

Wine, Rock and Real Estate

*Elk and T.V. Butte
 Photo: Linda McMahon*

(continued from page 7)

It's impossible for every forest dwelling request to comply with the approval criteria. Yet the LMD approved all such requests in 2013 and 2014. The state legislature adopted laws in 1993 that helped clarify the intent of allowing dwellings on forest land by special use permit (SUP). That body understood that unregulated parcelization of forestland in perpetuity would have the domino effect of enabling more dwellings on ever smaller lots and parcels and that this diminishment would violate the purpose of Oregon land use Goal 4, which is to conserve forestland and forest uses.

In the early 1980s the legislature created a minimum parcel size of 80 acres for the Forest zone. Commercial forest productivity was expected in return for tax deferrals on forest-zoned land. In reality, though, extensive large forested areas in Lane County have been reduced to much smaller parcels with lots similar in size to those in the Rural Residential 5 and 10-acre zones.

Despite the severely reduced space for trees, however, the properties still retain their forest deferral tax benefits.

LMD approval for a dwelling means the property is eligible to receive a building permit. The dwelling approvals are good for four years, and may receive a two-year extension if requested. There are dozens of these approvals in various stages of their six-year holding pattern in the county's real estate market. Many of them were unlawful approvals, because the LMD relies largely on the applicant's evidence without adequate neutral party review.

The building permits may never expire, even though they are approved with conditions that include deadlines. Often these approvals are used as placeholders to allow time for developers to sell land that "has been approved for a dwelling."

I began reviewing dwelling applications in late 2015, following a conversation

with a retired LMD employee who asserted I was "implying wrongdoing" when I asked how it was that every forest dwelling application in 2013 and 2014 (approximately 58 each year) had been approved. After reviewing dozens of forest dwelling applications since then, I've found that, for a variety of reasons, most of them are not approvable.

Currently, LandWatch has three forest dwelling appeals in progress before the local hearing official and one appeal on its way to the state Land Use Board of Appeals (LUBA). One other appeal resulted in the applicant withdrawing his application before receiving a hearing official decision.

Although staff, attorneys and consultants are pushing back, LandWatch is working relentlessly to articulate sound legal arguments and feels confident that state law and previous LUBA rulings are on our side.

Lauri Segel

Since 1991 King Estate Winery and its owner, Ed King, Jr., have cultivated a loyal following of wine buyers and restaurant-goers enamored of the winery's claim to raising organic grapes and of using organic produce and meats from its own grounds and from local vendors in its restaurant fare. Less well known and publicized is the Ed King whose Crown Properties and King Investment companies have exploited farm and forestland for industrial and residential development—well before his winery and his charitable contributions provided a veneer of "organic" purity and respectability.

For many years King was associated with companies such as Frontier Resources and Pioneer Resources whose owners, Greg Demers and Melvin and Norm McDougal, have duped vulnerable landowners into selling them their property with the promise of no more

than selectively thinning its forests, only to clear-cut them and chop the land into as many lots as they can get away with.

As reported in a 2002 Register Guard article by Joe Harwood, King, Demers and their partners had for years speculated in mining and real estate. In 1998 they lured a New Hampshire investor into a transaction involving 360,000 acres of timberland they'd acquired in California, Oregon and Washington. When their scheme to make big bucks by turning the holdings into a public stock offering fell through, multi-million dollar lawsuits followed. These suits and countersuits were "replete with charges and countercharges of fraud, conspiracy and slander, plus an allegation that Demers promised an appraiser a \$500,000 kickback for a favorable timberland appraisal."

In their devious practices these exemplary capitalists have been

dependably enabled by the Oregon Forest Practices Act, by state and local land use legislators and planners, and, apparently, by God, as both Demers, a Catholic, and the McDougals, Seventh Day Adventists, have a church and a religious center and school, respectively, in their moral building inventory.

In August 2013 the Oregon Department of Environmental Quality (DEQ) assessed Greg and Jeff Demers and Ed King \$790,062 in accumulated fines for their interests in Kinzua Resources, which had for years abandoned an old mill and refuse site in Pilot Rock that continues to burn and create dangerous pitfalls. As reported in an R.G. article, King said he is "an environmentalist" and would "get in touch with the DEQ and try to figure out what the right thing to do is." King determined that

(Wine, Rock and Real Estate, continued on page 2)

(Wine, Rock and Real Estate, continued from page 1)

“the right thing to do” was have his attorney claim his client’s connection with Kinzua was tangential and that he should not be a party in the suit. The DEQ agreed. To date no plan for cleanup has been submitted, and the fines have been appealed to the Court of Appeals.

