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# LandWatch

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*Photo: John Baugess*



## Nearby Clear-Cuts

To clear the land for settlement early pioneers grabbed an axe and went to work that demanded time and energy enough to break a sweat. Later, two men could work a cross-cut saw through old growth in half the time and half the sweat it took a man with an axe.

When the internal combustion engine was adapted to saws, one man could drop a tree in a matter of minutes. Now one person in an enclosed, air-conditioned and heated compartment operates a machine that cuts through a 3' diameter fir in a matter of seconds, uses the same machine to strip, cut to length and stack the log and moves on to what formerly would take at least half a dozen men with chainsaws to accomplish in a day. A still photo of this latest weaponry fails to do it justice; to see one in action check out <https://www.youtube.com/watch?v=nuuPI2hyt6M>

To stay apace commercial timbering moved from single species, 80 year felling cycles to 60 and now to 40 in

less than 50 years, and fast growing hybrids and even clones are fast shaving more years off the cycle. As a result, trees subject to this regimen never have a chance to become forests, robbing understory and underground plants and organisms, animals and insects of habitat and with every accelerated clear-cut, increasing global warming.

But that's just the outline of the story. To access trees that will be cut requires roads usually made by heavy equipment that disturbs the soil and provides ideal conditions for the invasive, non-native species it often introduces and spreads.

Aerial spraying of pesticides eliminates or stunts the competition of invasive vegetation and of non-commercially viable trees such as maples, oaks and madrones. These poisons wash into streams, creeks and rivers, or drift from helicopters directly into them and frequently onto and into nearby humans, pets, domestic livestock and wild animals. The land is replanted with a monoculture – typically Douglas fir – and the cycle begins anew.

Incredibly, this ecological trauma is a common practice legitimized by Oregon's Forest Practices Act and a host of political and bureaucratic enablers. The McDougal Brothers, Greg Demers and a plethora of other opportunists are easy to dislike for their callous pursuit of filthy lucre. But it's important to understand that they cannot operate without city, county or state approval.

Not so long ago, clear-cuts were hidden from the public by roadside buffers. But gradually discretion and deceit gave way to open greed, and the public by and large became inured to stumps and logging roads as common features in their view-sheds.

Though the McDougal Brothers have ravaged the landscapes of Lane County for decades, recent logging on the west edge of Lane Community College drew attention because of its proximity to the college, because it became a political and environmental issue for a high school ecology class, members of which testified

(Clear-cuts, continued on page 2)

(Clear-cut, continued from page 1)

at a local land use hearing, and because the significant bite it took out of heavily wooded slopes is highly visible to the many cars passing by it on 30th Avenue.

To the heavy machinery, quick cutting and slash-burning practices, the McDougals, Weyerhaeuser and their ilk add the more serious and long-lasting impacts of housing sprawl, bringing residents and their infrastructure further into the country and driving wildlife out. The property near LCC is typical of how the system works: Hired consultants apply for county legal lot verifications, often based on old and sometimes illegible deeds that pop up in ostensibly single tax lots. After the county's approval they submit a new application with the approved lots property-line-adjusted for maximum financial benefit to the developers. It's a common and deadly paradigm: Buy cheaply, clear-cut the trees when the market is high, and sell what remains as lots for high-end housing.

When the state legislature authorized commercial (F-1) and residential impacted forestland (F-2) zoning in the early 1980s, allowing in F-2 one house on a minimum 80 acres, surely they didn't anticipate the property divisions

commonplace in Lane County today. Now with so-called "template dwellings" approved on just a few forested acres, and old deeds providing the pretext for further land divisions, instead of one large tract with one house, one well, one septic system, one driveway and one utility line, Lane County is permitting multiple houses, wells, septic and infrastructure on smaller lots created within the same acreage. Most of these manipulated lots retain their F-2 zoning and their tax deferrals even though, practically speaking, these pieces have lost most of their value as productive timberland.

Considering that Oregon is one of the fastest growing states in the nation, we can expect to see more of Lane County's rural landscape urbanized by weak, anachronistic, land use laws and enforcement, and often questionable Land Management Division (LMD) policies and practices.

Before such land use actions, however, the Forest Practices Act and its defenders, the State Forestry Board and politicians of all stripes, provide the validation and backup for practices that should have gone the way of lead paint and DDT. Even former governor Tom McCall left the timber industry to its own devices.

