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Big Look Backwards



Photo: John Bauguess

Without the land use protections Senate Bill 100 established 35 years ago, Oregon long since would have gone the way of California and all the other states across the country providing open range to unbridled development. To our system of locally administered, state-regulated comprehensive plans and Urban Growth Boundaries we owe what's left of Governor Tom McCall's legacy.

What's left. . . . For from its inception those whom McCall referred to as "the grasping wastrels of the land" have been crippling his land use program little by little, lot by lot. The truth is that county codes and state statutes have always suffered the slings and arrows of outrageous manipulation by development interests and complicit land managers and politicians.

For over a dozen years now LandWatch Lane County has been fighting sprawl on Lane County's rural lands. And sometimes we've had to swallow hard while doing that because SB 100 puts us in the ironic and awkward position of defending agricultural and forestry interests whose practices, such as the use of toxic chemicals and clear-cutting, run counter to sustainable land use and public health.

Be that as it may, the land itself is neutral and the soil on it essential to retain as resource, not real estate. Unfortunately, certain land planners – whose jobs depend on the building permit fees they generate – eschew the precautionary principle when, for example, they routinely employ property line adjustments to justify non-resource related dwellings on agricultural and forest lands. Moreover,

Lane County is one of only two counties in the state with a Marginal Lands provision, a pretext – usually based on input from a developer's "soil expert" – for raising houses on resource land. Under this provision much of the soil growing our world-class wine grapes would be classified as marginal.

And, not least, concessions to developers have so weakened Lane County's riparian ordinance that it offers little or no protection to our watersheds.

With some justification, therefore, land use planners can reply to critics that they're only following the law. Legal bases for appeal typically hang by a thread, and the costs are so exorbitant as to effectively eliminate citizen participation.

Nevertheless, working with Goal One Coalition and affected neighbors countywide, LandWatch has successfully appealed proposed rezones to marginal land and unlawful property line adjustments. And we have proposed that the Board of Commissioners adopt an appeal review process that will consolidate the myriad hearings and reconsiderations presently costing citizens time and thousands of dollars into one local hearing with a fee capped by state law.

Meanwhile, though, a tsunami has hit Salem in the regulatory revision of our land use system proposed by the Big Look Task Force.

One would reasonably expect any revision of Oregon's land use program to respond to global warming and energy depletion, the passage of Measure 49 and the economic crisis by strengthening regulatory protections of our natural resources and our farm and forest economies. Instead, Sections 5-8 of HB 2229 allow two or more counties to provide their own definitions

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of agricultural and forest land and to “re-designate as other rural land those farmlands and forest lands that do not fit in the regional definitions”

Permitting counties to establish their own definitions of resource land would subject it to the whims of local political jurisdictions under the influence of development interests. These provisions must be eliminated.

Sections 2 and 3 of the bill begin with the mandate that the Department of Land Conservation and Development “assess what [and to what degree] economic and property interests will be... affected by a proposed rule.” Rather, state regulatory agencies should first determine whether and how natural resources and areas are protected by a proposed rule and how that regulation addresses global warming and energy depletion.

Contrary to the expectations of Portland State University’s Population Research Center, the Big Look Task Force believed it must accommodate 1.7 million more arrivals to the state by 2040. It therefore accepted and promoted the faulty premise that growth is inevitable. But growth is not inevitable; it is a matter of choice, a matter of policy.

The underlying assumption of HB 2229, and its unstated goal, is that growth – the unlimited use and abuse of a finite environment – can be accomplished by making regulations more “flexible” and less “complex;” i.e., by further weakening regulations that presently do not protect our farms, forests and natural areas.

This kind of thinking was anachronistic three years ago when the Big Look Task Force was formed. It should be unthinkable now as we confront increasing population, vested Measure 37 and ongoing Measure 49 claims, global warming, energy depletion and economic uncertainty.

At a House committee hearing on the Big Look bill February 3rd, an overwhelming majority from all over Oregon exhorted committee members to strengthen, not weaken, our land use protections. Even private property-rights zealots are unhappy with the legislation —because it retains a semblance of regulation.

Fortunately, the committee has said it doesn’t like the bill either. At a February 17 work session, members voiced their intent to excise at least those sections clearly intended to strangle the system. Perhaps, in this legislative session, those whom McCall referred to as “the grasping wastrels of the land” will only be grasping at straws.