In 2006 King’s company, Crown Properties, applied for legal lot verification for two tax lots in Oakridge, one of which includes a landform locally known as T.V. Butte. Greg Demers is named as a contact on the application. Before King bought the land from Murphy (timber) Company for close to \$4,000,000 it belonged to the Forest Service, and before that it was used by native peoples, including Molalla, Kalapuya, Klamath and Warm Springs.

From 2006 to date the corporate mask King has hidden behind in Oakridge has changed from Crown Properties to Stonebroke LLC to Old Hazeldell LLC, growing folksier with every guise. Hazeldell was the original name of Oakridge.

In order to clear-cut the forest and blast and crush T.V. Butte into quarry rock King is seeking a change in zoning from F-1 and F-2 (Forest) to Q (Quarry Mining). He is also trying to convince residents that his 30-50 year imposition is in their best interests—while never showing his face.

A prominent landmark at the south end of Oakridge, T.V. Butte, so named for the television repeating station on its crest, rises between Salmon Creek and Salt Creek at their confluence with the Middle Fork of the Willamette River. A salmon and sturgeon hatchery nestles in the butte’s northwestern base.

Here and there among the fully forested mountains and buttes surrounding the town lie patches of tableland that served as encampments for the Molalla and likely the Kalapuya Indians. These largely flat and stunningly beautiful stretches were base camps for hunting

and fishing and likely trading before white usurpation and settlement. In 1884 two Molalla natives, Charlie Tufti and Jim Chuck Chuck, owned two land claims near T.V. Butte and sold them later to white settlers. For thousands of years, according to Kayla Tufti Godowa, Charlie’s great-great granddaughter, and according to archaeological records supported by anecdotal accounts, an Indian trail ran through these parts, and traces of it have been found on T.V. Butte.

Tufti-Godowa insists that at least seven of her ancestors were buried in unmarked graves in the vicinity of and perhaps on T.V. Butte itself. Testifying before the Lane County Planning Commission, King’s archaeological expert, Kathryn Toepel, said that there is nothing in the record to support Godowa’s claim. However, the Heritage report, upon which her testimony was based, admits that the record is spotty, that no thorough and conclusive studies of the area have been undertaken and that “there is likely some potential for the presence of archaeological materials.”

Just as he has disguised his copious development enterprises with varying LLCs, King intends to hide clear-cutting and butte demolition behind a northwesterly face of trees. He’ll find it harder to mask the sounds and dust of hillside blasting; of rock crushing and processing on a not-to-be-disturbed dump site said to contain barrels of pentachlorophenol and other toxic waste from the long defunct Pope and Talbot mill nearby; and of 86 diesel trucks a day going and coming along Dunning and Fish Hatchery Road and along Highway 58 through the heart of town.

Nor can he hide his mountain top removal from the scores of bikers from far and wide who must pass by it to access the entrance to a world-class mountain bike trail. For years Oakridge has hosted a festival that attracts mountain bikers from all over the country and the world who provide a big boon to local business, drawn both

to the area’s trails and to the rare beauty of its landscape. During their stay they also may be privileged to spot a herd of 100-150 elk that forage in the surrounds and, according to locals, depend upon T.V. Butte as a lower elevation winter refuge.

State Planning Goal 5 purports to protect natural resources such as aggregate, but also scenic and historic areas and open space. Goal 4’s intent is to conserve forestland. But what happens when these goals and facets of the same goal conflict with each other, as they usually do? Extracting rock destroys scenic and historic areas, as well as open space, and it typically necessitates the removal of trees.

King’s hard rock mining proposal embodies this common conflict and serves as a touchstone to what a community values and what local and global environments can endure and still retain their integrity. At base, then, this project challenges the ability of Goal 4 to conserve trees, the rights of neighbors and wildlife to noise and dust-free surrounds, the rights of big game to intact habitat and the rights of Indian forebears to rest in peace. Neighbors, organized as Save T.V. Butte, their attorney, and LandWatch Lane County’s legal research assistant have met those challenges before two Lane County Planning Commission hearings and will take their case to the Land Use Board of Appeals if necessary.

