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LandWatch

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County Floodplain Policy Continues Costly Practices

The post-WWII economic boom in Oregon spawned significant clearing and development within the floodplain of our rivers. And it wasn't long before landowners were asking for help from the federal government to keep their property from being flooded. Along with the dams came huge public works in the form of revetments, most of which were completed by the late 1960s. These armor-plated dikes were usually constructed in partnership with "Local Improvement Districts," neighborhood corporations that agreed to maintain them.

As we entered the economic boom of the 1980s, the 100-year flood of 1964 was a distant

memory. Confident that dams, dikes, floodplain maps, FEMA and county regulations were sufficient to protect against catastrophic events, a new generation of landowners pioneered a startling expansion of development into the floodplain. But then three relatively minor flood events, two in 1996 and one in 1997, resulted in significant property damage and numerous applications from property owners for emergency dike construction and repair.

These occurrences should have served as a reminder that dams have not eliminated floods and that our rivers will do what they have always done: meander in their floodplain. And our common sense should have been tested when Lane County was

forced to spend taxpayer dollars to perform emergency repairs on revetments along the Middle Fork of the Willamette below Dexter Dam, when the cost was really the responsibility of the Local Improvement District. The handful of farmers that had benefited from the original project had been replaced by a small rural subdivision. And the new landowners, while benefiting from the original project, had long abandoned its maintenance.

We might also have been paying more attention when landowners reported local inaccuracies in flood maps and that new construction in the floodplain was subject to unanticipated

flood damage. But we didn't. And now we face a big problem.

Immediately downstream from the Matthews, who lost their home to a meander, another landowner on the McKenzie, fearful of losing his newly-constructed home, filed for emergency relief and the right to construct a new dike. But, while solving one problem, diking creates further problems downstream. In this case, it will probably push floodwaters onto a revetment that the Army Corps of Engineers estimated would cost more than \$1 million to repair in its present degraded condition.

Who will pay? Certainly not the Local Improvement District created for this purpose.

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Because Lane County defied common sense and allowed the property owner to build in a floodway, an area of high-velocity floodwaters, we all pay.

The dikes that protect much of our urban areas from historic flooding were engineered in the 50s and 60s with a 50-year life span. As development continues to creep into the floodplain fringe, land management agencies are playing a high stakes game with the taxpayer. Development shrinks the capacity of the floodplain to absorb flooding and channelizes the river, increasing its velocity and eroding the aging dikes.

At or near the end of their lifespans, these dikes will fail, and increasing numbers of homes will be at risk. If development in the floodplain is permitted, it can only continue if revetments are periodically replaced or maintained at enormous cost. If the taxpayer is expected to pay for this work, we should be talking about priorities, alternatives and how expenses will be allocated. Certainly we should be talking about whether the benefits of continued development in the floodplain outweigh the inevitable costs, not only to the taxpayer but to the needs of the river itself.

Robert Emmons

Citizens Group Forms to Track Timber Toxics

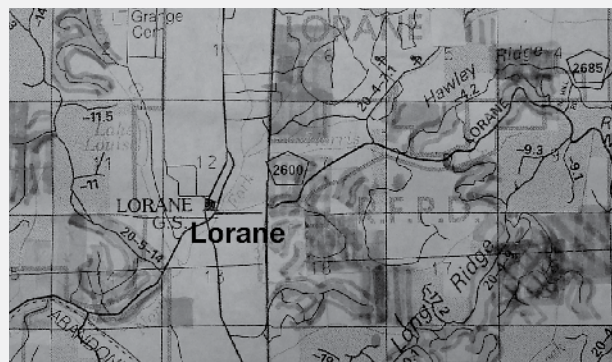
Early last year a group of concerned rural neighbors came together to stop the use of herbicides on industrial forest lands in Lane County. Forestland Dwellers No-Spray Group is informing people about the hazards of the continued use of poisons to control vegetation where clear cuts have recently occurred. Aerial sprays such as Oust, Transline, Lv6 and other herbicides can drift and otherwise migrate to local water supplies. Using data provided by the Department of Forestry Computerized Tracking System (ODF FACTS) I thoroughly mapped all spray activity that happened in 2004 west of the Willamette River, east of the Coast Range, and between the northern and southern boundaries of Lane County.

