



Lane County Commissioners, from left, Ryan Ceniga, Pat Farr, and David Loveall

Following are excerpts from a transcript by Lauri Segel of a June 13, 2023 Board of County Commissioners work session discussion about a potential Board interpretation of Goal 5, Policy 11. Behind the session is a request/demand from development interests attorney Bill Kloos to “elevate” three applications for properties in Oakridge owned by Ed King to the Board with the intent of overturning protections in Big Game habitat and attempt to gain deference in an appeal to LUBA. Commissioner statements are in bold for emphasis; editorial comments are in italics.

Commissioner Loveall: “When I look at Goal 5 on the website, it’s about adopting levels of protection for each resource site; resources like mining or river resources, etc; let me add to that commerce, farming, **and housing.**”

Commissioner Ceniga: “I mean with everything that is going on and all the presentations we hear, it’s we need housing, housing, housing; I’d hate to become more restrictive.”

Chair Farr: “We hear from so many people how difficult it is to use their land the way they had anticipated... for in some cases generations; and all of a sudden Lane County’s existing interpretation of the land use... makes it more difficult for people to do what they wish to do with their land, and it’s really important to me personally to make it more understandable to people and also to find ways to Yes, as opposed to elevate obstacles to No....

LandWatch Lane County has really made us **afraid** of making land use decisions, because we are **afraid** of what they will do. And they’ve been successful

sometimes, but as often as not they are not so successful in their obstruction to developing the land that people own, and I think to me it’s very important that... we set a course for this county that makes it easier for people to use land... for residential purposes outside urban growth boundaries as contained inside the Oregon law.... Other counties have developed “flexibility” that other counties have implemented, but we haven’t. What I’m interested in is finding ways in our county to use the flexibility allowable inside of the Oregon land use law, which is not unlike the US Constitution, subject to interpretation, **based on the way you want it to be interpreted in some cases.** And to me it’s important that we find ways within Oregon law to be **as flexible as we possibly can** in Lane County.

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I contend that the most important thing we can do with the resources we have is to find greater flexibility in land use law as it pertains to residential use outside of urban growth boundaries in Lane County and to find **greater flexibility in allowing people to develop residences outside of urban growth boundaries.**

We're talking about 40 and 80-acre plots. How many acres are there in Lane County? Just a little over 3 million acres. There's a lot of land in Lane County, which really does indicate that there's greater flexibility to find ways to interpret Oregon's land use laws in ways that make it easier for people to develop residences outside of urban growth boundaries.

Now, on F-2 you said there's maybe 4,000 residences outside of urban growth boundaries? Well,...that's not a lot; I mean, in a county this size, 4,000 residences is not a great many; in some of the other land use codes there are a greater number of residences. *[This is verbatim].*

Commissioner Loveall: "Amber, sorry to put you on the hot seat, I know you probably have things you want to do today, but I have a lot of questions from all the constituents emailing me. I have a few rapid-fire questions: When did this Goal 5 policy 11 policy go into play? 1984? Where we at with that?"

After the Planning Director tells him 1984, Loveall says, "That's what I figured. Since 1984 have we implemented anything that tells people about the possibilities of development hurdles in the future? How does the big game interpretation work, who determines that? ODFW? Have ODFW then made an interpretation of what is big game, and then the county is backed into that policy rather than being more strategic and intentional in developing their own policy with regard to what kind of wildlife to recognize in our own county *[comparing Lane to Deschutes, which was already noted as being nothing like Lane County]*. From what I've heard the owners were not consulted about wildlife on their properties; they were not part of the process; there's only

about 4,000 properties being affected here." *[Reading from his laptop, he alleges people have been unable to sell their properties because of certain kinds of overlays, specifically elk overlays].* "If we as a county have put policies over their land without their agreement or knowledge or participation haven't we as a county stripped some of that (land) value away? We by fairness should be able to compensate them for it; that's some of the complaints that I've been hearing from the constituents that have contacted me. They've lost a large degree of relative value because what was thought of as a buildable parcel of land is no longer; further, those people who have those kinds of big game property that we're speaking of, I can't imagine how an over 80-acre or 40-acre or even a 5-acre parcel, how the footprint of a house is gonna prohibit a herd of elk from coming through my property. The only thing that prohibits that is like a 25-foot fence. Maybe the migratory disturbance that we're citing in this policy needs to be looked at."

Commissioner Farr: "Comparing Lane to Wasco County in size and population *[very different]*, they aren't really affected by urban growth boundaries the way Lane County is; so I'm trying to put this all in perspective, as to how do we get to a position where the people that we represent feel that we're moving forward with the needs of landowners while at the same time recognizing the difficulty and the impact of moving forward with any wholesale changes to the way we interpret Goal 5. If we ignore the recommendation of the LC Homebuilders Association... then how can we reassure them we are paying attention to the needs of people who have issues with the way they are unable to develop their land;...how can we be moving forward without adopting what the Homebuilders is recommending we do?"