Perhaps it all boils down to a proper interpretation of King’s intent. According to his website, what King takes is actually giving to the environment and to the community. For example, though he intends to blast 400 feet off the top of T.V. Butte, nevertheless this obliteration will “create better wildlife habitat.” And he promises to “use the removed trees and the natural rocks to create a natural, visually appealing screen that will keep Oakridge beautiful.”

What some, then, may consider callous exploitation is actually charity. For, as a 5/5/16 article in the *Eugene Weekly*

revealed, King is a charitable man: a sponsor of Food For Lane County programs, a contributor of his own produce to the poor, and a provider of 5 acres of his Estate land for a solar installation that powers the winery and—for a price Lane Electric has refused to reveal—the grid. “It is part of

our mission” King is quoted as saying. “We live here, too. We’re proud to be part of this community.”

Therefore, Oakridge neighbors skeptical about King’s environmentalism and charity must learn what he has been teaching other neighbors for decades—

that some are more equal than others, sophistry fair game—and rejoice in knowing that what he takes from their community and others helps him give back to the one he calls his own. They should consider themselves the beneficiaries of a King’s ransom.

Robert Emmons



*Members of Save T.V. Butte on high prairie near T.V. Butte
Photo: John Bauguess*



Mayor of Oakridge



Save T.V. Butte sentiments

Lane County Seeks Renewal of Roadside Spraying

Alone in the nation, Lane County Oregon hasn't sprayed its roadsides since 2003. In August of that year a new majority of Lane County commissioners decided to minimize county liabilities by passing Lane Code 15.500, the Use of Herbicides as a Last Resort Policy.

The benefits are salutary and dramatic:

- Poisoning program costs and resulting lawsuit costs have been eliminated.
- Budget items necessitated by spraying, including highly polluting winter ditching, followed by re-graveling, re-shouldering and culvert cleanout, have been voided.
- Vibrant, grassy borders support roadbeds and absorb and clean the toxic runoff from roads, preventing this pollution from entering waterways.
- Invasive weeds have been replaced by established native ground covers, leaving only a few corridors and isolated spots with problems.

Ending herbicide applications along Lane County roads is due largely to the hard work and persistence of residents such as Jan Wroncy, who died in April of this year. Unfortunately, her legacy is threatened with a return to the dark ages of dead landscapes. Four of five Lane County commissioners are currently directing staff to substitute policy that will allow spraying to begin again.

Fighting relentlessly, but civilly, for chemical-free roadside maintenance, Jan Wroncy was a scientist, farmer, networker and legal tactician. About 20 years ago she talked me into joining her on Lane County's Vegetation Management Advisory Committee. She represented citizens, like herself, living with multiple-chemical sensitivity, what we today call Toxicant Induced Loss of

Tolerance (TILT). Always composed, Jan presented her facts and evidence during many meetings, including with those responsible for poisoning her.

In addition to roadsides, Jan also defended civil, constitutional and property rights against deleterious forestry and agricultural practices, particularly those on public lands. Always ready to help, for too many years she provided the only information available to those vulnerable to chemical drift and trespass and was a progenitor of Eugene Weekly's Lane County Area Spray Schedule

When county staff's application of chemicals made attending meetings and traveling on roads dangerous to her, Jan successfully sued for accommodation under the Americans with Disabilities Act. In a manner that appeared retaliatory, while the suit was in progress Jan found county and state herbicides repeatedly blocking all her roads to food, medicine and legal help.

In 2009 the Oregon legislature approved most of Lane County for an ODOT No Spray pilot project. The appropriation passed through all final committees, but when ODOT got its copy the line item was missing, and the project had to be cancelled. The department has since made its requirements for an official No Spray right-of-way too onerous for any reasonable agreement.

ODOT has its own agenda of fostering chemical dependence, as do the

Oregon Departments of Agriculture and Forestry. Roadside spraying is big business, with large investments in expensive chemicals, mechanical and protective equipment and personnel.