In this area alone, a total of 51,277 acres were poisoned last year, of which 27,138 acres were sprayed by aircraft. More than half of this area (24,409 acres) was

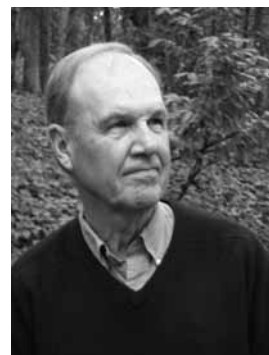
sprayed by Roseburg Forest Products. Weyerhaeuser reported sprays totaling 10,036 acres in 2004. Swanson Bros. sprayed 4,300 acres, Seneca Jones 3,700 acres, Transition, Inc. 2,000 acres, Giustina Resources 780 acres and Rosboro 750 acres.

Citizens can find out when and where herbicide spraying will occur by paying an annual fee of \$5 per section to get on an Oregon Department of Forestry spray notification list. For west Lane County, contact the ODF office located at 87950 Territorial Highway, Veneta. For east Lane County contact the ODF office at 3150 Main Street in Springfield. Because many notifications happen in March, it is urgent that a network of subscribers organizes so that neighbors can respond before aircraft begin to deliver their toxic payloads to our watersheds.

Lynn Bowers



Lynn Bowers' map plots timber spray activity in west Lane County.



Interview with Chuck Rusch

Chuck Rusch is an emeritus professor of architecture at the University of Oregon. He just completed a four-year term on the Eugene Planning Commission in which he was a consistent advocate for long-range comprehensive planning, holding firm on the Urban Growth Boundary, and handling growth through infill construction and higher densities. He advised against building the West Eugene Parkway and the first phase of Bus Rapid Transit (BRT) as conceived by LTD. He supported completing all phases of the Natural Resources Inventory, the development of concentrated urban villages within the city, and the Rivers to Ridges Strategic (regional) Plan.

LW: *By way of background... what led you to interview for the Eugene Planning Commission?*

CR: I taught architecture for 35 years, here and at UCLA, so necessarily I became a student of land-use issues and trends. I believe that our design choices and decisions impact the quality of our lives, and that these choices need to be made with their long-range implications in mind, rather than just short-range benefits. When a neighbor asked me to interview for the planning commission, I thought it might be a chance to be involved in how the city made those long-range choices.

LW: *Any thoughts or conclusions about your experience on the commission?*

CR: I would say that my experience on the commission was mixed, both very rewarding and very frustrating. The most rewarding part was the quality of the people I got to work with, both the other commissioners, who are quite extraordinary, and the city planners, who are smart, talented, and dedicated. I think we did some good work during my tenure. The frustrating part is harder to describe. I sense a serious disconnect between the long-range planning the city planners have been doing for 20 years, which is quite good, and what happens when they respond to short-term development projects, which is problematic. There's no doubt that they have been planning long-range: there's the 2050 Study, the Rivers to Ridges Strategic Plan, the state-mandated Goal Five

Natural Resources Inventory, the Growth Management Study, Transplan, the Parks and Open Space Plan, and other studies, including those on storm-water runoff and the protection of streams and salmon habitat. That's all good work and all long-range planning, both in Eugene and beyond. But when it comes to applying that thinking to the latest development project that comes through the door, the disconnect happens, and suddenly it's business as usual.

