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Lane County Commissioners

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**G**oal One of Oregon's statewide land use program of 19 goals is "Citizen Involvement," providing opportunities for public participation in all phases of the regulatory system. Public awareness and engagement is essential to a functional democracy.

When statewide goals and the regulations meant to support them have been corrupted, and when, as a consequence, the health, safety and welfare of the public and the environment are endangered, it is incumbent upon those injured parties to seek redress through formal judicial procedures and/or by initiative petition.

Aerial spraying of herbicides on federal forests ceased decades ago. But so tight is the timber industry's grip on state and county legislators that for over 40 years poisons have continued to rain from the skies over Oregon's private timberlands

despite incontrovertible evidence of their deadly impacts from trespassing drift and runoff.

In a letter published in the September 26, 2016, *New Yorker*, Carol Van Strum of Tidewater, Oregon, observed that the federal government has responded rapidly "to spread of the Zika virus and the microcephaly associated with it", but studies thirty-six years ago showing "a strong correlation" between aerial spraying of herbicides used by the logging industry and "a substantial increase" of birth defects "in which a baby is born with little or no brain," have been discounted or ignored by state and federal authorities.

As an article in our Summer 2016 newsletter recalled, regardless of efforts by individuals and communities to end the collateral damage—sickened neighbors with aerial poisons in their urine, dead pets, fish passing

Atrazine and 2,4-d through their gills with the water they take in — state legislatures, Democratic governors and environmental regulators have refused to change the pro-spray "Right to Farm and Forest Act." With no other choice, the article concludes, "a coalition of organizations and individuals has come together to ban aerial spraying in Lane County through the local initiative process." Freedom from Aerial Herbicides Alliance volunteers are gathering signatures for a charter amendment to be placed either on the November 2017 or May 2018 ballot.

Facing insurmountable political and legislative roadblocks against their efforts to ban GMOs and to oppose other state, county and federal laws deleterious to their well-being, several years ago a number of people organized

*(Muting Goal One continued on page 2)*

*(Muting Goal One, continued from page 1)*

as Community Rights Lane County and have been gathering signatures for a charter amendment that would establish the right to local self-government. They're gathering signatures for the initiative to ban aerial spraying, as well.

Though both initiatives have been approved by the county for signature gathering, last year four of the five Lane County Commissioners proposed an ordinance allowing them to veto any measure they deemed too costly and "not of county concern." Instigated by two representatives of the timber industry, the proposal is a shameless attempt to preempt the initiative process. Community Rights attorney, Ann Kneeland, has countered, and the county's own attorney concurs, that procedurally "matters of county concern can only be addressed after an initiative has been voted in by the people." Moreover, as a home rule state, Oregon allows counties to adopt charter amendments.

At stake here, Kneeland has said, are "our rights to direct democracy and free speech, including our right to circulate petitions, engage in political discourse and vote on proposed law." Facing a firestorm of opposition, the commissioners agreed to a cease-fire for six months.

Waving the Constitution in one hand and the Bible in the other, elected officials who profess that global warming is a liberal hoax and the earth's natural resources there for the taking are gnawing at the roots of our democracy. Registered county voters can provide an antidote by signing the petition to ban aerial spraying of herbicides in Lane County and the petition that would allow local self-governance.

**Robert Emmons**

## Commissioners Consider Raising Appeal Fee

Over the past year research analyst Lauri Segel and I have been working cooperatively with the Land Management Division (LMD) "to address issues directly rather than through the appeals process." Our meetings with LMD Director Lydia McKinney and staff have transpired with mutual respect and acknowledgement that "some of the issues LandWatch has raised on appeal have been upheld and that the division has changed practices as a result." It's disappointing, therefore, that the Board of County Commissioners (BCC) is considering raising the \$250 fee for asking the Board not to hear an appeal in order to stop the number of land use appeals we've had to file.

In 2008 Commissioner Bill Fleenor submitted a request to the Board that led to the November 2009 adoption of an ordinance that established the addition of the "elect not to hear" option currently being targeted. LMD staff recommended a starting fee of \$600 for this option, but an alternative \$250 was adopted. Staff believed the actual cost of Board order preparation and review would cost around \$5,000 based on the "assumption that preparation and review costs would be similar for both the option to hear an appeal and not to hear one." That assumption was unsupported and should be reconsidered or its conclusion reassessed.