So, to clarify, the Lane County scoping would take years of work, and resources would need to be identified and allocated; so we would be years in the process, and in the end there is no clear indication that it would increase the availability of land for residential use outside of urban growth boundaries, is that a fair assessment?

Commissioner Loveall *[reading directly from his laptop]:* "I think I hear what chair Farr is saying about his tone of frustration of the length of time this is; I think we should direct staff to elevate the next relevant hearings official decision *[singular]* involving Goal 5 Policy 11 to the board for their review pursuant to Lane County 14.608. *[Sic; he apparently didn't know that LC is the acronym for Lane Code, not Lane County].* The Board by state law can interpret ambiguous law.... So the board could adopt a local interpretation of the policy either by affirming the hearings official interpretation or through an on-the-record review, **and** we could also direct staff to initiate a board interpretation process pursuant to Lane Code 16.008. So I'm here trying to get the problem solved today...and I think if we can say that you could hold to whatever figures you're at now with 40/80, that's fine, but let's push maybe those decisions *[now plural]* to the Board of County Commissioners because by law *[puts his glasses on and starts reading directly from his laptop]* we have the power to interperate *[sic]*, interporate *[sic]*, excuse me, *[can't seem to pronounce the word]* state law and to interperate *[sic]* interpet *[sic]* ambiguous law.... We talk about the wildlife game habitat overlay and over and over we hear about elk habitat. *[Putting on his glasses and reading from his laptop]* It's interesting that elk habitat, we're not talking about a real huge endangered species; it's elk, right, not like African rhinos or wildebeest. Every year...we issue thousands of hunting permits because these animals are on the verge of being called "a nuisance" **according to the hunting guides.** The owners of 160-acre parcels are granted landowner harvest tags to mitigate the damage they cause to their property. Further, property owners have stated elk, deer, and mixed game come through and over their property regardless of any built obstructions they have; they come right through the home's fences or in their gardens, and there are ever-increasing numbers over the last five years....I think the Board of County Commissioners should take back this ambiguous law and make their own interpretations in the face of whatever risks and perils are in front of us.

After some further discussion, with no motion on the floor, no second, no request for head nods, the Chair looks left, then right, then states: "I am going to suggest this: direct staff to elevate the next relevant hearings official decision *[Singular]* involving Goal 5 Policy 11. And then motion 2, direct staff to scope for a Goal 5 big game update.... *[To staff:]* "Did I say that clearly enough for you to understand; did I state it clearly enough for the Board to understand it? It doesn't do anything regarding the Nimpkish decision because that is in effect at this point in time.... It doesn't preclude a Lane Code amendment, which is going to be expensive and time-consuming...."

Commissioner Loveall: *[To the Planning Director]* "I was just thinking of those people that are on my communications list, what I'm going to tell them. Sorry, gotta wait a year and a half.... **Or can I at least say hey, the county commissioners will take a look at this and there may be a chance we can make some ambiguous decisions to move your cause forward?**

Symbiosis or Apocalypse: Reflections on Our Mission

LandWatch Lane County's mission is "to protect Lane County's farms, forests, natural areas, and open space by advocating responsible and sustainable land use policies, fostering long-term stewardship of the land and building a greater sense of community for all county residents."

However, from our inception as an organization almost 30 years ago I've been troubled by our unquestioned, unqualified support for saving and protecting farmland per se, which has been largely driven by the threat of urban-style housing and other development. Lost in our defense has been a clear-eyed assessment of the harm to the natural environment from conventional farming practices themselves. These typically result in the replacement of a diverse, complex ecosystem of native grasses, shrubs, and trees that provide habitat for insects, birds, ani-

That's all I'm asking; I'm going to reserve that for at least part of our tool kit. *[Said with a smirk]*

Commissioner Farr: I've given you two instructions, and I'd like to add a third one *[Not the Board has given you instructions or that the Board wants to add a third]:* to individually look at ambiguous decisions on existing land use requests and have the Board take a look at them on an item by item basis...to see if the ambiguity can be resolved. Is that clear?

...If we go with the Planning Commission recommendation, there's no ambiguity; the answer is no. But if we direct the staff to elevate as I've suggested **No is not the answer *[his emphasis]*....**I don't think everything is elevated... just the next relevant Hearing Official decision **[which he already knows is for Ed King].**

This is not a vote. I see (at least) three head nods that this is the direction we want you to move towards: the next

relevant...HO decision involving goal 5 policy 11 to the board for their review.

■ ■ ■

Accordingly, Kloos's King applications, waiting in the wings as pretexts for a guaranteed Board majority to overturn Big Game protections on F-2 lands, were "elevated" to a BCC hearing on 4/16/24. At the hearing, our attorney Sean Malone challenged Commissioners Farr and Loveall for ex parte contact and bias, supported by their statements and actions in the above 6/13/23 work session. Not surprisingly, both commissioners denied the charges.

