend some of their precious remaining energy cleaning gravels of algae so that their eggs can adhere, will now have to contend with toxic ash as well.

It would be pretty to think that out of the ashes of this unprecedented harbinger would arise an enlightened phoenix of politicians, administrators, planners and concerned citizens ready and willing to correct past mistakes, to enact and enforce legislation mindful of the root causes of degradation: the overpopulation, overconsumption and callous practices that have led to global warming and fires, flooding and other disasters as consequences.

It is dismaying, therefore, to slog through hundreds of pages of the county's floodplain regulation document whose BFEs, CLOMRs and LOMRs, FIRMs, DFIRMs, FIs, ECs, LOMCs, PMRs, EAPs and a morass of other acronyms—rather than a plan for floodplain restoration and protection—provide a blueprint for floodplain development and the foundation for an economy of engineers, geologists, hydrologists, architects, planners, land use consultants, attorneys and commissioners prescribing or permitting an industry of flood-proofing, anchoring materials and construction, and specialized electrical, mechanical, plumbing and waste technologies.

As Jeff Ziller suggests, a conscientious and responsible agency should be concerned with disallowing any impediments to the natural function



McKenzie River guide Bob Spencer.  
Photo: Tim Lewis

of floodplains, and by extension watersheds—impediments and ordinance violations such as we witnessed on the McKenzie and that can be found in watersheds throughout Lane County.

We know that the Land Management Division is overwhelmed with applications from property owners who lost their homes in the Holiday Farm Fire. Some, reportedly, are seeking to increase their housing footprint. Most of what we saw from the river were large dwellings and appurtenant structures with most of the riparian buffer removed and lawns and patios that dominated and degraded the scant natural area between the river and Hwy 126. At the very least we trust that staff will limit rebuilding to the original footprint and encourage a smaller one. Certainly, missing and burned vegetation in the riparian setback should require replacement with native trees and shrubs.

I sympathize with those who've lost their properties, for it's like losing part of your life. Thirty years of my life are growing on the land I own, and every



Cantilevered house and rock wall displaces native trees and shrubs.  
Photo: Tim Lewis

native plant I put in the ground grows in me as well. I like to think that my work is helping to make Lane County a healthier place to live. But just a few weeks ago the Holiday fire was just over the hill when an arsonist started a fire two miles up the road. We were on an alert for the very real possibility of our years of stewardship, our investment, turned to ash in a moment. It wasn't speculative for Bob Spencer in Vida, the river guide who had taken us down the McKenzie the week before the fire. Everything on his property, across the highway from the river, burned: his house, his river equipment and likely his livelihood.

For willing participants, now is the time to work with land trusts and other environmental groups, with Oregon Fish and Wildlife, with EWEB, with Lane County, the State of Oregon and FEMA in a partnership to restore, relocate or buy damaged or destroyed properties.

This crisis also highlights the urgency to craft comprehensive legislation, such as that in Deschutes County, that in a direct and simpler way aims to protect the natural functions of floodways and floodplains—including riparian zones—and by so doing assure the health and safety of those dependent on them. Whether old or new, however, any regulation is only as good as its enforcement. And, as we have seen on just one short stretch on the McKenzie, even Lane County's weak regulation is not being enforced. As a result, a river once an icon of beauty, purity and pride is dying. Its resurrection is in our hands.

**Robert Emmons**  
*Fall Creek*

## Phoenix Rising: Words from a McKenzie River Guide

On the river the view is shocking. Few houses remain from the community of Rainbow to Leaburg. Pristine areas of Old Growth on the river, such as Eagle Rock near Nimrod, are burned beyond recognition. Finn Rock Landing, Ben & Kay Doris Landing and Bruckhart Bridge Landing are unrecognizable. The fire was so hot that burned homes can only be recognized by standing chimneys. It seems the extreme winds funneled the fire right down on the river as we witnessed trees burned on small islands in the middle of the river. We did see many burned trees in the river.