*Photo: Pete Helzer*



Notwithstanding, prolonged, persistent and loud public outcry by contacting political representatives, writing letters and editorials and direct confrontation has been and will be effective, as it was in the multi-faceted, long-term fight to stop field burning.

LandWatch depends on neighbors and others to support our efforts on their behalf. Because we've been forced by county policy and practice to file many appeals—including a challenge to the legality of four of the six lots the county's hearing official approved on the McDougal clearcut near LCC—your aid is critical for us to continue to work in Lane County's best interests. And please take a moment to let your state and national representatives know that clear-cutting and aerial spraying of pesticides are Oregon's past not its future.

**Robert Emmons**



*Photo: John Baugess*

## Nearby Marijuana

When I show my friends on the East Coast a two-page spread from the *Eugene Weekly* advertising the strengths and moods of various "buds of the month" available to the public at large in numerous cannabis shops throughout the Eugene-Springfield area, they're incredulous, certain I've clipped some parody from the pages of *The Onion* or the *National Lampoon*.

But it's no joke for neighbors who've caught more than a whiff of the buds being grown and processed next door. Large-scale manufacturing of marijuana is cropping up all over Lane County, and while these companies may be home-grown, many of them are not home-owned. A factory of bright white greenhouses stretching across a cutout hillside off Reuben Leigh Road in the Fall Creek area, for example, has a Los Angeles proprietor. Another in the McKenzie valley is owned by a business from Colorado. And so on.

Since legalization, large-scale cannabis commerce has quickly become one of Oregon's largest enterprises. And here in Lane County it has burgeoned into one of our biggest land use issues because it is largely unregulated, or,

rather, regulated in a manner that does not respect its impact on neighbors or the environment.

In a November 3 *Register-Guard* guest viewpoint, Richard Sedlock and Jerry Settelmeyer describe what they and their neighbors in Cottage Grove have endured since Mike Arnold, the attorney who defended those who took over the Malheur Wildlife Refuge, and Dan Isaacson, a co-owner from Illinois, started their business, One Gro, on Cedar Park Road. Reportedly, the company recently added two men with criminal pasts to its staff. Last November Arnold tried, unsuccessfully, to get Creswell to overturn its ban so he could sell marijuana there.

After Landwatch member and photographer, John Baugess, and I met Richard and his wife, Beth, at their home across the road from Arnold's operation to view the facility and hear firsthand about its impacts on the neighborhood, Sedlock sent the following comments.

*After Oregon voted to legalize recreational marijuana, state legislators classified it as an agricultural crop....allowing cannabis to be grown with little regard for its effects on soil, water supply, water quality, and existing biota. [It is allowed,*

for example, on top of prime farm and forest soils, even though much, if not all, of both the cultivation in containers and processing could take place on gravel, asphalt or concrete.] Permissive legislation passes a good chunk of the regulatory and oversight buck to city and county governments—who get negligible funding and have struggled with the task.

We've written about the direct impacts on humans (traffic, noise, stench, cartel-like intimidation and threats, gunshots, drone use) in the *Register-Guard* and local community newspapers. And we have heard from many other people in rural residential neighborhoods of Oregon and elsewhere who have had similar experiences.

Last season, the marijuana operation on our street grew about 50,000 plants outdoors in containers on huge swaths of weed fabric. Tractors periodically sprayed the plants with rodenticides, and the fall rains washed these toxins into our neighborhood, including the storm ditches, our dogs, birds and other wildlife drink from.

Fifty thousand pot plants get thirsty during the dry months of summer.... Growers can irrigate their plants with pumped groundwater if their property has an irrigation water right, or they can truck in water from a legal source. Or they could, surreptitiously and typically unchecked, pump groundwater anyway. Despite the wetter-than-average winter of 2017, the wells of several neighbors adjacent to One Gro went dry within a week of the company drilling a new well and opening one that had been closed down for 20 years. All of the neighbor wells had been dependable in previous years, even those that had been shut down.

High prices are being paid for these interloping, water sucking marijuana mills, artificially inflating the cost of farmland and driving genuine farmers out. Where do the product and

*(Continued on page 4)*

(Marijuana, continued from page 3)

the proceeds go? Do they stay in the community, in the county, even in the state? Who's monitoring and how?

