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LandWatch Lane County and Salem Witchcraft



Over the last few months LandWatch has been engaged as never before with proposed legislation in Salem.

While Governor Kotek's mandate to increase the housing supply by 36,000/yr. is ostensibly focused on sitings within urban growth boundaries, its effect has been to open the door to a flurry of bills intended to undermine Senate Bill 100 and the protections it has provided for 50 years to farm and forest land, natural areas and open space outside Urban Growth Boundaries (UGBs), and the public process upon which those protections depend.

To facilitate the notoriously fragile, variable and fickle computer chip industry (think Hynix Eugene), Senate Bill 4 gives the Governor temporary authority to super-site semi-conductor companies on thousands of acres outside of UGBs.

In 1973 SB 100 established a program of land use goals governed by comprehensive plans, statutes, rules, codes and enforcement. Essential in all phases of

the program, and the reason it is our first goal, is citizen involvement. But public participation through hearings and other input is co-opted by allowing one person alone, in this case the Governor, to make a decision that could—and would—put the protection of our rural lands in jeopardy.

Perennial opponent of land use regulation and author of Measures 37 and 49, Dave Hunnicutt, a lobbyist for Oregon Property Owners Association (formerly Oregonians in Action), and legislative sponsors Senators David Brock Smith and Cedric Hayden, have made abundant use of the opportunity provided by our Democratic governor and by legislative committees who are overrun with hundreds of bills during a session.

SB 1051, for example, would pre-empt orderly planning processes and citizen involvement by allowing premature expansion of up to 200 acres outside UGBs. Towns with populations under 3500 could expand into an urban reserve for any use, be it industrial, commercial or housing, with no affordability or needs

analysis—another removal of oversight without which land use planning is no more than window dressing. Essentially, urban reserve expansions under this bill will be driven by private property owners without a public process that allows the input of other citizens and landowners. Fortunately, as a result of the Republican walkout, the legislative session ended without a vote of the committee.

In the zeal to meet the housing directive, HB 3414 would allow variances within UGBs that would, among other impacts, damage and destroy trees, wetlands, floodplains, and high quality habitat. Most egregiously, it would subvert Goal 14's purpose to contain urban populations and employment within UGBs by allowing an "emergency one-time occurrence" urban growth boundary expansion without public input. Governor Kotek aggressively lobbied for this bill. In the full senate it was defeated by one vote, but it would certainly have passed had all Republican members been present.

(Salem Witchcraft, continued on page 2)

(Salem Witchcraft, continued from page 1)

HB 2192 was ostensibly put forward to help anyone not permitted to replace a dwelling destroyed by wildfire but without offering any examples of agency denials. Rather, using a crisis event as a pretext, this bill was yet another unnecessary attempt by a perennial opponent of land use regulation to further development on our rural lands.

HB 3362 claims to be a remedy for the two Lane County families who were victimized by doctored deeds and description cards. Hunnicutt, the bill's writer, has suggested that Lane County bears some blame for what transpired. But, as our attorney Sean Malone has pointed out, the blame belongs to the person who perpetrated the fraud and betrayed her own clients, and all the forensic evidence that came to light in the Lane County hearing on this matter points unequivocally to Kim O'Dea. The bill was unnecessary because ORS 92.018 allows anyone who buys a piece of land that is not lawful to bring action against the seller and to recover attorney fees if successful.

With four amendments HB 3362 was passed unanimously by the Senate Committee on Natural Resources on 5/17/23.

The bill's ostensible intent was to relieve the two "innocent" families that were defrauded by doctored deeds, but the bill, even with four negotiated amendments would have allowed the alleged defrauder, Kim O'Dea, to benefit from her illegally created parcel. To correct this oversight negotiation among our attorney, an attorney with 1000 Friends of Oregon and Hunnicutt resulted in an amendment to the 4th amendment that allows any party to challenge the legality of a lot, a property line adjustment or a template dwelling that was fraudulently created.

At the committee hearing, however, Dave Hunnicutt, who was the bill's only recognized representative, failed to mention or request the additional language to the 4th amendment that would have provided the means to hold the Lane County perpetrator accountable and to challenge the legality of other lots obtained by fraudulent means. The 4th amendment

allows a party to challenge a template dwelling that may have been fraudulently created, but, unless the legality of the lot is challenged, appealing the legality of the template dwelling could be considered a collateral attack and doom the appeal. Despite consultation with our attorney and an attorney from 1000 Friends on the necessity of the suggested language, Hunnicutt and the committee allowed the 4th amendment to stand unamended.