Discussing his innovative land use program with an NBC interviewer in 1974, Governor McCall said, “The Oregon Story is a hopeful force. I think it shows that the system can work and that people respond if there is leadership with imagination and guts.”

While the Big Look Task Force threatens to throw open the state capitol doors to the “grasping wastrels”, we have a rare opportunity at the county level to be proactive for a change. LandWatch and Goal One Coalition are working closely with a sympathetic majority of commissioners to help us update the Oregon Story to meet the challenges of an exhausted and rebellious earth.

It’s a new, but no less hopeful, narrative that must anticipate and take immediate measures to cure the ecological abuse fueling what author John Michael Greer calls “the long descent” of deindustrialization.

Legislators and planners may begin by strengthening and enforcing regulations weakened by growth addiction and enabling politicians and administrators. But, as Jim Just of Goal One

Coalition has proposed, to do so they must:

- Move energy and climate consequences to the forefront of land use planning
- Evaluate, as a condition for approval, the carbon dioxide and energy consequences of development proposals
- Eliminate non-resource related dwellings on farm and forest land
- Foster the evolution of villages

Surely, if these qualifications are part of Lane County’s standard operating procedure, we can expect the adoption of a scientifically-validated riparian ordinance, and to shrink our urban growth boundaries and reserve or reclaim the unbound land as open space and resource.

To accomplish these objectives and effectively address the population, climate and energy crises, state-regulated regional planning must be based on the natural limits of watersheds not the artificial boundaries of political jurisdictions.

The Big Look Task Force’s own statewide surveys show that a majority of Oregonians wants to protect our natural resources and the communities that depend on them. It is imperative that we hold our representatives on both the state and local levels accountable to that majority.

Robert Emmons

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Photo: John Bauguess

LandWatch Blows the Whistle on LCOG’s Population Forecast

Controlling the expansion of urban growth boundaries (UGBs) is key to reducing sprawl. When a city’s supply of “buildable land” falls below a twenty-year supply, the city may expand its UGB. The requisite land deficiency is demonstrated by first performing a population forecast to predict how many new housing units will be needed during the next twenty years. The next step is an inventory of vacant land already within the UGB and an assessment of how many new units could be sited on this land. If the results show that more units will be needed over the next twenty years than can be sited within the existing UGB, an expansion is allowed.

This preliminary process means that by the time a UGB expansion is actually proposed the fight is largely over before it’s even started. The question is no longer whether the UGB will be expanded but merely where the expansion will occur. Yet the public typically does not get involved until this stage, when it’s too late to challenge the buildable lands

inventory and population forecast that justify the expansion. This may be due to the seemingly innocuous nature of the inventory and forecasting processes, that at first blush appear to be straightforward, objective determinations. Unfortunately, under the right circumstances both of these are susceptible to manipulation, much of which may occur outside the public eye.

LandWatch members have discovered many problems with Lane County’s population forecast process. In late 2006, a new countywide forecast was initiated by the Lane Council of Governments (LCOG). This quasi-governmental entity claimed that years ago Lane County delegated its forecasting authority to LCOG. Unfortunately, LCOG is anything but neutral as a population forecaster. LCOG works year-round as a paid consultant to Lane County cities, and its board of directors is controlled by city mayors and city councilors. These conditions are likely why it seems so difficult for LCOG to reject requests from its member cities for inflated population allocations.

The LCOG forecasts were derived in private meetings with city staff. Some of the city forecasts assumed growth rates three times higher than have ever been

seen, even in the recent housing boom years. Nevertheless, mercenary LCOG staff steadfastly refused to consider input from the public, asserting that LCOG didn’t intend to “judge” the requests of the cities.

After a cursory “hearing”, the city-controlled LCOG board eagerly voted for the bloated and unrealistic “build it and they will come” forecast they’d requested. If allowed to stand, the LCOG forecast would have enabled the wrongful and premature expansion of UGBs across Lane County.

LandWatch members responded by approaching the Lane County Board of Commissioners, sharing the many problems with the LCOG process, and uncovering proof that, despite its claims, LCOG did not actually have the legal authority to perform forecasts. The Board subsequently voted to reassume its forecasting authority, to throw out the entire LCOG effort, and to commission a new study from Portland State University’s well-respected Population Research Center.