Sedlock and Settelmeyer warn that "anyone living within a mile of a property zoned F-1, F-2 or EFU" is at risk of suffering impacts such as they describe. To provide relief at both the county and state levels the authors offer the following suggestions: "Significantly reduce the permitted size of marijuana grows near residences;

limit large-scale operations to sites distant from residences; significantly increase the required setback from property lines; reclassify cannabis as something other than an 'agricultural' crop; enforce the water laws."

In a 1/30/18 Board meeting the county commissioners decided not to change any of the existing provisions, deferring to the State and Federal legislatures for any changes that might be made.

**Robert Emmons**



Andrew Mulkey

## Interview With Andrew Mulkey

Andrew Mulkey works with research analyst Lauri Segel and represents LandWatch at land use hearings.

**LW:** You were raised in Oklahoma. What influenced your decision to come to Oregon and become an environmental law attorney?

**AM:** I didn't spend a great deal of time exploring the outdoors when I was growing up in Oklahoma, but I certainly wasn't cooped up inside. My Mom and I took plenty of trips to state parks when I was young, but I didn't get to go hiking in the woods and mountains as often as some folks in Oregon like to do.

There are two parts to why I became an environmental attorney. There's the environmental part and the attorney part. After college I knew I wanted to do something – anything – to help stop climate change. Growing up, I was lucky in that I had family all over the country and in Germany as well. I traveled quite a bit compared to most people and most of my friends. All that traveling gave me perspective. It also helped that both my parents are scientists, so I got a lot of insight from them early on about the massive threat that climate change poses to our planet, my generation, and future generations.

When I moved to Portland, I found a part-time job working at a food cart, and then I figured that for the rest of my time I should find something that I cared about and volunteer. Lucky

for me Portland has plenty of volunteering opportunities. My first Google search turned up the CRAG Law Center, a nonprofit environmental law group in Portland. Two of their attorneys were working on the atmospheric trust litigation for Our Children's Trust. Having majored in "Government" during college, I had no marketable skills other than the fact that I could read, and I was pretty sure I could write, which I thought would be perfect for a paralegal. I wrote CRAG asking if I could volunteer, and they said, "Yes."

That volunteer position turned into a more or less permanent part-time job for the next three years. Working for CRAG was an amazing opportunity, and the mentorship their attorneys provided was invaluable to me. Watching the attorneys work up cases, I simply got hooked on litigation. I liked the pace of litigation, I liked legal research, and I liked writing up legal arguments. The fact that I could litigate on behalf of people and the environment to protect drinking water, rivers, forests, and everything that lives in them (including us) was a revelation to me. I had spent so much time learning about the problems of carbon pollution and the impact of unfettered resource extraction that it was a relief to find myself in a profession that I thought could help make a difference.

**LW:** The intricacies, complexities and inconsistencies of state and county land use laws are daunting even to seasoned attorneys. You've been working with LandWatch for almost a year. How are you holding up?

**AM:** I'm holding up pretty well thanks to Lauri. Among the many things they forget to teach you in law school is how to actually practice law. I'm lucky that I worked on a few land use cases when I was at CRAG, and I am doubly lucky that I knew Sean Malone through my time at CRAG. Sean introduced me to LandWatch and helped feed me some legal work after

I passed the bar. He continues to be a mentor and a resource.

But I got up to speed on the intricacies of land use law by working with Lauri. She is a tremendous force for good and has a wealth of knowledge about the land use process and the history of land use law, both statewide and here in Lane County. Although they don't teach you much about practicing law in law school, most everything a new attorney needs to know is written down somewhere. You just have to know where to look for it. And Lauri knows where to look. Without Lauri as a resource and as a sounding board for my constant questions and confusions, my learning curve would have been a lot steeper.

**LW:** Despite our ongoing dialogue with the Land Management Division Director and her principal planner, the division has largely chosen to rely on the results of LandWatch appeals to determine whether they should change their policies and practices. This is costly for both LandWatch and Lane County. How would you suggest we resolve this dilemma?

**AM:** In my relatively short tenure working on land use cases from the Planning Department, I think the biggest thing planners can do to bring down the cost of litigation is to write better findings. Every grade school math student knows that he or she needs to show his or her work to get credit. For the most part, land use laws are just lists of elements. And like a math problem, the decision making process consists of a series of steps. An applicant needs to take all the steps and meet all the elements to proceed with a project.