Thanks to Senator Prozanski, committee chair Golden, our attorney and others the final bill was amended with language introduced by our attorney that allows the perpetrator of a fraudulent land use transaction to be held accountable and not benefit from her illegal deed.

Meanwhile, our case challenging the LUBA decision that overturned Lane County's denial of the fraudulent application awaits a decision in the Oregon Court of Appeals. Lane County and 1000 Friends filed complaints to the Oregon Bar Association over six months ago.

As originally written, SB 648 prohibited "vacation rentals" as home occupations in residential structures on all resource zoned land. As amended it allows them, with the effect of further urbanizing land that should be reserved for farms, forests, natural areas and open space. As one consequence, the amended bill could result in the displacement of farm workers in long-term housing by short term rentals and thus drive up the price of land for farming.

Generated by Patrick and Kasey Fay, owners of Hentze Family Farm, and sponsored by Cedric Hayden, SB 1087 would allow "cafes" on farms. Farm stands are a common, pleasing, popular and permitted seasonal attraction for produce grown on site and restricted to ensure that sales from them do not exceed the overall sales from farm crops. This bill would allow a year round restaurant — larger than the typical small town cafe — that could readily become independent of the production and sale of crops onsite. What the restaurant would produce is all year traffic and pollution, lighting and noise that could disturb wildlife and

neighboring property owners, and more global warming.

The legislative session ended without SB 648 and SB 1087 passing out of committee.

LandWatch Research Analyst Lauri Segel is LandWatch's first line of defense. We largely depend on her to flag local land use applications that violate county code or state statute. She also has her eye on bills slated for consideration and hearings by state legislative committees. Thanks to her vigilance, she caught House Bills 2192 and 3362, and brought them to the attention of our attorney, 1000 Friends' legislative lobbyist, and other land use groups and individuals.

Unfortunately, regardless of the written testimony of the large majority who opposed it, SB 4 received rousing support from the three Democratic and two Republican members of the Senate Committee on Housing and Development and was placed in the hands of the Governor, who signed it. Fortunately, thanks to amendments advocated by 1000 Friends and the backing of thousands who offered oral and written testimony, the temporary authority can only be used after all available land is exhausted and no other possibilities for development exist within UGBs.

Most, if not all, members of state legislative committees are unfamiliar with land use law and likely unaware of the implications of decisions they make that may have profound consequences for land use protection. The difference between whether a piece of farmland grows crops or houses, or whether a forest retains its trees or becomes a low density suburb, may hinge on the interpretation of a single word or a phrase in local codes and state statutes. With an avalanche of bills before them in a session only months long, committee members understandably turn to "experts," usually long-term, well recognized lobbyists, such as Dave Hunnicutt, who opposes land use regulation, and Mary Kyle McCurdy of 1000 Friends, who supports it but may not represent the interests or positions of other land use organizations that draw a bolder line in the sand.

The sheer number of bills does not allow time for their proper consideration by the committees that will decide their fate. A reasonable solution would impose a limit on the bills allowed in any session coupled with a limit to the number any senator or representative could sponsor. Certainly, all interested parties should be notified about a bill well in advance of its hearing, and the opportunity for negotiation concerning its content must be a prerequisite. The present protocol pays no more than lip service to public involvement.

Missing, as usual, in the zeal for wholesale housing development, to "super-site" a semi-conductor corporation in Oregon,

Playing Against the House

On the 21st and 28th of March and the 3rd of April, three LandWatch Board members, our Research Analyst and other land use groups and individuals fruitlessly waited for 5 ½ hours through three meetings of the State House Committee on Agriculture, Land Use, Natural Resources and Water to testify against House Bills 2192 and 3362. Having prioritized numerous hearings on other bills while he kept us waiting, at the end of the third meeting Committee Chair Ken Helm said, without apology, that hearings were being delayed until the bills' author, Dave Hunnicutt, and Mary Kyle McCurdy, lobbyist for 1000 Friends of Oregon, reached an agreement about amendments. He assured us there would be a hearing the following day and called the meeting to a close.