In early February, the draft PSU forecast was released. While still subject to change as the adoption process moves forward, the draft is very encouraging. Overall, PSU predicted 40,000 fewer people than LCOG did, which is 30% less growth over the next 25 years. This translates into thousands of acres of farm and forestlands that will not be lost to UGB expansion in coming years. The difference between the politically -motivated LCOG forecast and the neutral, fact-based PSU forecast is a compelling reminder of what can go wrong and just how high the stakes can be.

It is important for the public to stay involved in this process. There is a link to the Population Forecasts webpage on the Lane County homepage at www.lanecounty.org <<http://www.lanecounty.org/>>. At hearings before the Planning Commission and Board of Commissioners in May and June, LandWatch members, as well as the general public, will have an opportunity to tell our leaders that we support responsible, fact-based forecasting.

Mia Nelson



Pete Sorenson Interview

Pete Sorenson is South Eugene County Commissioner. LandWatch recently questioned Sorenson about land use issues.

LW: You've grown up in Oregon. How has that experience shaped your current view of land use in the state?

Pete: I'm an Oregonian. I came to this state as a young child, raised my two children here, and I work here. Since 1972 I've lived in Eugene and graduated from the U of O with a law degree, but I grew up in three distinct areas of Coos County in southwestern Oregon.

For a year I lived with my parents and brother in Bridge, Oregon, on a 600-acre cattle ranch and tree farm. In 1963 we moved to the small town of Myrtle Point where I attended grade school and then to North Bend (near Coos Bay) where I went to junior high school and high school.

From 1974 to 1979, I lived in Washington, D.C. Traveling to all parts of the U. S. as legislative assistant to Congressman Jim Weaver and as special assistant to the Secretary

of Agriculture made me realize how exceptional Oregon is and that, if we don't protect it, we could end up like Atlanta or Phoenix or—closer to home—like L.A.

LW: You once rode in a Eugene Celebration parade on a white horse as "the Lone Liberal." Times have changed and so has the political climate. What does that transformation mean to you and your work on the board?

Pete: When I first got on the Board in 1997, I was outvoted on major issues—every time—on a 4 to 1 vote. I was always the lone No vote on land use, riparian protections, civil liberties and budget matters.

Over the years, though, all of the incumbents have been defeated—all but me. Three of the four incumbents were significant adversaries who had very low ratings on conservation and environmental issues.

It's rare in politics that 80% of the seats in a legislative body are held by challengers who've defeated incumbents. Yet that's what we have now on the Lane County Board. It's a pleasure to work with fellow commissioners who are both environmentally and fiscally responsible.

LW: What do you consider the most important issues facing Lane County? How might the Board address these issues?

Pete: As a result of the economic downturn, many people are unemployed and have lost their retirement savings. We need to help create sustainable jobs, such as growing trees to mitigate global warming and growing and processing organic food. We need innovative work, such as green building, that utilizes energy from the sun.

Whatever they may be, those jobs we support should conserve the natural resource base—our precious soils, water and air and the landscapes they cultivate—that defines our sense of place and constitutes our legacy.

Unfortunately, county government must confront a structural deficit—the difference between a small increase in property taxes and a large increase in operating costs—and a public that consistently votes down even public safety measures, the last time by 71%.

LW: The county, the state, the nation and the world are in the midst of severe and potentially catastrophic environmental and economic crises. As chair of the Board overseeing a county in a budget deficit, how will you prioritize issues so that those crises are effectively addressed?

Pete: We have over 40 funds, including the property tax, which is supplying about \$30 million of our overall \$210 million revenue. But, in this economic climate, both state revenue and state special fund revenue, like building permits or recording fees, are falling radically. This has required us to lay off a lot of people, and we'll probably have to lay off more.

We must continue to fund public safety, public health and other aspects of country government but it's difficult to set priorities because each fund has its own statutory limits. For example, we can't use road funds and state mandated public safety funds for public health.

LW: LandWatch and Goal One Coalition believe that an assessment of the potential effects of proposed developments on global warming and energy depletion should be a routine requirement for every development proposal. What role might the Board play in ensuring that these issues are addressed and harmful practices discontinued?

Pete: We are moving ahead on the "cool counties initiative," pioneered by King County, Washington. And we are trying to exercise the precautionary principle in all our actions. We look forward to input from LandWatch and Goal One as to how to implement them.

Introduced a couple of years ago by the Sierra Club, the "cool counties initiative" seeks the involvement of all 3,066 counties across the nation in efforts to reduce the impacts of climate change in their communities. Registering as a "cool county" would commit Lane County to:

- Reduce our own contributions to climate change through internal operations
- Demonstrate regional leadership to achieve climate stabilization and protection of our communities
- Help our community become climate resilient
- Urge the federal government to support our efforts

Tools include assessments of development impacts, green building guidelines, clean vehicle technology, and the reduction of fossil fuels.