Often the decisions by the planning department simply lack adequate findings or they fail to provide a clear statement of facts that demonstrates compliance with each element of the law. If that's the case, then the Director should deny the proposal.

A maxim of federal administrative and environmental law is that the facts found must support the conclusions made. Land use decision making is no different.

Inevitably, the planning department's failure to clearly show why and how a particular proposal complies with the law means that sometimes a decision will be right for the wrong reasons. If the elements as they appear in the Director's decision do not meet the requirements of the law, litigation forces the applicant to provide or reveal information that was missing or erroneous. That's where the process becomes a waste of time and resources, for the planning department, for LandWatch, and for the applicant.

**LW:** Do you think we should make a consideration of population, resource depletion and global warming an essential part of every land use application and approval? In other words, how do we assure that the rights of nature aren't buried under the minutia of land use regulation?

**AM:** Climate change is already affecting the entire planet. When we hear about wildfires and hurricanes that have been intensified by a warmer climate, there is no excuse not to take action to prevent future disasters and further damage.

We all need to do a better job of acting locally. Because so much of our lives revolve around activities that produce carbon pollution there is a lot we can and should do to reduce it. Local residents control many aspects of our lives that are directly responsible for carbon emissions, from transportation, to land use, to how our utilities produce and provide electricity.

In the sense that comprehensive planning and zoning laws should consider and reflect the realities of resource scarcity and global warming, yes, every land use application and approval should be part of a larger framework that takes these issues into account. On the scale of individual applica-

tions and approvals, we need to do a better job of protecting our farm and forestlands from sprawl. Changes in land use and development patterns affect the amount of carbon we put in the atmosphere. Farm and forestlands can play a key role in reducing carbon emissions, both now and in the future. Someday we may even come up with a system to promote carbon sequestration on private acreages. Lane County certainly does very little to protect these resources from development and sprawl.

The piecemeal process that developers use to recognize new lots, rearrange them, and then develop these newly recognized properties with forest "template dwellings" allows developers to effectively create subdivisions without complying with any of the protections put in place by Oregon's land use laws. These pop-up divisions break up larger tracts of forestland, and the new wells, septic, roads and utilities required by multiple new home sites add an exponential burden to the land and can create conflicts with unsuspecting neighbors. This is exactly the type of rural sprawl that Goal 4 and comprehensive land use planning was meant to prevent.

Lane County approves more forest template dwellings each year than any other county. The reason is in part because of its lax standards for dwelling approval. Lane County does not have a minimum parcel size for new dwellings.

The county also lacks a means to protect neighboring landowners' wells from conflicts with unplanned housing developments. Rezones and subdivisions typically require a pump test to ensure that the development has sufficient water and will not create conflicts with neighboring homeowners. However, the county does not apply the same level of scrutiny to the embedded lots they approve for template dwellings, resulting in further degradation of our rural lands.

## Landwatch Activities Update

Last summer the LandWatch newsletter reported on a land use proposal on Gimpl Hill to rezone 131 acres from Impacted Forest Land (F-2) to Non-Resource to allow an 18-lot subdivision – essentially an addition to a 2007 Measure 49 10-lot subdivision on the same property.

Even after months of written testimony for the record from hydro geologists, attorneys, state agencies, and neighbors, no one was more surprised than LandWatch when the Lane County Planning Commission recommended denial on July 18, 2017. The county staff report for those deliberations had recommended approval with a list of conditions that would supposedly address availability of groundwater into the foreseeable future. According to staff, the applicant had shown they complied with all other criteria.

Following months of delay and uncertainty about the applicant's next steps, including the scheduling of the next work session before the Board of Commissioners (BCC) and modifications or changes to the application, it became apparent that the applicants were at the very least faced with the difficult task of defending their water quantity analysis. It's been over six months since the planning commission recommended denial, and yet there's been no meeting scheduled for the BCC on the issue.

Following the testimony, the applicant had no defense and instead asked for an additional two weeks to respond. Near the end of that two-week period, the applicant's agent, Kim O'Dea, notified

In 1983, in conjunction with Comprehensive Planning, one of the county's working papers for establishing compliance with the land use goals reported that 80% of Lane County was seriously "water quantity or quality limited, or both." The report also noted that "Quantity Limited Aquifers" should be designated in which proof of water availability would be required for land divisions or each new consumptive use of groundwater. Instead, the county has relied on a policy of making water availability merely a Condition of Approval that could be met by paying a small fee to obtain a well permit from the Department of Water Resources.