A tour today of neighboring counties' roads or ODOT-maintained state and federal roads within Lane County reveals what 1500 miles of our county-maintained roadsides used to be—a dangerous, expensive, chemical-dependent and ugly landscape. Compounding the exposure, adjacent landowners routinely spray unquantifiable amounts of dangerous chemicals in county rights-of-way. And authorities are encouraging the illegal treatments by looking the other way.

In 2011 Jan achieved a long-time goal when county public service announcements explained that the county didn't spray its roadsides, and citizens shouldn't do so either. When new commissioners were elected, the reminders ended.

Those concerned about a renewal of roadside spraying should demand an Integrated Vegetation Management Plan that builds on county success; help pass the petition by Freedom from Aerial Herbicides Alliance to outlaw poison drift in Lane County and work to elect officials who will protect them, their children and a diversity of wildlife from unnecessary exposure to toxic chemicals.

We owe it to Jan and to ourselves.

John Sundquist



An Initiative to End Aerial Spraying in Lane County

For over 40 years Lane County residents have been subjected to the practice of aerial herbicide spraying. Since 1993 timber companies in Oregon have relied on the Right to Farm and Forest Act to justify helicopter spraying of their forestlands with hazardous chemicals such as Glyphosate, Atrazine, and 2,4-D (an ingredient in Agent Orange) to prevent plant growth after a clear-cut. Due to drift from aerial spraying, these chemicals "trespass," contaminating surface and groundwater, livestock, crops, and people.

The Right to Farm and Forest Act also shields timber companies from liability for the potential harm they cause as long as they are following "generally accepted practices," including the aerial spraying of herbicides near populated areas. Because of this, Oregonians have little legal recourse to sue timber companies, or the State, for impacts on the health of community members or damage to their property.

Oregon employs much weaker regulations with regard to aerial herbicide spraying than Idaho, Washington and California. The industry has a 12-month window to spray after notifying the Oregon Department of Forestry; it does not have to provide a specific date, nor are there any set buffers for spraying near schools and residences. Unfortunately, Oregon's elected officials have shown little interest in addressing this issue. Lane

County residents organized a statewide movement in 2012 to have Governor Kitzhaber declare a moratorium on aerial spraying; even though the effort had widespread support, the Governor refused to do so. In February 2015, State Senate Bill 613 (SB 613) was introduced, prohibiting aerial spraying "in proximity" to schools and residences and requiring better notification of spraying for rural residents. Due to industry pressure, even this anemic effort failed to receive a hearing.

According to the Oregon Department of Agriculture's Pesticide Use Reporting System, 800,000 acres of Oregon's forests were sprayed with toxic herbicides in 2005. Spraying by ground and air has increased 17 percent since 2010, threatening wildlife, our watersheds, and rural communities.

After long-term exposure to aerial herbicide spraying, over 40 residents of Triangle Lake, Oregon had a chemical exposure expert test their urine. All of them tested positive for Atrazine and 2,4-D. In October 2013 dozens of residents in Cedar Valley in Curry County, Oregon were exposed to a mixture of toxic herbicides from an aerial spray. These residents suffered headaches, nausea, nosebleeds and other medical problems but were unable to obtain records from the landowner, the aerial spray company, or any state agency about what chemicals were sprayed so their physicians would know how to treat them.

The industry argues its chemicals and methods are safe, but a two-year investigation by the Natural Resources Defense Council revealed the U.S. Environmental Protection Agency (EPA) exploited a regulatory loophole by approving 65% of 16,000 pesticides that pose a potential threat to public health. In 1978, Congress gave the EPA authority to issue approvals on a conditional basis for pesticides needed to address public health emergencies with the understanding this authority was to be used in moderation. However, in an internal review, the EPA said it had widely (98% of the time) misused its "conditional registration" of pesticides from 2004 to 2010.

Despite persistent efforts by citizens and communities to end the harm and growing scientific evidence of the dangers, the State of Oregon still refuses to change the law for the good of its people. Now, using the Community Rights model, a coalition of organizations and individuals has come together to ban aerial spraying through the local initiative process. The Freedom from Aerial Herbicides Alliance has drafted a charter amendment, the Lane County Freedom from Aerial Spraying of Herbicides Bill of Rights, which would ban the aerial spraying of herbicides in Lane County.

The charter amendment has been reviewed by the County and approved for signature collection to qualify it for the ballot. Members of the alliance are holding film events and conducting tabling efforts to inform the public, and volunteers are collecting signatures with the hope of placing the charter amendment on the ballot in May 2017.