The two processes are very different. An elect to hear appeal requires preparation and mailing of notice of a public hearing, the scheduling of and holding of a public hearing, the acceptance and inclusion of yet more evidence and rebuttal documentation that must be collected, distributed, and reviewed by staff and Commissioners, and a new final decision with new findings and justifications.

An elect not to hear appeal requires a cut and paste staff report and draft Ordinance for the Commissioners, all edited into a template document and taken from the Hearing Official Decision and, in part, the original Planning Director decision document.

Almost exclusively, the issues that Landwatch raises on appeal have to do with forest template dwellings. And though staff says it is overworked by these appeals and underfunded, they admit that within the last year the LMD has experienced "an overall resurgence of permit activity" and, with considerable understatement, note that these requests have become "more creative and complex" in "an effort to develop parcels that may have challenges." The reason, they say, is that remaining "potentially developable" parcels are often "highly constrained and encumbered" and that reviewing them involves "nuanced legal issues vulnerable to appeal."

In fact, while the county claims that the volume of appeals it has received is higher than other counties, between 2010-2013 the LMD approved 111 forest template dwellings and between 2014-Oct 2016 it approved 118. No other county comes close to that number of approvals.

One of the end results of so many forest template dwelling approvals is that commercial forest management has been compromised and replaced by forest-zoned land meant to benefit the rural real estate market. And, as the parcel size data show, Lane County is essentially allowing for densities and smaller parcels expected in the rural residential zones, not resource zones. Nevertheless, in most cases the properties retain their property tax deferrals.

We've found that many of these applications should not have been accepted because they relied on easily discovered illegal lots or property line adjustments or even egregious manipulation, such as a property map submitted by development consultant Kim O'Dea on which she hand-drew property lines.

*(continued on next page)*

An analysis of LUBA appeals/decisions in the five counties — Columbia, Clackamas, Coos, Jackson and Lane — that had the highest number of forest template dwelling approvals between the years 2010 and 2016 shows that 72% of Lane County appeals were justified. The county with the closest percentage of justified appeals was Coos, where 60% were justified. A justified appeal is one that results in a LUBA remand or reversal, meaning the local decision was either deficient (remanded) or unlawful (reversed).

Regardless of the significance of the results above, the data/facts show that LUBA both upheld and overturned County decisions. For this reason alone, without even looking at other contributing factors, it is clear that access to LUBA should not be constrained by local appeal fees that would prevent members of the public from continuing to participate locally.

LandWatch acts in the public interest and represents neighbors all over Lane County. Our appeals are based on well-researched analysis of state and county law that drills into the nuances and complexities characteristic of template dwelling applications. As

these complexities challenge the legal expertise of land use attorneys, analysts and seasoned planners, one would not expect the majority of commissioners, unschooled in and unfamiliar with land use law, and dependent on counsel who is not a land use attorney, to resolve or even understand legal interpretation best left to land use judges. In that regard it is regrettable that such cases as we have challenged do not go directly from the Hearings Official to LUBA, and save all of us a lot of time and money.

As professionals, LandWatch and Lane County have come together to resolve our differences, but unfortunately we're both being crushed under the slow wheels of justice. Appeals whose outcome would affect appeals that we have filed subsequently have not yet been heard by LUBA. Meanwhile, the LMD continues to approve applications involving the same issues awaiting judgment from that body. As an organization committed to protecting the interests of impacted neighbors and their environments, LandWatch is obligated to challenge land use decisions we believe violate Lane Code and State Statutes.

Staff concedes that appeals "can be a productive part of the land use process." Indeed, they are often the only way citizens may effectively exercise their prerogative under Goal One: Citizen Involvement.

Both parties are frustrated by the time it's taking to get a critical case before LUBA that will either change LMD practices or dry up our appeals. In the interim LandWatch has requested that the Board table any proposition for action that would change the current land use appeal fee structure until LUBA issues a pertinent decision and until a comprehensive review of fees — including the application fee — has been discussed.

The over-parcelization and related large number of approvals for dwellings on forest land in Lane County is something we believe elected officials, department directors, and the state Department of Land Conservation and Development should all be concerned about, if for no other reason than hundreds of thousands of dollars in tax subsidies are given to impacted forest zoned land being used for little more than residential and related accessory uses.

**Robert Emmons and Lauri Segel**

## Clearcut Along McBeth Road

A recent clearcut on McBeth Road near the southwest edge of Eugene, thanks to a thoughtless owner and a Forest Practices Act that afforded no riparian protection, endangers motorists and others

by allowing tree removal into the county right-of-way, and contributes to global warming.