Never mind that our attorney, Sean Malone, our research analyst, three board members and most of the public kept waiting to testify were advocating dismissal of the bills outright. Hunnicutt, the author of Measure 37, is a long time, well-known opponent of land use regulation. Mary Kyle is a long time, well-known lobbyist for 1000 Friends. As it played out, the rest of us realized that we were just along for the ride—a little noise in the background muted by

and in any and all bills seeking to weaken land use regulation is any consideration of their impact on population growth and consumption, the root causes of our environmental degradation and global warming, any esteem or respect for the prescient and stolid work of visionaries, such as Tom McCall and Henry Richmond, and a callous and shameful disregard for the environmental legacy imposed on future generations. Those concerns are the crucible in which all land use legislation should be tested.

Underlying these bills and most land use planning is the implicit belief that growth is inevitable and desirable and can, and should, be accommodated and promoted.

a committee chair who knew all along that the only hearing our bills would get was behind the scenes in a negotiated settlement that we would have no direct say in.

It's certainly understandable that legislative committees faced with massive amounts of bills in any given session would rely on proxies for much, if not all, of their public input. Scale of that fever typically devolves into insular reliance on familiar and favored parties, with an equitable and accurate representation of public opinion operating at a deficit by necessity and design. But for public testimony to be anything other than window dressing in legislative sessions the work load must be reduced to a manageable and equitable level. That means a cap on bills before committees during any five month or five week session.

What's happening in Salem is nothing new, only intensified by a systemic bias to accommodate increased development and housing pressure that inevitably lead to robbing Peter to pay Paul, to a Faustian bargain with our rural lands. For their part, labor Democrats congratulate themselves and justify, for example, their willingness to plant thousands of acres of computer chips on farmland for the promise of jobs and the illusion that a thirsty, fickle and fragile industry will help save the environment while destroying the ground it's on.

But growth is not inevitable and cannot be accommodated; it is a matter of choice.

When Republican Governor Tom McCall stood at Oregon's border and welcomed people to visit but not to stay he understood the meaning of carrying capacity and the tragedy of the commons. It ought to be a lesson that influences every land use decision by the Governor, the Department of Land Conservation and Development, the legislature and every commission, council and planning department in the state.

Robert Emmons

Except for occasional appearances before legislative committees early in our existence as a group, LandWatch has for the most part focused our work on Lane County. But, too often of late, Lane County development interests that have lost significant cases to us in higher courts have circumvented that process by finding a Hunnicutt, a Smith or a Hayden to draft and sponsor legislation that would pre-empt or obviate a fair day in court.

Fortunately, our attorney can now spend more time working on Lane County land use cases with our research analyst, Lauri Segel, and with our allies in other public interest land use groups. Further, we are seeking potential funding for an attorney or attorneys that would represent LandWatch and likely other land use organizations that have not routinely had a seat at the tables in Salem and who, over time, may earn the same status and respect enjoyed by perennial lobbyists from both sides of the political spectrum. It's a tall order and the odds are against us to play against the house, but it's a game we can no longer afford to sit out.

Robert Emmons

Paving the Road to Hell

Oak and prairie are some of the most imperiled habitats in Oregon. Prior to European colonization there were approximately two million acres of oak and prairie habitat in the Willamette Valley, but the last 170 years have resulted in conversion of most of the valley to urban and agricultural land use. In addition, as Native American tribes were decimated and controlled, the regular burning they used to do was halted, allowing conifers to move into oak habitats, overgrowing and killing off the oaks. For both of these reasons, oak woodlands have been reduced by over 90% and prairies reduced by over 98%. Much of what remains is fragmented, isolated, and heavily impacted by conifers and invasive species.

Many species of wildlife are dependent on oak woodlands and prairies; at least 10 of these are now listed as Sensitive Species by the Oregon Department of Fish and Wildlife. Some people had good

intentions to solve this problem: In 2017, the City of Eugene joined the Willamette Valley Oak and Prairie Cooperative along with federal and state agencies, Lane County, Native American tribes, and non-profit groups. Three staff ecologists from the City of Eugene Parks and Open Space Department worked with 48 other like-minded professionals for two years to formulate a plan for saving the oak woodlands and prairies called the Willamette Valley Oak and Prairie Strategic Action Plan (WVOPSAP). This effort was funded by the Oregon Watershed Enhancement Board, the Land Trust Alliance, Pacific Birds Habitat Joint Venture, and the City of Eugene.

Published online in March 2020, the WVOPSAP is a 70-page document that contains a 30-year plan, with maps, which shows the Core Conservation Areas for oak and prairie to be protected and restored. The members of the partnership, including the City of Eugene, signed a Memorandum of Understanding, pledging to uphold and implement this strategic action plan. The plan makes

it clear, however, that the Memorandum of Understanding is not legally binding.