LW: *Why do you think that happens?*

CR: I think that it's because in our culture we see growth as the only successful planning and economic model. It's all we have ever known in this country. The way we think is: "If it's not growing, it's dying. Growth is good; anything else leads to ruin, decay, and/or death." Economic growth is part of who we think we are. So we have a very complex culture of laws, regulations, measures, and economic incentives to keep that model in place, and often disincentives to discourage alternatives. On the one hand, we know that big changes are in the air, and we do our long-range planning studies to get ready, but then the next project comes in the door and the other hand takes over and treats it in the same old way – business as usual.

LW: *For example? Name some projects that seemed to ignore current long-term planning goals.*

CR: The West Eugene Parkway is probably the

biggest one the commission worked on while I was on it. It's very controversial and somewhat complex, but I would say that in that case short-term business interests overwhelmed long-term planning goals such as those laid out in Transplan, the Growth Management Study, and state planning goals. The planning commission unanimously recommended not building it, but the council approved it anyway. Now it's hung up for other reasons. Other examples of business as usual might include: the decision, now withdrawn, to build a new police station on 8th; to build a new hospital on the EWEB river bank property despite many long-range reasons against using that site for a hospital; the decision to switch to the toothless "Safe Harbor" criterion to list properties in the Natural Resources Inventory for protection; the decision to approve ripping up Franklin Blvd. for the first phase of BRT despite no improvement in transit times or bus frequency. That's just for starters; there are others. Long-range studies are done, goals and policy are laid down, but then when a project appears, the goals and policy are forgotten in favor of doing it the old way.

LW: *What do you see as an alternative?*

CR: Any serious alternative to the growth model today must be centered on sustainability. I think the goal must be full-employment in a steady-state economy. That means not only no growth, but also full-employment. No growth does not mean

decline. No growth means holding steady, i.e., no growth, no decline, and sustained indefinitely. This is not a new idea. The economist Herman E. Daly published a dozen books on steady-state economics and ecological economics between 1971 and 2004. He and his co-authors lay out the details of an alternative to growth and how it would work on both a local and a global scale. It is possible, but we have to be clear about it. I hear people, who should know better, talking about "sustainable growth" as a kind of middle ground, as if we can have both growth and sustainability. This simply isn't possible. There is no form of growth – physical, social, or economic – which is sustainable. And yet we live in a culture that demands continual growth. That means that our culture is asking us for something that is not possible! That's why I believe that the goal should be "full-employment in a steady-state economy," which is possible and can be sustained.

LW: *Say more about that. How could people be fully employed without a growing economy?*

CR: Renewal. Making things better. There is plenty to do, plenty of construction jobs tearing out the old and replacing it with the new. In this future, businesses would still come and go. We'd still have to produce all of the food, clothing, shelter, warmth, tools, and "stuff" that human societies require – but no more than what is required. The resource and product

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cycle has to be a closed loop. Compare it to the human body. Around age 20, we stop growing, but we don't wither and die; we just stop growing. During a long adulthood, thousands of different kinds of cells are fully employed. Throughout maturity, cells die and are recycled, and new ones emerge to take their places, a constant process of renewal. This goes on for 50 years. Then in our 70s, decline sets in and eventually we die, but other individuals are born and begin their time to grow and replace us. That's the model that our cities should be following. They should be just entering adulthood right now, preparing for a long thriving period of steady-state equipoise.

LW: *Sounds kind of utopian.*

CR: That's because we're spoiled. Our country has never known anything but the growth model. But now, after 300 years on this binge, we are running out of room and resources. If we continue to destroy the watersheds and the ecosystems on which we depend, the planet will survive, but likely with a completely different set of species on it. I think we have to change who we think we are, how we relate to nature, what we think a city is, how we plan for the future, and how we build and conduct our business. I believe that the folks in Eugene's department of Planning and Development know all this and are working on it. It just hasn't found its way clearly into the daily business of running a city. On the planning commission, I found that to be very understandable but also very frustrating.

I think we're running out of time.

CHOICES Chooses to Settle with PeaceHealth

Over the past few months, PeaceHealth has managed to settle with community groups and state agencies opposed to its plan to build a new medical campus in the Gateway area of Springfield.