The fire took two hours to travel from Blue River to Vida - over 10 miles! I consider myself to be fortunate to have experienced the McKenzie - as it was. But, fire is a natural activity in the forest. Forests burn, recover and regrow. Now we can witness the rebirth! I am not as concerned with the McKenzie fire damaging the watershed as much as I am concerned with the human impact on the river. Mother nature knows how to regrow a forest if left to natural ways. I am concerned about human fire debris leaching into the river. I am concerned about uncontrolled rebuilding along the river. I am concerned about corporations dumping tons of fertilizer, herbicides and pesticides into the forest watershed to speed up the growth of Fir trees burned in the fire.

The McKenzie River fire has caused much pain and suffering and will likely be felt for years to come. The river will recover and the community will rebuild. Let's hope we are smart enough to direct the recovery in the best interest of the watershed and river.

**Robert Spencer**  
Vida

## Floodplain Ordinance in Motion

At the second hearing on September 1 to consider proposed changes in the county's floodplain regulation, planning staff was directed to return for a third reading and hearing on October 6 with a provision that would ban residential development in the floodway. The floodway is that part of the floodplain where water runs highest and fastest during flood events.

Between the second and third hearings, during which the Holiday Farm Fire destroyed homes in the McKenzie River floodplain, Commissioner Jay Bozievich put out a message on his personal Facebook site alleging that, "environmental groups influence" resulted in a Board motion that "could prevent Holiday Farm Fire victims from rebuilding their homes." He urged victims and others to email the commissioners and ask them to "stop all work on new more restrictive floodplain and floodway regulations."

Just as occurred a decade ago, when the county had proposed minimal changes to its riparian ordinance, Bozievich's latest ploy used disinformation and misinformation to incite private property rights zealotry by cynically fueling fear and outrage in those disenfranchised by the fire. Surely Bozievich knew that the new floodway restrictions would not apply to those who lost their homes and wanted to rebuild.

The West Lane Commissioner's proposal in the third hearing to send the new legislation back to the pre-development planning commission was a disingenuous attempt by an anti-regulation conservative now in the Board minority to eradicate any sensible floodplain regulation. Over 75 people emailed the Board their concerns about the "land grab," and a number spoke at the virtual meeting. If the meeting had been in person at Harris Hall we may have had a repeat of the mob scene 10 years ago.

For her part, Chair Heather Buch called Bozievich's appropriation of Holiday Fire victims suffering and uncertainty to further his anti-government beliefs unprofessional and asked him to apologize to those he had so callously and unconscionably used. Instead he patted himself on the back for his outreach. When Commissioner Farr said he'd never been in a Board meeting so "emotional," Buch responded that women have routinely been limited and belittled by sexist tropes like "emotional" and that what she has to say is her considered opinion and should be valued irrespective of her gender.

While Bozievich failed to get the new proposal sent back to the planning commission, the Board did direct staff to add language that would allow houses destroyed by the fire to be rebuilt in the same footprint—a process already underway at the Land Management Division for weeks. At the 4th reading and hearing on November 11, the Board unanimously approved a motion by Commissioner Sorenson, using the Deschutes County ordinance as a model, to 1. Disallow new dwellings in the floodway; 2. Allow houses lost in the fire to be replaced in the floodway and floodplain only if no higher ground exists on the property; 3. Prohibit new subdivisions in the floodplain; 4. Revise the definitions for "critical facilities" and "hazardous material" to be "clear and objective"; 5. Provide an exception to the requirement that foundations be 2' instead of 1' above the base flood level for structures being rebuilt as a result of the Holiday Farm Fire. (Staff added a 3 year time limit to the exception for Board consideration in the 5th reading on December 1).

With LandWatch's support, at the 5th reading the Board voted 4-1 (Bozievich opposed) to approve the above provisions, including staff additions, and close the public hearing. A 6th reading is scheduled for December 15.

**Robert Emmons**  
*Fall Creek*



Chris Berner

## Interview with Chris Berner

*Chris Berner is Senior Designer at Funk/Levis & Associates, and Typography Instructor at Lane Community College. He has served on the LandWatch Board since 1997. He lives in lower Fox Hollow where he takes care of his forest, pasture and gardens.*

**LW:** How long have you been active in environmental issues?

**CB:** Since 1974, when I protested the damming of the Meramec River in Missouri. Developers wanted to flood Onandoga Cave, which would have destroyed native bat species and eliminated a free-flowing whitewater stream. To this day that part of the river flows free, and the endangered species in the cave live on. It was that victory over the greed of land speculators that inspired me to become involved in conserving unspoiled parts of the earth.