Clackamas and Multnomah have joined the national "cool counties" effort. Should Lane County be far behind?

LW: The Board recently adopted "good governance" as a template for Board procedures and decisions. How might good governance be applied to land use issues?

Pete: Part of good governance and good governments is public notice. Notice is a fundamental right. So that the public may research and comment on county issues intelligently, part of good governance is keeping people informed. Our good governance board

order calls for more information on the Internet, more board meetings, more opportunity for public comment, public comment via recorded statements and more outreach by the commissioners. Policies encouraging the denser development of new urbanism, for example, are good governance provisions. Again, we welcome your suggestions on how to connect good governance to prudent land use policy.

LW: The Land Management Division has laid-off a high number of its planning staff as a consequence of loss of revenue from reduced building permits. The LMD's reliance on building permit fees for planning staff funding has generated at least a perception of a conflict of interest. What alternative funding sources – or creative reorganization – might better serve the Division and the public?

Pete: I think we should be open to consolidating divisions, such as Land Management with Waste Management. I also think that driving down the amount of garbage with increased garbage fees could result in revenue for developing jobs based upon waste reduction and fund planning activities. That would help mitigate the concerns you've raised.

LW: You've been better able to speak your mind and stay in office because of the political make-up of the district you serve. Other commissioners have had to be more cautious. How do we ensure that the present majority spends more time voting right than getting votes?

Pete: I think people want authenticity from their candidates. I tell candidates something I used to tell my law students when I was an adjunct law professor: the jury has more than 700 years of life experience looking at everything in the courtroom. It's hard to trick or fool people for very long,

and that's why I think candidates that go door to door and are honest about their lives, about their challenges and about their views tend to do better than candidates who don't listen to their constituents.

This works well at the local level, where I can get to know a high percentage of my constituents. It doesn't work so well at higher levels, where money for marketing is what politics has come to. I discovered that the hard way when I ran for governor.

In some ways, my success at the state senate level or at the county commissioner level is fairly direct. I tell people what I'll do and I try to do it. They like that level of honesty and directness.

LW: Oregon was once a national model for sound land use protections. With the passage of Measures 7 and 37, Oregon established a benchmark for opportunistic greed and unbridled development. What identity do you want Oregon to carry into the future and how might it be defined?

Pete: We need leaders with the courage to stand up to special interests and who are willing to protect our invaluable natural resources.

Numerous polls have shown that most people support Oregon's nationally renowned land use program. The system isn't perfect, but for the most part it has protected our land and water. Getting rid of it has been the goal of extremists.

From the time I was a little boy, I grew up enjoying clean air and water and abundant productive soils. Now, as a Lane County commissioner, I intend to do everything in my power to ensure that the quality of life I took for granted passes on to my children and all future Oregonians.



The Fable of the Red Legged Frog: Another Inconvenient Truth

Even our best efforts often betray our ignorance.

According to a recent *Register Guard* article (1/22/09), in suburban areas of Puget Sound populations of red-legged frogs and other amphibians continue to decline despite 300' buffers around sensitive habitat and 'some of the most generous habitat protections anywhere....' Scientists studying their migration routes have found that these 2-5" amphibians refuse to stay put in their buffer zones, no matter how thoughtful and tidy. Why are they so ungrateful?

No one, it appears, could imagine that these tiny creatures have needs other than those we've granted them — and that they travel so far to satisfy them. Nonetheless, like a number of our own species, the red-legged frog lives in one place and has sex in another, well away from home. In the winter they hunker down at the

base of forest ferns under leaf mulch and snow awaiting the warm moment when it's time to spring pond-ward — one small hop at a time.

What a daunting distance they must travel from woods to wooing! And the pitfalls created for them on the way make surviving their sometimes three-mile odyssey nothing short of heroic.

In the Sammashish Plateau in King County the kingdom of the red-legged frog has morphed into Beaver Lake Estates, and busy roads serv-



ing this subdivision and other sprawl bisect their routes to romance and the long way home. One night's tally found as many as 100 red-legged and other frog species, salamanders and newts dead on the pavement, their killers dumb to the carnage.