The Oregon Department of Transportation withdrew its concerns about infrastructure capacity in exchange for PeaceHealth's promised contribution of millions of dollars for the I-5 / Beltline interchange project.

River advocates John and Robin Jaqua promised no further appeals in exchange for significant riparian protection setbacks and conservation easements. The Jaquas also obtained some view protections for river users with PeaceHealth's agreement to limit the height of the hospital building itself to below the height of the mature conifer trees fronting the river. By reducing the planned building from nine stories to eight, PeaceHealth also committed to keeping approximately 200 additional jobs at its Sacred Heart facility in downtown Eugene.

On February 21st, the Coalition for Health Options in Central Eugene-Springfield (CHOICES) announced that its steering committee had reached agreement with PeaceHealth as well. The CHOICES agreement, however, covers both plans for the Gateway development known as RiverBend and

plans for redevelopment of PeaceHealth's current hospital facilities in downtown Eugene.

For three and a half years, CHOICES has advocated for community involvement in hospital siting decisions. While, regrettably, the settlement agreement does not prevent PeaceHealth from moving the bulk of its hospital services from downtown Eugene, it will require PeaceHealth's ongoing commitment to more public involvement in internal planning decisions and a broader evaluation and consideration of livability issues.

The settlement includes:

- A requirement that PeaceHealth fund the work of an independent consultant team to forward plans and design recommendations for viable nodal development of the areas surrounding the proposed hospital building site at RiverBend. CHOICES has long argued that the traffic and livability concerns from the regional hospital could only be alleviated with effective nodal development.
- Specific height limitations (three stories) for housing development around the hospital, in addition to the height limitations already secured by PeaceHealth's earlier agreement with John and Robin Jaqua. CHOICES sought to improve on the view protections and shield the adjacent rural neighborhoods from looming structures.
- A seat for a CHOICES community representative

on the internal PeaceHealth committees that will propose development details for RiverBend and redevelopment details for PeaceHealth's existing Sacred Heart campus at Hilyard in Eugene. In combination with the Jaquas, who received enforceable employment commitments through their settlement earlier, CHOICES seeks to hold PeaceHealth to its promise to continue providing significant employment opportunities in the central city.

- A commitment that, within two years, PeaceHealth will begin marketing or redeveloping its Willamette Street site, and that, if it chooses to market the site, it will not restrict its use, especially by preventing its being used for medical services. This ensures that downtown Eugene will not have a large vacant block of land in its core. In conjunction with the commitment to not oppose McKenzie-Willamette's certificate of need application, this provides opportunities not previously assumed to exist.

Oregon Court of Appeals Chief Judge David Brewer mediated the settlement. CHOICES agreed to abandon its legal appeals because its steering committee felt that, in light of the other settlements, the community could get essentially the same outcome, with significantly less cost to both sides and thus the community as a whole.

Jan Wilson
Public Interest Attorney
Coalition Coordinator for
CHOICES



Swap would turn Santa Clara farmland into more tract houses and businesses

McDougal Proposal Pits Farmland Loss against Parkland Gain

When Santa Clara's prime farm soils began growing houses and shopping malls instead of row crops and fruit trees, 40 acres became as hard to come by as a mule. Little wonder, then, that Eugene's Parks Department, looking for at least 40, jumped at the chance to add 77 acres of "community park" in Santa Clara by doing what it calls a land swap with logger-developers Norman and Melvin McDougal.

This sweetheart deal would bring 197 acres of farmland into the urban growth boundary (UGB) for mixed density residential and commercial development, remove 120 acres of steep forested land in Laurel Hill Valley

from the UGB, and donate the difference (77 acres) for a community park in Santa Clara. The city would then spend the remaining \$950,000 from their 1998 bond measure to purchase the 120 acres in the Laurel Hill Valley and thereby acquire a connection to the Ridgeline Trail.