**LW:** What are the roots of your environmental activism?

**CB:** My family cared for about 40 acres of hardwood forest and farmland near Wentzville, Missouri, from the 1960s through the 1980s. I grew up

planting trees, growing food, tending chickens, and swimming in creeks. I loved that land, and still do. As a child, I saw the devastation of urban sprawl, strip malls, office parks, and the literal paving of the native forests and meadows of western St. Louis County. My heart was broken countless times as I saw forests plowed over and farms bought and turned into high-density suburbia. Creeks were bulldozed and culverts were installed where turtles, fish and amphibians once lived. My habitat, as a young boy growing up in a healthy environment, was ruined. But I was lucky. Playing in the woods, running through warm creeks, seeing wild animals and plants up close imprinted on me. I learned to love nature, all by myself, in the woods.

**LW:** What brought you to Oregon?

**CB:** I was very fortunate to meet Julie, my ex-wife. Julie and I were attending the Kansas City Art Institute, and she saw a poster for a Lane Community College summer workshop located at a commune on the north slope of Dorena Reservoir, just east of Cottage Grove. We were young, and ambitious. She inspired me to visit her at the Cerro Gordo Intentional Community, and it was love at first sight. I realized, in 1978, that I was home. I'd found my new habitat. We finished art school and moved to Fox Hollow in the summer of 1982.

**LW:** How did you get involved with LandWatch?

**CB:** About 25 years ago, I became involved in a protest involving the Bonneville Power Administration. The BPA was planning to build high-tension electric lines through Fox Hollow. Fox Hollow neighbors successfully proved that the power lines were unnecessary, and the project was never built. Through that issue I met many of the early board members of LandWatch and have been involved ever since.

**LW:** You've lived in Fox Hollow for 38 years. How has that part of Lane County changed in your time there?

**CB:** When we purchased our 4 acres of Rural Residential land, lower Fox Hollow was one large meadow. The forests surrounding the narrow valley were largely uncut second growth forests, and vestiges of old growth. We planted hundreds of trees and native shrubs and built a large organic garden. Many of those Douglas firs are now 18 inches in diameter and over 50 feet tall. Others have succumbed to drought due to climate change. But the real change has been the acceleration of clearcutting that has occurred during the past 15 years. I am shocked and deeply saddened by the amount of forestland and the supporting ecosystem that has been degraded and erased because of logging.

**LW:** As you know, LandWatch has been doing what it can on a case-by-case basis, with significant successes, to stop the development and decimation of our rural lands. Meanwhile, however, the development applications keep rolling in, the chainsaws keep running and the climate keeps changing at an accelerated pace. What or who will it take to stop the bleeding? Is that even possible?

**CB:** For an organism like Planet Earth to survive, the severe wounds humans have inflicted must heal. It will take everyone, myself included, to do everything possible to repair the damage we have already done and prevent further degradation of our life-sustaining ecosystem. For me, that means planting trees. Tree planting is easy, healthy and so satisfying. It means growing as much of your own food as possible, even if a person has very limited space. It means consuming way, way less. Less packaging. Way less fossil fuel. Less red meat. It means something as simple as composting, which puts you in touch with the soil that sustains life. It means

being IN nature. Listening to the wind. Watching birds. Appreciating a leaf, or the shapes of clouds. Smelling the earth. Realizing that life just wants to live, and humans have no right to take it all. We must share the abundance of life on Earth with all the other living beings. Simply put, we must share, and not take. We must be grateful, not greedy. That has been my

philosophy since I was a teenage boy, and will be my guiding principle for the rest of my life.

There is no one answer. The answers lie in our everyday actions and choices. The choices of the many add up very quickly. I believe in the collective consciousness. When a neighbor sees a neighbor planting, growing,

composting, and acting in a way that respects the Earth, that truth radiates and affects us all. I've seen the positive energy one person creates cause others to act in new ways, because we are social animals, and, when we see good, we mimic good. For at least 46 years, I have held that peaceful awareness in my soul, and that keeps me sane.