At the same time that these City of Eugene ecologists were creating a 30-year plan to save the oak woodlands, City of Eugene planners were creating a 30-year plan — “Urban Reserves” — for where the city would grow next. There is no evidence that these city staff members from different departments talked to each other or even knew about each other’s plans.

I became aware of the Urban Reserves plan in late 2019 when my farm was included in the land that was being evaluated for inclusion in the Urban Reserves. By the time I was informed and invited to a meeting to give my input, they had already mapped out the potential for 200 homes on my 15 acres. I was unaware of the WVOPSAP at that time, but I knew that my land contained large, old oak trees and at least eight Sensitive Species. I knew that Oregon Statewide Land Use Planning Goal 5 required the inventory of habitat for Sensitive Species, and I knew that no one had inventoried the habitat on my land or that of any of my neighbors. I pointed this out in my testimony at the planning commission public hearing.

Lane County had completed and adopted inventories for Goal 5 forty years ago, but, as I discovered, there is no legal requirement for them to complete additional inventories no matter how many more species are added to the Sensitive Species list. That would have to wait until one or more of those species was so depleted that it achieved the federal Endangered Species List.

When I found the WVOPSAP online, I compared the map to the Urban Reserves map and realized that there was a direct contradiction. The largest area of the Urban Reserves was in the same place that the WVOPSAP had a Core Conservation Area. Astounded by my discovery, I wrote to all 51 members of the WVOPC Steering Committee and Working Group that the City Of Eugene might be about to renege on their agreement to uphold this plan. I notified the other funders that the City of Eugene might be wasting their money by voting to contradict the

plan. I contacted the local media about the mismanagement of public funds. And then I wrote to the Eugene City Council about what I had discovered and whom I had notified with the notion that they would be embarrassed and might apologize to the public, to the other members of the partnership, and to the other funders of this work. I asked them to postpone their vote on the Urban Reserves (especially since they had just been on break for almost a month) and take the time to hold a work session where members of the WVOPC could come and present their findings.

On April 10, the Eugene City Council held a work session (where no public comment is allowed) on the Urban Reserves where they did not even mention the WVOPSAP and barely mentioned oaks at all, except that they had been assured that there was no legal requirement for oak protection. The Urban Reserves plan, as initially mapped, passed seven to one. Matt Keating was the no vote, based, apparently, on his concern about big game habitat, not oaks.

Water Over the Dam

In January 2023, EWEB decided to decommission Leaburg Dam/Canal and Waltherville Dam/Canal. While this is a positive change for the McKenzie River, EWEB states that it will likely be ten years or more before decommissioning and demolition begin.

McKenzie Watershed Protective’s position is that both Leaburg Dam and Waltherville Dam must be opened immediately for fish passage and navigation. Doing so will allow Leaburg Dam to continue to be used as a bridge and allow endangered salmon and trout to migrate unimpeded both upstream and downstream.

(Continued on next page)



Oak savanna

My emails to local media were ignored, and I heard back from only three of the 51 people who worked on the WVOPSAP. None of them submitted testimony to the City Council. Only one of the other funders of this work, the Oregon Watershed Enhancement Board (OWEB), got back to me, with this message: “It is important to note that OWEB is a grant-making state agency, and the strategic action plan is a product of the collaborative that received the grant

award, not OWEB. The plan is intended to be used for voluntary conservation of oak and prairie habitat efforts, and OWEB cannot apply any pressure to land managers or landowners to implement any part of the plan.”