To develop the farmland, the applicants need a Metro Plan amendment to expand the UGB before its state-mandated evaluation in 2017. UGBs were established to constrain urban development and protect outlying lands from speculative purchase. This proposal would reward speculation and set a precedent for developers to have their land rezoned on a case-by-case basis.

The addition of 1,000 McDougal homes would create a demand for social programs, public health and safety services, road construction and maintenance, public

works and schools to be paid for through increased taxes. Residential, commercial and park development would exacerbate traffic congestion on River Rd., Irvington Dr., the Northwest Expressway, and in surrounding neighborhoods. And, not least, aside from the permanent loss of potential food production, loss of farmland to development would contribute to increased water pollution, reduced air quality, loss of open space and wildlife habitat, and lost cultural and educational opportunities.

No money has been secured for the proposed infrastructure and ongoing maintenance; funding will come from future bond measures. The city's parks planner admits it could be 10-20 years before the park is complete. Meanwhile, the developers stand to gain instant millions from the land swap, Santa Clara residents will bear long-term costs and immediate environmental impacts, while the city gets tax revenue from 1,000 residences and free land earmarked for a future regional park dependent on continually diminished public funds.

Parks are essential to community health, and Santa Clara would clearly benefit from a community park. However, instead of a car-centered, one-site-fits-all destination at the furthest reaches of our city, the citizens of Santa Clara would like to recycle spaces within our community to meet our recreation needs. We believe this can be accomplished by:

- Extending the riverfront bike path and park system to give us access to the Willamette, connect us with the rest of the city's riverfront parks, and provide opportunities for all city residents to use Santa Clara's park system without having to add more traffic to River Rd.
- Creating a community center housing a library, classrooms and an aquatic facility at Santa Clara Elementary, a historic part of our community on 8 acres of land on a major arterial with public transportation.
- Seeking two smaller sites within the UGB, instead of one 40 -acre site, to serve as areas for ball fields and unprogrammed play. This would spread out traffic concerns, create options for people within walking or biking distance from their homes, and secure some of the last available land within the UGB for open space.

Both the McDougals and the City have said that they won't do it if we don't want it. Please let your city councilor and county commissioner know that this proposal would set an unacceptable precedent by validating a shell game with city and countywide consequences.

Kate Perle
Biodynamic Farmer,
Member of Santa Clara
Committee for Sensible
Parks and Open Space

Special Gift

LandWatch is pleased to report that early in February we received a \$1,000 gift from the estate of Jane Claire Dirks-Edmunds.

Edmunds, who died last year, was a professor of biology at Linfield College, a conservationist and author of *Not Just Trees*, a story of an ancient Oregon Coast Range rain forest on Saddleback Mountain. Covering a span of more than sixty years, it is the tale of the mighty Douglas-firs and cedars and hemlocks that once grew there, as well as other life forms that depend on them.

The letter accompanying the bequest stated that, in her will, Professor Edmunds included "a plan to give \$1000 gifts to nature related organizations that were judged to be doing good work."

We are greatly honored.

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Reversing Measure 37 Demands Litigation and Right Message

On January 14, 2005, farm bureaus in Linn, Washington, Marion and Yamhill Counties, together with 1000 Friends of Oregon, announced their filing of a legal challenge to invalidate Measure 37. Filed in Marion County circuit court, the suit asserts that Measure 37 violates the clause in Article 1, Section 20 of the Oregon Constitution that states: "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

In the meantime, Measure 37 demands are piling up. Approximately 135 demands have been recorded in the Measure 37 Web

A statewide summary of demands recorded by 1000 Friends of Oregon shows that, as of February 21, 2005, over 200 demands have been recorded in a 1000 Friends of Oregon database:

- 2 in Lane County
- 71 in the Mid-Willamette Valley
- 19 Coastal
- At least 2 in Deschutes County
- Over 5 in Hood River County
- 29 in Southern Oregon
- Over 80 in the Portland Metro area, including 55 in Clackamas and Washington counties

Registry Report. Another 200–220 demands have been recorded by the League of Oregon Cities.