To learn more about Freedom of Aerial Herbicides Alliance and the charter amendment, visit them on Facebook or go to their website at freedomfromaerialherbicides.org

Cristina Hubbard



Interview With James Johnston

Bio: James Johnston holds a B.A. in History from the University of Oregon, and a master's degree and Ph.D. in Forest Science from Oregon State University's College of Forestry. He currently serves as the monitoring coordinator for the Blue Mountains Forest Partners, a John Day, OR based partnership of diverse stakeholders working to enhance forest ecosystem health, economic opportunities, and public safety in Grant County, Oregon.

LW: You're a native Oregonian who has just spent five years doing research for a Ph.D. in forestry after many years of environmental activism and advocacy. What are some of the early impressions and experiences that may have influenced your activism and your academics?

JJ: I grew up in the Oregon Coast Range surrounded by forests, almost all of which were being intensively managed for timber. It's kind of a depressing neck of the woods, with just a few scraps left of what was once the greatest temperate rainforest in the world. I think I carried those impressions with me to college when I got involved in campaigns to stop old growth logging on public land in the Cascades. There was still a fair amount of old growth left in the Cascades, but the Forest Service was planning on turning about a million acres of it into even-aged tree plantations after the adoption of the Northwest Forest Plan during the Clinton administration.

I have no idea how I found myself in academic research. Stuff happens.

LW: For years you headed a grassroots environmental/conservation group called Cascadia Wildlands. How did you get involved in that organization? What were its goals, strategies and accomplishments?

JJ: Cascadia Wildlands was thrown together in 1998 in the wake of the Salvage Rider, an act of Congress that suspended environmental laws and led a number of us to suspend even a semblance of a law-abiding existence. When the Salvage Rider expired in 1998 and conservationists were able to make use of environmental laws to stop old-growth logging, Mick Garvin, one of the leaders of the underground resistance, put me to the task of using purely legal means to stop old-growth timber sales. It was sort of like getting assigned to a desk job.

I feel like I must have done something at some point because Cascadia Wildlands lets me get drunk at their annual holiday event for free. But my recollection is that Josh Laughlin did all the work from the get go. Today, Josh and his staff are playing an absolutely critical role in protecting Oregon's wolf population, keeping public lands in the Coast Range from being sold to timber companies, and stopping road-building in wild areas.

LW: At some point, perhaps relative to a particular event, you decided that additional approaches and tactics were necessary to accomplish environmental goals. What induced this seminal departure, and how has that influenced your subsequent perspective and work?

JJ: You're not going to get me to admit to being anywhere, at any particular event. I don't know nothing about anything.

One of the things I often notice about environmental activists is that they don't always seem to understand the relationship between tactics and goals. Goals are what you want. Figure that out first. Then figure out what tactics

will accomplish your goals. Whatever you're doing activism wise—sitting in a tree, writing a letter to the editor, standing outside the courthouse waving a sign—that's not an end unto itself. It's not a goal. You've got to ask yourself, is what I'm doing part of a plan to accomplish a goal? Activism is a crappy lifestyle, as far as I'm concerned. Set goals, get them done, and move on to something else.

My primary goal working with different conservation organizations in the late 1990s and early 2000s was to stop the Forest Service from logging old growth. That goal was largely accomplished. I didn't invent any new tactics, and other people did most of the work. But I thought I did a good job of staying focused on discrete goals, and I think some of that focus rubbed off on the people around me.

LW: What's the nexus between your earlier involvement in protests of timber sales such as Warner Creek and your research and teaching at OSU? In other words how, if at all, has your former direct engagement influenced your thinking and instruction about forests and forest politics, and, inversely, how has your academic work altered, or how might it alter, your perspective on hands-on protest?

JJ: Well, the Warner Creek campaign was in part about getting the Forest Service to acknowledge that burned forests are not a ruined forest that's only good for timber. All of my research at OSU has revolved to a certain extent around wildfire. Forests are dynamic systems, and forests that experience disturbance like wildfire are super dynamic systems. I consider it a real blessing to be able to learn from a burn. Sorry, you're asking a complicated question. I don't think I have a good answer.