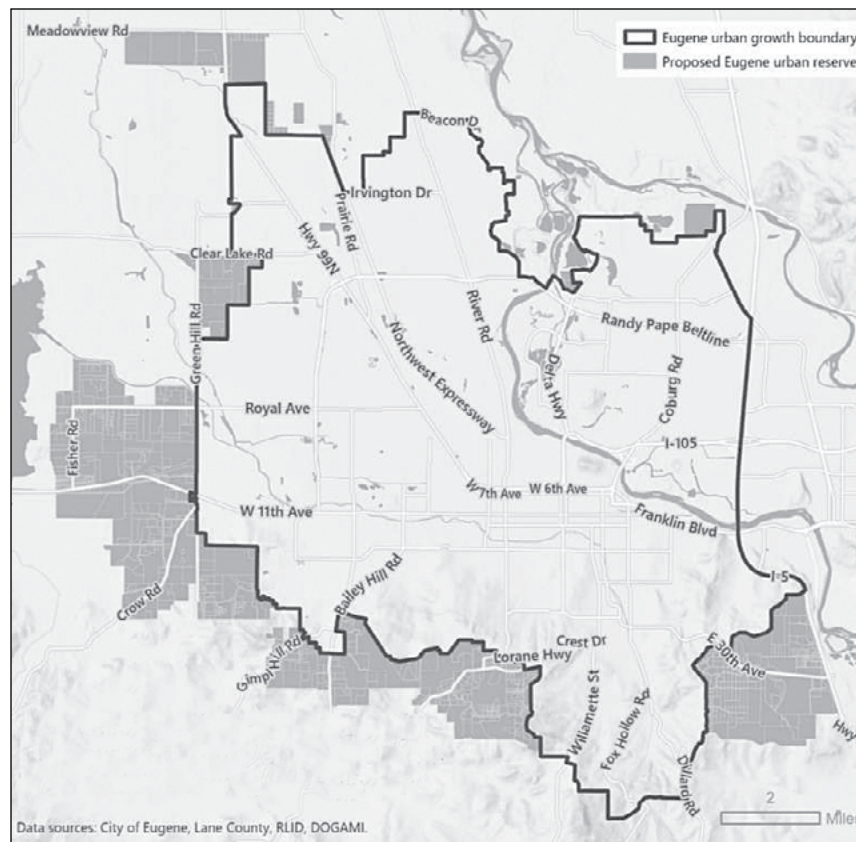
To create an oak and prairie preservation plan and then refuse to defend its implementation is, at best, no more than greenwashing — with public money.

The ODFW released a map on 7/10/23 that shows Priority Wildlife Connectivity Areas. That most of our land is included underscores the lack of connectivity between

strategic plans for habitat preservation and the City of Eugene’s plan for urban reserves residential and commercial development.

The road to hell is paved with good intentions.

Sharon Blick
Eugene



Urban reserves for development in oak habitat slated for protection in the Willamette Valley Oak and Prairie Strategic Action Plan.



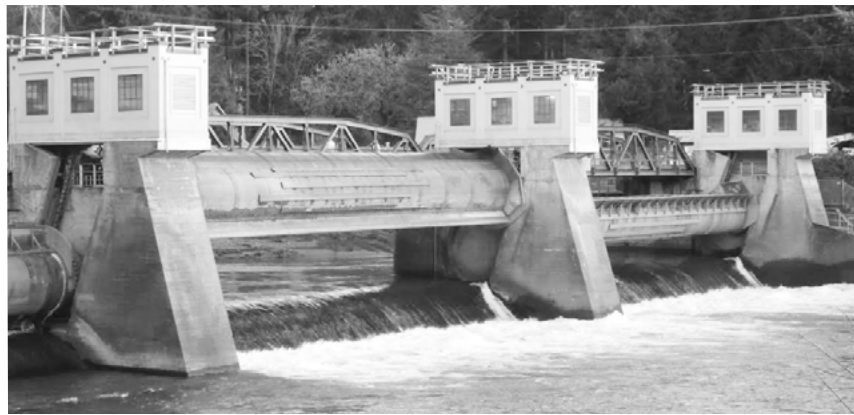
Fish killing turbulence with one gate open

(Water Over the Dam, continued)

When counting began in 1950, the salmon count was over 40,000; in 2022 just 1,459 were counted. The McKenzie's Chinook runs cannot wait ten years for EWEB to act.

A recent letter from EWEB casts doubt on the viability of fish passage and navigation with the dam gates open. To the contrary, the photographic evidence posted on our website demonstrates that fish passage and navigation are enhanced when the gates are opened. Moreover, the gates of Leaburg Dam can be opened at no cost.

It should be an easy decision for federal oversight agencies to open the gates of a dam that has not generated electrical power in three years, is now scheduled to



Enhanced passage downstream and upstream with all gates open

be demolished, and is killing native fish because of the hydro design. McKenzie Watershed Protective has petitioned the Federal Energy Regulatory Commission, U.S. Fish & Wildlife Service and the National Oceanographic & Atmospheric Administration to compel EWEB to con-

duct an immediate flow test to determine feasibility of permanently raising the gates. You can help by petitioning these federal agencies as well.