Lauri Segel

## Regarding Measure 49

The intent of this article is to remind readers about Measure 49, and, more importantly, to ask neighbors to pay attention to notices you could receive from Lane County regarding proposals for Measure 49 land divisions, property line adjustments and/or dwellings near where you live.

Measure 49 (M49) was adopted in 2007 as a replacement for Measure 37 (M37), which had been adopted after approval of a 2004 ballot initiative generated by Oregonians in Action (OIA). OIA is an anti-land use regulation lobby organization.

After the passage of M37 almost 7000 property owners filed claims to compensate them for the subdivisions they supposedly had always wished to develop on their farm and forest zoned land but couldn't because they were not allowed by land use laws. When people realized that, as a response to these claims, subdivisions were receiving wholesale approval on resource zoned land, enough pressure was applied to the Legislature to result in a referral to the ballot for a vote on a new measure, M49, that purportedly would eliminate the majority of M37 claims.

In 2011 the Department of Land Conservation & Development (DLCD) published a report on the "outcomes and effects" of Measures 37 and 49. They disclosed that of the approximately 4600 M49 claims received, about 4400 had received "final orders" (FO). The FOs are valid forever unless the claim property is conveyed out of family ownership. If that occurs the "rights" associated with the final order are limited to 10 years from the date of the ownership change.

It should surprise no one that most of the M49 "development rights" were intended to be sold for money on the real estate market rather than stay with the family. However, many

of the M49 claimants were elderly, and it is common to find that family members and others now hold those development rights.

More than ten years have passed since DLDC issued the c. 4400 final orders. Now, owners of the properties with those "development rights" are filing applications for the partitions, property line adjustments and dwellings authorized by the final orders in 2009.

This year, LandWatch has filed two appeals challenging approvals of M49 partitioning and dwellings. The first of the two was on behalf of neighbors who live adjacent to the proposed development. The application for a three parcel partition and two new dwellings was approved by the Planning Director and appealed to the Hearings Official. LW challenged the location of the proposed access driveway, which would have provided access to two new homesites from a location that would impact neighbors but would have no impact on the owners of the claim property.

LandWatch also questioned the legal status of what is referred to by M49 as the "contiguous non-claim property" owned by the applicants. The Hearings

*(Measure 49, continued on page 6)*

(Measure 49, continued from page 5)

Official ruled that, because the contiguous non-claim property was not lawfully created, the applicant's partition plat was not approvable, and therefore reversed the Planning Director's approval.

In the second appeal, which is ongoing, LandWatch is challenging the applicant's parcel size and whether it qualifies for the proposed M49 dwelling based on the Final Order. M49 limits the number of acres allowed for each new parcel authorized by the Order to either five acres (on non-high value soils) or two acres (high value soils). The parcel the applicant created for their proposed M49 dwelling is located on high value soils and is 13 acres rather than the two acres allowed. The other challenge LW raised is the M49 Order allowed two new parcels, while the proposed dwelling would be on a fourth parcel.

As we've discovered, even though the Orders are final, not everything being applied for and based on the Orders is lawful and/or consistent with the development rights they authorize. LandWatch, therefore, is interested in hearing from neighbors who may have received notification and/or live in close proximity to property where a M49 development, always indicated in the application, has been proposed.

**Lauri Segel**



## Congressman Jim Weaver 1927-2020

In 1986, or thereabouts, Jim Weaver and I walked around Waldo Lake together for an Oregon Natural Resources Council fundraiser. There, as always, Jim was walking the talk. And what better place to do it than Waldo, a prime example of the sort of wilderness Weaver spent his 12 years in Congress resolutely, tirelessly—and ultimately successfully—helping to protect.

But that was then. Twelve years earlier, when I was living on Riverview St. in the Laurel Hill Valley on the edge of Eugene, a cluster of apartments sprang up in a wetland area on newly paved Augusta St, the road just below me. From time to time a man of about middle age, always nattily-dressed, would visit the site as the developer-owner I soon discovered him to be.