I guess I would say I've developed an aversion to simple messages and simple answers. There's a tendency in public discourse today to try and make everything simple and provocative. It seems to me there used to be

a greater premium on longer answers. Forest ecosystems are complex and not as interesting to most people as the stupid shit that Justin Bieber or Donald Trump do and say. I don't think I really know how to communicate effectively about complex issues. But it's been personally gratifying to learn a few new things and develop a few intellectual tools that let you see beyond the surface of complex natural resource management challenges.

LW: At the risk of oversimplifying a complex question, has academic forestry caught up to the urgency of climate change and its political hurdles? During your tenure at OSU, what's your role been? Has forestry orientation and instruction at OSU become more ecologically based? Is OSU taking an active role in changing forestry politics?

JJ: I don't think any institution or profession has caught up to the reality of climate change. Foresters are at least aware that tree growth and establishment depends on climate, and even the most political atavistic members of the profession are paying attention to climate change. Foresters are practical people. They're not like investment bankers, who evidently think they'll still be able to turn three cents on the dollar when New York and London are underwater.

My role at the university? As a Ph.D. student, my role was similar to a sharecropper. I was expected to work one tiny corner of a much larger academic holding in exchange for resources barely sufficient to avoid starvation. I didn't agitate for political causes. I occasionally agitated to get paid the money the College had promised to pay me, but didn't.

The Academy struck an unholy deal in the aftermath of the 1960s. The left wing got the façade of an inclusive, diverse, and progressive institution. But corporate America got the guts of the place. I think you could walk through the halls of any university in the country dressed like a dolphin carrying the Book of Mormon in one flipper and a bag full of China white

in the other, as long as you make the university money. As soon as you stop plowing a field for someone else's benefit, your loony drug-addled Mormon dolphin ass'll be out on the street.

LW: What is your dissertation about? Why did you decide to pursue that line of study, and how will you use it?

JJ: My dissertation studies involved the use of tree ring evidence to understand how forests change in response to climate variability and fire disturbance. At the moment, most of my time is spent working with the Blue Mountains Forest Partners, a stakeholder group out of John Day, about six hours east of Lane County. The BMFP has brought together representatives from the timber industry, the conservation community, and local citizens to craft restoration strategies for federal lands in the southern Blue Mountains, where I did my dissertation research (bluemountainsforestpartners.org). The BMFP is leading what I think is the most ambitious and impressive forest restoration effort in the nation.

LW: You mentioned your work exploring how forests respond to climate change. What does the future look like for Oregon in a world where the climate will change dramatically?

JJ: There's been a lot of ink spilled that describes the effects of climate change. My opinion? The future is fundamentally unpredictable and it's really hard to plan to plan around uncertainty. Here's a couple of things we know won't change that we can plan around. Oregon's right next to the North Pacific Ocean, the largest body of water in the world. The earth rotates from the west towards the east, so all the warm air that's transported north from the equator moves across the North Pacific Ocean, picks up a whole lot of water and comes ashore right where we are here in western Oregon. No matter how much carbon dioxide is in the atmosphere, there's always going to be a ton of water coming ashore in western Oregon.

Water is a buffer against change. And the implication is that there'll be less change in western Oregon, and change will come more slowly to western Oregon than in other parts of the world. And the implication of that is that Oregon will be under increased pressure to produce crops, to produce water, and to provide a place to live for people from other parts of the country that are suffering more severe impacts from climate change. I'm not saying that there won't be significant environmental impacts to western Oregon as a result of climate change. But I'm pretty sure there'll be less impact here than in other places.

So the real challenge for Oregonians in the face of climate change is managing people and managing land use. Which means that community organizations like LandWatch Lane County are really on the front lines of the climate change fight.

Growing Houses Instead of Trees

Farm and forest land in Lane County has been for decades, divided, parcelized and lot line adjusted, legally and illegally, for the purpose of qualifying dwelling sites — at the expense of valuable farm and forest uses.

There has always been a myopic and, as we see it, corrupt force behind the County's practice of approving all dwelling proposals: its reliance on decades old interpretations and relationships with consultants and attorneys influential in establishing those interpretations. Today, several retired Land Management Division (LMD) employees work as land use consultants, often on behalf of people who received "sketchy/unlawful" approvals from these same people 10 or 20 years ago.

(continued on next page)