Robert Spencer, President
McKenzie Watershed Protective, Vida

Officially Ordained Degradation

Meanwhile, upstream of a decommissioned dam still inhibiting fish passage and downstream of Finn Rock Reach, where McKenzie River Trust has re-channeled the McKenzie to restore natural flow and native habitat, rebuilding after the Holiday Farm Fire continues to eradicate riparian vegetation, destroy precious soils with heavy machinery, and impose dwellings, decks, docks, accessory buildings, non-native plants, lawns and rip-rap revetments to and over the river's edge.

This egregious and outrageous free-for-all is occurring courtesy of "emergency" state legislation that eliminated all environmental oversight and absolved authorities of the enforcement they hadn't been performing before the legislation made their irresponsibility officially acceptable.

Robert Emmons



Excavation, house foundation and removal of all vegetation in the riparian zone



Adding insult to injury

Creswell Wetlands, Dam and Canal

The City of Creswell commissioned Branch Engineering to do an Economic, Social, Environmental, and Energy (ESEE) analysis of its wetlands in order to comply with the state mandate to provide buildable lots within its Urban Growth Boundary (UGB). A preliminary draft describes the functionality of the wetlands and makes recommendations for which wetlands should get full or no local (municipal) protection.

By this initial analysis it appears that about 5 acres of small (under .05-acre) wetlands and others deemed to be poorly functioning would be given no local protection, while about 30 acres of relatively high functioning wetlands should be given full local protection. Those wetlands given no local protection would still have to pass federal and state protection and permitting procedures.

The draft will be fine-tuned before it is submitted to the Planning Commission. If accepted by the Commission it will be passed on to the City Council for consideration.

The Deception of "Clear and Objective" Approval Criteria

Applications for residences in Lane County's Exclusive Farm Use (EFU) and Forest zones are limited by state statute to those that qualify as temporary medical hardship, relative farm help or template dwellings. These are conditional, not outright permitted uses. However, Bill Kloos, the attorney for the Lane County Homebuilders Association, recently began arguing in applications and in local appeals that the housing statute applies to all applications for dwellings in farm and forest zones.

The intent of this tactic is to obliterate land use protections outside Urban

The City of Creswell has acknowledged that enforcement of wetland protection has been lax, that it has resulted in the deterioration of some wetlands and that there have been recent violations as well. Several years ago an access was built with fill through the middle of a wetland, thereby degrading half of it. Instead of requiring the violator to remove the road and restore the wetland, the city's ESEE draft recommends "no protection" for the degraded half and the other half for "full protection."

More recently, in an apparent violation, vegetation in a wetland behind the local Dairy Queen was removed and the ground mowed. A city planner has said that "enforcement policy is...unclear," and, as of May, the city is still considering its enforcement options.

Lynx Hollow and Hill Creek

In May 2023 the members of the Creswell Water Control District (CWCD) voted 64 to 42 for not dissolving the district. As a likely result, water from Lynx Hollow Creek will continue to flow directly from the diversion dam and concrete channel built by the Army Corps of Engineers into the Coast Fork

of the Willamette River. Only a small portion of the water will be diverted into the riparian corridor of Hill Creek. The concrete channel is about a half mile in length, whereas Hill Creek runs several miles before meeting the Coast Fork. The purpose of the dam is to prevent flooding.

Severe flooding occurred prior to the dam being built. However, keeping water out of Hill Creek deprives the area of natural recharge of the water table and local wetlands and of native habitat. In addition, due to its design and construction, water running through the channel is heated by the sun during some months and does not allow fish from the Coast Fork into the channel and subsequently into Lynx Hollow Creek.

Correcting the situation would probably require state and/or federal resources, but the majority of the Creswell Water Control Board say they are opposed to involving relevant agencies in management of the district because of increased "bureaucracy."

John White
Creswell

Growth Boundaries and ultimately all approval criteria that aren't so-called "clear and objective"—outright permitted—in the review of applications for what are subordinate conditional uses, such as dwellings, in the resource zones. This includes Goal 5, fire siting standards for roads and driveways, legal lots, an income standard for accessory farm dwellings, etc.

The Lane County Hearing Official has already ruled in favor of this "clear and objective" argument, and LandWatch has appealed that decision to the Land Use Board of Appeals. At least for now the Lane County Planning Director must continue to approve relative farm help dwellings based on a lack of clear and objective criteria in Lane Code and state law.

Fortunately, HB 3197, a Washington County bill, was approved in the recent session, making needed housing/clear and objective standards applicable only to residential zoning inside Urban Growth Boundaries.

Lauri Segel
Eugene