To see the Measure 37 Web Registry Report, go to: www.oregon.gov/DAS/Risk/docs/RegistryRpt1_7_05.pdf

State residents are beginning to bear the brunt of a measure that is inherently mean spirited, inequitable and unfair. It gives a privileged class of property owners special rights: immunity from community zoning safeguards on which neighbors depend, and immunity from informing neighbors of Measure 37 demands. And it pits neighbor-against-neighbor by allowing development that hurts surrounding property owners.

But reclaiming Oregon values will not be achieved by litigation alone. Promoting a shared message will help strengthen and rebuild support for Oregon's landmark

land use planning program. Conscientious Oregonians must remind their fellow citizens that at base land use planning is about caring for our home:

- Land use protections ensure that Oregon remains a great place to live and work.
- Oregon's quality of life and long-term economic prospects are supported by land use protections.
- Oregon's citizen involvement process in land use decisions gives everyone a seat at the table

Lauri Segel
Planning Advocate
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LandWatch and Goal One Hold Ground, Win Reversal

Over the last months LandWatch and Goal One have joined forces in a concentrated effort to halt the destruction of farm and forest land in Lane County. Those efforts are beginning to pay off.

Challenging county approvals of development applications to the Land Use Board of Appeals (LUBA) is part of our strategy. LUBA approves about 70% of the local government decisions that it reviews. Of the remainder, almost all are remanded (returned to the local government) with instructions to address problems with the deci-

sion. LUBA almost never reverses the decision of a local government. A reversal means not only that the local government's decision was wrong, but that it was so wrong there's no possible way to fix it.

On February 2, 2005, in *Emmons v. Lane County*, LUBA No. 2004-111, LUBA reversed the Board of Commissioner's decision approving the Grant application, which rezoned 30 acres of farm land to nonresource land and would allow the land to be divided into 5-acre parcels and converted to residential uses. The Natural Resources Conservation Service (NRCS) survey shows that the soils on the property are rated Class III agricultural. But the applicant found a soils scientist who, for the

right price, opined that the soils weren't suitable for agriculture despite their NRCS rating. One of our many arguments was that the land had been part of a larger farm operation for at least the last 30 years. In reversing the county's decision, LUBA held that "the subject property is adjacent to and intermingled with class I-IV soils, and is a part of a farm unit as a matter of law. The county erred in concluding otherwise."

1000 Friends of Oregon, LandWatch Lane County, and Goal One collaborated in preparing and presenting testimony at the local level. Christine Cook, an attorney provided through 1000 Friends' Cooperating Attorney Program, wrote the brief and argued the case before LUBA.

The Grant case is the first of a string of "marginal lands" and "nonresource lands" cases that are making their way towards resolution. Last December, LandWatch, 1000 Friends and Goal One won a "marginal lands" case at the local level when the Board of Commissioners voted to deny the application and the application was then withdrawn. The Board of Commissioners in January approved another "marginal lands" applica-

tion for the Carver property, which would allow residential development of 42 acres of forest land. We have appealed that decision to LUBA.

The Legault application for a "template dwelling" (a type of forest dwelling) raises many issues that we've been struggling with for a long time in Lane County – the county's practice of using roads to divide lots and tracts, the validity and scope of legal lot verifications, and the county's practice of improperly allowing houses to be built right next to streams. In cooperation with the neighbors, we are challenging long-standing county policies. A victory would establish great precedent and effectively force a change in county policies.

LUBA's reversal was a wake-up call to Lane County's land development practitioners and the county's Land Management Division that it's no longer business as usual. While favorable outcomes cannot be certain, we're encouraged by previous decisions and confident our work is helping keep Lane County's farms intact and its forests standing.

Jim Just
Executive Director
Goal One Coalition