It's the price of progress. As John Kaufman, who's developing home-sites on 40 wooded acres near the road-kills lamented, 'I've been strung out forever waiting for permits. When somebody wants to come talk about frogs and things, it's about the last thing you want to hear.'

Still, Kaufman has been cooperative; he's ready to consider 'culverts, signs or speed bumps' to slow the death rate 'as more development and traffic occur.'

Meanwhile, Klaus Richter, a senior ecologist for King County whose past visits to Beaver Lake Park found 'the grassy areas near the lake alive with toads,' has not seen a one in recent visits. 'It's sad,' he said, 'they are just gone. People don't even know what used to be here. It's the extinction of experience.'

Moral: The road to hell is paved with good intentions.

Robert Emmons



Photo: John Bauguess

State Legislature Scrutinizes Big Look, May Disarm "Hired Gun" Soils Scientists

The Big Look Task Force finished up its four years of work by preparing a Final Report and submitting a bill (HB 2229) to be considered by the legislature this session.

The bill is now being given a close look by the House Land Use Committee, chaired by Mary Nolan (D-Portland). Nolan also serves as House Majority Leader. Already three hearings have been held at which invited experts (including representatives of the task force) and the public could speak, followed by several work sessions.

The committee appears dedicated to passing some kind of bill, but expressed little fondness for HB 2229, at least in its present form. Committee members complained that it's too complicated, too expensive and doesn't implement the recommendations of the Task Force's Final Report. Most significantly, they disdained its failure to provide any framework to guide the land use planning program for the next 30 years by taking into consideration new realities such as climate change. Bottom line: any bill that emerges won't look much like the one that the Task Force submitted.

Sections 5-8, allowing two or more counties to provide their own definitions of farm and forest land, are going nowhere. Nobody likes that

proposal. Ditto for Section 17, which would require cities to annex lands as it brings them into UGBs.

The committee agreed that, despite their generality and lack of legal significance, the Task Force's four "overarching principles" — "Provide a healthy environment; sustain a prosperous economy; ensure a desirable quality of life; provide fairness and equity to all Oregonians" — are pretty unexceptionable. The only edit the committee made was to strike "to all Oregonians" from the fourth principle. Apparently, not all Oregonians deserve fairness and equity. Go figure.

The committee also seems likely to adopt some version of the regional problem-solving fix contained in the bill. This section of the bill is technical in nature and limited in scope, and is not controversial. A work session devoted to this topic occurred on February 24.

Section 18 of the bill would direct Department of Land Conservation and Development (DLCD) to appoint a work group to conduct a "policy-neutral" audit of land use laws and rules, with the objective of reducing complexity and improving consistency, and "to allow for greater variation between the regions of the state." Certain committee members wryly pointed out that "to allow for greater variation" isn't a policy-neutral directive. With that caveat, the committee agreed on this section of the bill, subject to fiscal constraints.

It appears that the committee may be willing to latch onto a few other underdeveloped suggestions in the bill as a

launching pad for a more ambitious rewrite. Sections 19 and 20 would direct LCDC and DLCD to coordinate with other state agencies to develop a strategic plan and to set up benchmarks and performance measures for the planning program. Committee members saw that these suggestions might offer a way to better integrate transportation planning and concerns such as climate change into Oregon's planning program. These sections may evolve to be the heart of HB 2229 as it moves out of committee. For this reason alone, this bill and this committee bear close attention.

The Land Use Committee has taken a brief hiatus on HB 2229 while it waits to hear back from counties on whether they would be willing to spend the money necessary to take advantage of the "two county" option. This may be a strategy to allow the "two county" proposal to die a quiet death.

One more land use bill is worthy of wholehearted support. Rep. Brian Clem (D-Salem), Chair of the House Agriculture, Natural Resources and Rural Communities Committee, has introduced HB 2761. This bill delegates DLCD the authority to hire soil scientists to re-evaluate agricultural soils. If a property owner thought her land was improperly zoned to be protected by Goal 3, she would request that DLCD hire a soil scientist to assess the land's capability. DLCD would then send the owner a bill.

HB 2761 would put an end to the widespread abuse of "hired gun" soils scientists confirming the desired conclusion that EFU land isn't really farmland and so can be opened to development. In essence, the current practice is that a landowner pays to get the opinion he wants. HB 2761 would ensure that decisions are made based on independent and objective information.

HB 2761 is not currently scheduled for any hearing or work session. Please contact Rep. Clem and your own representative to urge that it move forward.

Jim Just