Consequently, after approving a rezone from Forest to Marginal Lands, county planners recently approved a 4-lot subdivision in an area known for at least the past 35 years as having serious water quantity problems, and where an adjacent subdivision approved in the late 1970s has had water quantity problems from its inception. Close to a dozen neighbors objected, and two separate attorneys representing the neighbors were hired. At the first public hearing before the Hearings Official, neighbors provided testimony and first-hand accounts of their history with lack of ground water, and attorneys testified about the numerous shortcomings in the staff findings that were supposed to justify the approval of the subdivision application.

the Hearings Official that she intended to place the application on "permanent hold." LandWatch questions the meaning and legality of a "permanent hold," and we are continuing to build our case according to the briefing schedule set out by the Hearings Official at the public hearing.

Lane County currently has two recent subdivision approvals on indefinite holds, both at the request of applicants and each for the same reason: the applicants are unable to defend the findings that supposedly justify water availability based on their own materials/evidence.

Lane County is currently in the process of amending its Land Use/Development Code, and LandWatch is participating in that update. This is an opportunity for the county to adopt the water quantity review policies that it has known for decades are necessary and to require a showing of water quantity and quality not only for land divisions but also for building permits allowing use of an aquifer with limited water.

**Lauri Segel**  
LandWatch Research Analyst



Forested TV Butte overlooking Oakridge

## Oakridge Neighbors Win Remand at LUBA

Supporters of Save TV Butte are thrilled to have won a remand in their long-running legal battle against the proposed gravel mine on the eastern boundary of Oakridge.

In December 2015, a group headed by Ed King of King Estate Winery filed an application for a hard rock gravel quarry with Lane County. On March 14, 2017, the Board of Commissioners confirmed the Land Management Division (LMD) and Planning Commission's approval on a 4 to 1 vote.

The following month Save TV Butte filed an appeal with the Oregon Land Use Board of Appeals (LUBA). On January 8, 2018, LUBA remanded the mine approval back to Lane County.

Fundraising to support the legal work by attorney Zack Mittge has been a big challenge, and the Save TV Butte group is seeking donations to cover the costs incurred by the appeal.

Donations may be mailed to:

Kathy Pokorny/Save TV Butte  
P.O. Box 1114, Oakridge, OR  
97463

**Kathy Pokorny**  
**Oakridge**

***Editor's note:** The LUBA judges agreed with appellants that only 46 of the 107 acres should be on the "significant aggregate sites inventory" and therefore where the mining would be expected to take place. They did not agree that it could not occur on the other acreage. King and associates insist, however, that they never intended to mine anywhere other than the 46-acre site.*

*LUBA supported the appellant's argument that big game habitat on the butte is a significant use and that the applicant also did not sufficiently address silica dust emissions, ambient air quality, air blast and ground vibration and groundwater run-off.*

*What all this may mean to keeping TV Butte intact will be determined in a remand process the LMD expects to take six months or more.*

LUBA's decision may be viewed at [17031\[1\].pdf\(2.6MB\)](#)



## In Rememberance of Gary Crum 1942-2017

On December 13, Lane County lost a strong voice for environmental justice and defense, fairplay and open-mindedness. In frequent letters to the editor and op-eds Gary Crum let us know in one way or another, but always eloquently and intelligently, that ecological integrity and respect for one another and for other things are inextricably bound and essential for our survival,

Excerpts from another frequent contributor to the RG and Eugene Weekly letter archives, Jerome Garger, reveal how he was influenced by the man he had only recently met:

*"...Gary possessed a depth and wisdom that I lacked. I enjoyed winning the argument and wielding my Scorpio stinger far too much. Gary saw beyond such hollow 'victories.' Without overtly or obviously teaching, he subtly and effectively did teach me the superiority of his approach....*

*Because of his sudden death...we will be deprived of his honesty, his open-mindedness, his fairness, his sense of humor, his empathy, his integrity...his faith in our shared humanity, and his eloquent insights.*

*'They are not gone,' a Native American proverb reminds us, 'who live in the hearts they left behind.'*