*Photo: John Bauguess*



## Interview With Nena Lovinger

**Bio:** *Nena is a native Oregonian who lives on 40 acres of forest and meadowland with Bob Emmons near Little Fall Creek east of Jasper. They are founding members of LandWatch Lane County. Nena studied Interior Architecture and the History of Art at the University of Oregon and in 1964-65 studied Italian and Art at the University of Pavia in northern Italy. She has two grown children. Reading, gardening and walking her dog are favorite pastimes.*

**LW:** *You've been a LandWatch board member since the group's founding twenty years ago. But you've been a land use activist longer than that. What were some of the issues you've been involved with and what motivates you?*

**NL:** My commitment to protecting the natural environment springs from the fortunate childhood I had in western Oregon during the 1940s and 50s when our forests were characterized by majestic old growth trees, and our streams, rivers and the ocean appeared pristine and were teeming with fish and other aquatic creatures.

I mostly played outside, was fine with being dirty and was quietly in awe of plants, animals and the great out-of-doors. Until the late 50s I never saw a clearcut in western Oregon. Clearcuts were largely concealed from public eyes by intact forests along roadways. Slopes of hills, buttes and mountains that could be seen from travel routes were usually left forested.

Wildlife was abundant. Several times while riding with my family between Dallas and Tillamook to visit relatives we saw black bears ambling along the roadside. More commonly we saw deer and elk. Thousands of pheasants, geese and ducks animated ponds and grasslands and graced the sky. These images are embedded in my soul.

Since those early days I've always wanted to protect the natural and nurturing aspects of the rural environment.

I am a tree lover and occasional hugger. In an urban setting in the 1980s I helped spearhead the effort to save Eugene's historic street trees along 6th and 7th avenues. After a two-year battle and considerable public debate those lofty trees were cut and the streets were widened. However, because of the outpouring of citizen sentiment to save urban forest, several hundred new trees were planted along the streets. They've matured and provide shade, habitat and beauty. Also, as president of the South University Neighborhood Association in the 1980s, I helped organize volunteer tree planting efforts in Eugene neighborhoods. And from 1986-90 I served on the Lane County Parks Advisory Committee.

My planet-wide environmental experience has included travels to many states and national parks in this country and a boat trip up the Inside Passage of British Columbia as an 8-year old. I've spent time in most European countries, including Czechoslovakia, Yugoslavia and Hungary. I've lived in Italy, Scotland and Israel and have travelled in Morocco, Tunisia, India, Kashmir, Nepal, Thailand, Japan, Costa Rica, Ecuador, and New Zealand. Experiencing these places further embedded my realization that Oregon is close to paradise and its natural amenities should be protected.

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

**NL:** In 1996 a small group of local citizens became aware that Lane County was considering amending its land use code to allow the construction of houses in the F-1 (Non-impacted Forest) zone of the county. Lane County has approximately 695,000 acres of F-1 forestland. The prospect of low-density sprawl spreading through our world-class forests demanded action. For several years members and supporters of what became LandWatch Lane County met with an increasing number of concerned citizens, attended town meetings and hearings, pressured commissioners and wrote guest editorials and letters. Ultimately, the county decided to shelve plans to open the F-1 zone to development. Unfortunately, this put more pressure on the F-2 (Impacted Forest) zone to accommodate forest dwellings, ostensibly for forest stewards.

**LW:** *LandWatch works with neighbors throughout Lane County to protect farm and forestland, natural areas and open space. What have been the group's main challenges?*

**NL:** Since the early 2000s, the predominant theme of our work has been to slow the proliferation of template dwellings built in the F-2 zone. For the most part, new houses sited in this zone are not the dwellings of forest stewards but often the large country estates of urbanites who simply want a piece of rural Lane County.

We've watched companies with large timberland holdings trend toward converting their forestlands to real estate. Rather than wait for replanted clearcuts to grow trees in 30 or 40 year rotations until the next harvest, companies such as Weyerhaeuser have found that it is more lucrative to chop their F-2 lands into buildable lots to grow houses instead. Weyerhaeuser has been in the real estate business on the East Coast for decades, so their intention is clear.

Lack of enforcement of the County's land use, building, and nuisance ordi-

nances has been a historical problem. Investigations of non-compliance are complaint driven with the goal of achieving voluntary compliance with Lane Code rather than imposing fines on the property owner or responsible party. Voluntary compliance, however, tends to equate with minimal or no compliance.