Those of us who had lived in Laurel Hill for long enough to consider it our piece of country in the city regarded the dandy and his development as a threat to the character of the neighborhood. In truth the structures appeared to be well-built and largely fit both in design and color into their surroundings.

When I learned that this man was running against John Dellenback for the 4th District Congressional seat, I wondered how his potential environmental constituents might trust someone with real estate development interests. At the time, though, I was largely apolitical, attending more to finishing my graduate studies in English than to players in a game I deemed distant and irrelevant to my interests and milieu.

But, as I explored landscapes ever farther from campus, the ivory tower morphed into a wooded hut, and Oregon's environment became

my career. That's when I began to understand that I couldn't take for granted what surrounded and had become such an intimate and life-changing part of me.

A town of c. 53,000 when I came to Eugene had burgeoned into a city. And, as it grew, those open spaces I'd grown accustomed to a couple of miles in any direction from the city's center were filling up with outside industry and homegrown ingenuity and spreading up the hillsides. Escaping their influence required travel further afield.

Fleeing from one scourge, however, increasingly led to another: all those wigwam burners fouling the air fed on the leftovers of industrial tree-cutting, much of it at the time old growth fir, that was opening huge gaps in the integrity of both private and public forests. How was this happening, and more germane to my awakening, who could stop it?

To my amazement, while I was cultivating my awareness, the dapper developer had shucked his wetland apartment complex and was busy building a steadfast reputation for forest protection when Reagan, Watts and Hatfield were trying to turn Oregon's wilderness and identity into stumps. Weaver's was a tough case to make in the 4th district, much of which is dominated—still is—by the timber industry. Notwithstanding, he managed to place over one million acres of Oregon forest land under statutory wilderness preservation, save French Pete in the process and still stay in office.

That was all under his belt by the time I met Jim and we wended our way around Waldo toward a well-earned campsite and, for him, a martini and steak. What I discovered on our walk was a well-read, erudite, articulate, entertaining and largely self-educated intellectual, as familiar, I later learned, with the plots of operas from Aida to Tosca, as he was with the intrigues, intricacies and inadequacies of Congress.

After he left his congressional seat in 1987 Weaver returned to Eugene, and our paths began to cross when he interested and involved himself in local issues. Issues such as the state's and the county's dumping of toxic wastes in a wetland near his house on Seavey Loop; in the threat to the rich farmland and natural areas nearby by development interests and other discordant activities; and in the prolonged fight by neighbors to stop the mining demolition of Parvin Butte near Dexter.

Disgusted by conservative mayor Jim Torrey's politics and practices, Weaver ran against him in 1996 when he was 69. Increasingly, however, he was frustrated by aging and his inability to fight what he perceived as the creep of fascism in corporate-controlled America, the appointment of ultra-conservative Supreme Court and other judges, and their counterparts and consequences in his own backyard.

In 1992 Weaver published a book called *Two Kinds* in which he argues, with research into other cultures as well as his own, that there is a "genetic predisposition" to be either ethnocentric-conservative or

empathic-liberal regardless of education or economic status. In the book's epilogue he concludes:

*The human population has quintupled in the past one hundred years, fomented by two extraordinary events: the exploitation...of petroleum, and the advent of a most unusual and benign climate. Oil will run out soon, and the climate is likely already changing. The billions of humans who have thrived through our 100 year binge on oil and benign climate are now in jeopardy.*

*If we survive...it will be through our powers of reason and learning and the evolution of cooperation.... We must cleave to democracy.*

*We are but one animal on the face of the earth. It is our task to preserve our dwelling place and those who live with us.*

Until his keen mind and voice began to fail him a few years ago, Jim did what he could, when he could, while he could, to apply his powers of reason and learning to our survival in a devolving politics of cooperation. His dedication and achievement will stand forever with Wayne Morse, Tom McCall and others who devoted themselves to the defense of Oregon's natural environment and our place in it.

When I return to Waldo Lake, I'll step again on what is now officially named the Jim Weaver Loop Trail, grateful for the opportunity to have shared that path with him so many years ago and for all the paths we've taken together since.

**Robert Emmons**  
*Fall Creek*