During at least the past two decades, successive planning directors of the Land Management Division (LMD) have exercised too much discretionary approval of development proposals. As we see it, their approvals often disregard Lane Code land use guidelines and conflict with state law. As a result, with increased frequency, LandWatch appeals questionable land use decisions to the state Land Use Board of Appeals (LUBA).

**LW:** *In addition to monitoring and being otherwise involved with forest dwelling proposals in Lane County, what other issues has LandWatch engaged in?*

**NL:** Here are few examples of what we've taken on over the years:

**Cell Phone Towers:** Since 2001 we have worked with neighbors to create guidelines for proper cell tower placement away from schools and houses.

**Native Plant Restoration:** LandWatch volunteers have worked with others in Elijah Bristow State Park to remove undesirable vegetation and replant a 2-acre oak woodland with native vegetation. And we helped the Middle Fork Willamette Watershed Council replant a 27-acre deforested area at the confluence of Lost Creek and the Middle Fork Willamette River within the park.

**Critical Habitat Conservation Zone:** Beginning in 2000 LandWatch has intermittently worked with watershed councils and with EWEB to craft ordinances to create and safeguard a more protective buffer of native vegetation along the rivers and creeks of the county.

**National Guard Armory Near Russel Creek:** LandWatch helped Russel Creek Neighbors in a successful fight

to keep the armory off a wetland site across 30th Avenue from Lane Community College.

**Fire Road:** In 2000-01 the county agreed to rezone a 31-acre tract on Fire Road near the Siuslaw River from Rural Residential 10-acre minimum (RR-10) to Rural Residential 5-acre minimum (RR-5). The property is in a flood plain where a neighbor went kayaking on one of the proposed building sites just after heavy winter rains. Eventually the developer dropped the request, but the process was expensive for all people concerned.

**Cottage Grove Speedway:** In the early 2000s Cottage Grove residents were impacted by the noise and other problems due to a radical increase in activity at a nearby speedway facility. Without permits the owners of this nonconforming use on land zoned for agriculture had increased the number of race days, racecars and hours allowed and performed other violations. A Land Use Board of Appeals decision required Lane County to remedy these problems, but in summer 2003 jurisdiction passed from the county to the city of Cottage Grove. Once this occurred LandWatch was no longer involved, but we understand that speedway issues continue to affect the peace and quiet of the neighborhood.

**Coburg Power Plant:** In 2001-02 we weighed in with other opponents to stop Enron Corporation's proposal to site a natural gas-fired 605-megawatt generating plant on farmland three miles northeast of Coburg.

**Urban Growth Boundary Expansions:** LandWatch monitors and offers comments on UGB expansion plans proposed by the county's incorporated towns and by cities such as Eugene, Springfield, Coburg, Junction City and Veneta. Our experience indicates that most communities have inflated their projected population figures in order to legitimize expansion of their UGBs, even though typically an ample inventory of residential, commercial and industrial lands exists within current boundaries.

**Gravel extraction:** For years LandWatch has joined neighbors in various parts of Lane County to fight loud, dusty and destructive gravel extraction operations near where they live. The extraction sites are often in riparian areas of creeks and rivers, or comprise forested buttes. We've helped opponents deny a mine site expansion by Eugene Sand and Gravel Company along the Willamette near Thistledown and Lone Pine farms. And in North Eugene we helped stop the rezoning from "Exclusive Farm Use" to "Sand, Gravel & Rock Products" of 72.31 acres belonging to Delta Sand and Gravel.

Unfortunately, not all of our efforts have been so successful. In 2013 after LandWatch had worked with determined neighbors for two years to save Parvin Butte, located 1500' from the Dexter post office, blasting and crushing began the butte's destruction.

With varying degrees of success during the past ten years LandWatch has joined residents in their opposition to expanded mining operations at the Overholser quarry near Cottage Grove, the Bradford quarry near Creswell, and the Bessett quarry near Fall Creek.

Before winery owner Ed King bought land near Oakridge, including TV Butte, from Murphy [timber] Company for close to \$4,000,000, the land belonged to the Forest Service. Prior to that it was used by native peoples. In order to clearcut the forest and blast and crush TV Butte into quarry rock, King is seeking a change in zoning from F-1 and F-2 (forest) to Q (quarry mining). LW is helping an active group of concerned neighbors fight this proposal from a man who hides his extensive mining and real estate development behind his reputation as an organic winemaker.

**LW:** *You mentioned your work exploring how forests respond to climate change. What will guide LandWatch's activities as we move ahead?*

(Lovinger interview, continued from page 5)

**NL:** According to State land use Goal 5, "Local governments shall adopt programs that will protect natural resources and conserve...open space resources for present and future generations [and] promote a healthy environment and natural landscape that contributes to Oregon's livability."

To help assure that Lane County takes that goal seriously, over the past year LandWatch President Bob Emmons and Research Analyst Lauri Segel have been meeting with Land Management Division (LMD) Director Lydia McKinney and new Public Works Director Tim Elsea.

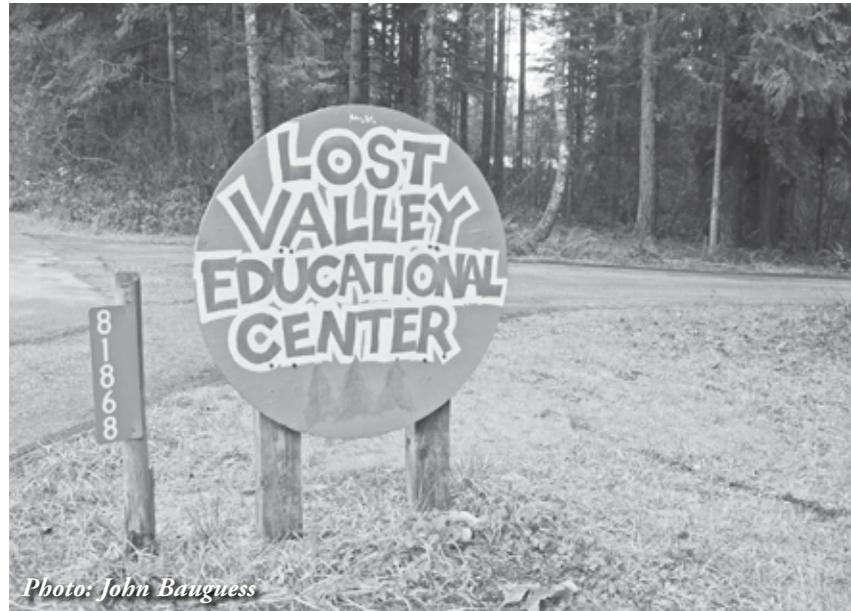


Photo: John Bauguess

## Tests Reveal High E.coli Contamination in Lost Valley Center Drainage

On April 15, 2013, Lost Valley Education and Events Center (LVEEC) applied to Lane County's Land Management Division (LMD) to expand a Non-Conforming Use permit (NCU) for 32 additional structures. At least fifteen neighbors near the center submitted letters expressing their concerns about the proposed expansion.

A primary concern was the impact such a large increase in use would have on water and sanitation. The letters specifically mention the presence of an open cesspit, sewage smells, contaminated surface and well water and a decrease in the water quality of Anthony Creek.

The LVEEC application included a study showing their subsurface sanitation system had adequate capacity for the expansion. However, since they had reason to suspect pre-existing surface water contamination, neighbors commissioned an investigative study to determine whether contaminated LVEEC surface drainage was reaching neighboring properties or public waterways.

Beginning 11/24/2015, we began sampling a large ditch that drains LVEEC's site across neighboring properties and into Anthony Creek. The samples include 27 submitted to Analytic Laboratory Group (ALG) Eugene (a State certified water analysis lab). An additional 60+ samples were collected for monitoring purposes and privately examined.

The object of the study was to investigate the possibility of a subsurface sanitation system failure. To do this the EPA suggests looking for fecal indicator

organisms in surface waters, in this case *Escherichia coli* (E. coli).

Our study only monitored surface runoff, since drinking water is presumably monitored by public agencies. What we found is that the drainage from LVEEC is consistently contaminated with E. coli, sometimes grossly so. LVEEC appears to have exceeded the limits imposed in Oregon Administrative Rule 340-041-0009 for at least the last six months.

During the monitoring, interrupted by the 2016 summer dry season, there were fewer than 65 people residing at the LVEEC site. Raising the residency rate to 300 plus people, as proposed, would only exacerbate the health risks associated with high fecal contamination.

The indigenous microorganism profile in rural Oregon has been stable for a long time. But the apparent failure or leaking in LVEEC's subsurface sanitation system exposes the local public and environment to elevated bacterial loads not native to this area and more consistent with urban areas. With thousands of transient citizens and a system shedding dangerous bacterial levels, it's very likely the neighborhood will see a continued decrease in surface water quality, increased odors and perhaps downstream effects on public health. Moreover, it should be noted that the residents of LVEEC are facing the same exposure risks as the downstream community.

All of our samples were properly collected and handled, following EPA procedures in Federal EPA Manual EPA 841-B-97-003. The certified sample data, including sample preparation, culturing and plate counting techniques, are available for inspection and analysis.

While our samples were not collected by a licensed sanitarian they clearly indicate a health threat. Notwithstanding, after the State DEQ forwarded our complaint to Lane County, Environmental Health Specialist Jay Mathison inspected the property in mid-December 2015 and "found no evidence of failure". He found no evidence, because he only looked into the system's junction boxes to see if they were clogged. No leakage testing with dyes was performed.

On April 18th (2016), with the possibility that mishandling of livestock manure or human feces could cause this, we filed a complaint with the State Agriculture Department. On June 19th the department reported that a thorough inspection of LVEEC's site and surrounding area found no agriculturally related activity that would explain the elevated E.coli levels. Unless this is a wildlife issue, which isn't likely in a built-up area, our monitoring suggests the need for a comprehensive sanitation study.

Lane County Public Works has known of the neighborhood's concerns about open cesspits, sewage smells, improperly decommissioned system components, etc., for many years, yet it has failed to address these offenses as serious health risks. Perhaps the cost of a proper study exceeds Lane County's budget constraints, but neighbors have spent over \$3,100 to date.

Using video monitoring and court-approved evidentiary pouches to provide actionable data, we resumed the study on November 14. Both at low flow and high our samples from the ditch adjacent to the Lost Valley property that drains into Anthony Creek greatly exceeded the standard 125 Culture Forming Units/100 Milliliters for E.coli contamination.

The first year of the study was a courtesy to neighbors and Lane County Public Works. We trust that in the second year our higher quality data will lead the responsible agencies to investigate further and take corrective measures.

Meanwhile, Lane County Hearing Official Gary Darnielle, who agreed to reconsider his denial of the expansion request, has yet to render a decision, despite the passage of over eight months and a LUBA decision on another LandWatch appeal that should support his original denial. And, even though neighbors have reported hearing sounds of construction on the Center property, the county's enforcement officer has failed to investigate.

**David Senkovich**  
Lost Valley



Jozef Zdzenicki

## Jozef Zdzenicki 1947-2016

On October 4, 2016 LandWatch board member, Jozef Zdzenicki, and his long-time companion, Pauline Hutson, stopped their car on a logging road off Hwy 22 near Grande Ronde and took their own lives. Both had suffered long-term physical pain and the psychological stress that accompanied it.

Typical of his thoughtfulness and responsibility, even in despair, Jozef left a note in the car with money for the police to cover their time and trouble. And he had mailed a letter to his daughter in Berkeley, California with money enclosed for cremation and associated costs.

In 1947 Joseph was born in a refugee camp in England to a Polish Catholic family. The family moved to the U.S. when he was 5. Jozef's father had been an intellectual in Poland, but WWII drastically altered the family's life, and he worked as a longshoreman in this country.

Jozef graduated University of California, Berkeley in 1974 with a degree in geology. During his time in California, he was active in anti-war protests and social/environmental causes, such as a successful effort to stop a Wal-Mart in Ventura.

Pauline was born in England, but she spent her childhood in Mombasa on the coast of Kenya.



Pauline Hutson

In 2000, I received a call from Jozef, who had recently checked into a motel in Eugene. He introduced himself and said that he and his companion had just arrived from California. He told me about his effort to stop a Wal-Mart there and said that he had heard about the fight to stop a Wal-Mart in Cottage Grove. Jozef also said he had heard about LandWatch Lane County and wondered if he and Pauline might attend our next meeting.

Though Pauline soon had to drop out for health reasons, Jozef became a committed member of LandWatch and was appointed by the Lane County Board of Commissioners to the Planning Commission in 2003. Always well-prepared and always in the minority, he ably represented LandWatch's interests during his 7 year tenure on the commission.

Jozef put his principles on the grounds of Lane County, as well, in two native plant restoration projects in Bristow Park 12 miles southeast of Eugene.

Jozef was a gentle and generous man, dependably dedicated to protecting the natural and social environments of Lane County. A memorial get together for Jozef and Pauline was held at Tsunami Books on December 16.

**Robert Emmons**