However, Malone's challenges resulted in Loveall agreeing to provide a list of his contacts that grew from an initial claim of two to "six or seven", is part of the record, and was at least in part responsible for delaying the hearing "on the merits" to a future date.

Lauri Segel and Robert Emmons



mals, amphibians, reptiles, and mammals with simplified mono-cultures of plants and livestock, maintained with pesticides, fertilizers, and machinery. A process of elimination rather than inclusion.

In *Silent Earth, Avoiding An Insect Apocalypse*, British entomologist Dave Goulson makes a case for the alarming disap-

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pearance of insects worldwide from the despoiling and destruction of wild land habitat as not only an insect apocalypse, but a planetary one. Goulson's research reveals the critical importance of insects and the domino effect the loss of these largely unnoticed, extremely vulnerable, and often vilified organisms is having on the entire biosphere.

Tolerance is a matter of scale and perspective, as Jonathan Swift's Gulliver discovers in his travels. As his descendants have lost perspective and the scale of their numbers has grown to Brobdingnagian dimensions, the ability of natural systems to tolerate their impacts has shrunk to Lilliputian proportions. When farms grew from feeding the family to feeding millions; when windmills became wind turbines and solar panels became solar plantations; when the logger with an axe became the operator of a feller-buncher and what both were cutting became a

crop, not a forest; and when human populations have grown from c. 2.5 billion in 1950 to over 8 billion in 2024, carrying capacities have been exceeded to tipping points and the commons has become a tragedy. The scale of effects is directly proportional to the scale of the human populations producing them.

Following the removal of native grasses, wildflowers, shrubs, and trees, the majority of farm crops and livestock which replace them rely on repeated applications of pesticides and fertilizers that poison any surviving flora and fauna. Over time hedgerows that provided food, shelter, and protection have been contaminated by those toxic applications or eliminated by the expansion of the farm fields and pastures they formerly bordered.

To be sure, large-scale farming is just one of a plethora of activities that have had a cataclysmic effect on native ecosystems worldwide. We all have to eat, and farmland needs our protection from the

relentless threat of urbanization. But, to support truly responsible and sustainable land use policies and foster long-term stewardship of the land, it seems to me that public interest land use groups must focus our advocacy on the protection of small farms growing organically and on farmers that reserve, as Goulson suggests, at least 10% of their land as native habitat. Yet, that percentage will be effective only if the number and size of farms radically decreases, and that will depend, of course, on a commensurate decrease in the mouths those farms must feed.

In the present Age of the Anthropocene, the survival of all species depends on the numbers and behaviors of homo sapiens: whether, in time, we can replace the Biblical injunction to go forth, multiply and dominate with the discovery, recovery, and implementation of a certain humility, and thereby achieve symbiosis with the natural world.

Robert Emmons



"The Ultimate Goal of Farming is not the Growing of Crops but the Cultivation and Perfection of Human Beings" Big Bear Camp, Walton

Interrogation

Following is a response from our attorney, Sean Malone, to an interview questionaire sent to him by Kent Howe and Jim Mann, the consultants hired by Commissioners Farr, Loveall, and Ceniga to assess alleged barriers to affordable housing in the Land Management Division.

Jim,

Unfortunately, I am unable to participate in the interview for practical and policy reasons. The questions are not applicable to my work before the County, the questions have the potential to reduce staff's effectiveness and role in the land use process at a time when more and more responsibility is laid at their feet, and the interview appears to lack transparency.

The questions do not pertain to those that regularly participate in the land use system but do not regularly file applications before the County. The result of using questions aimed solely at applicants will result in one-sided answers. The questions also appear problematic because your direction is to address affordable housing, but the questions are not specific to dwelling applications. Furthermore, developing housing outside of an urban area will be inherently costly because of the lack of services (sewer, water, electricity, transportation, etc.), and it should not be mistaken with affordability of housing inside of an urban area where services are readily available. Inherent in the Board's direction is the problem that affordable housing is better met within urban areas than outside of urban areas for the simple fact that it is more efficient and cost-effective to do so within cities.

This brings me to my next point: the questions appear to be worded so as to put staff on the defensive against unsatisfied applicants, despite staff's excellent work and timely processing of applications. For example, in my most recent testimony before the Hearings Official, I noted that the staff did an excellent job in reviewing and plotting out the numerous conveyances that occurred across decades and a series of properties. That type of work product is exactly what is expected of staff, and, oftentimes, depending on the outcome,

an applicant may be unhappy with staff's good work. To the extent the questions will result in less staff and less staff time devoted to processing applications, it is important to remember that Lane County recently found that false deeds and false property description cards were used to secure legal lot verifications, property line adjustments, and even a forest template dwelling, and the Court of Appeals laid the blame directly at the feet of staff because the staff person did not perform their due diligence. If you recommend that staff numbers are reduced or that staff spend less time on applications, then that will reduce the likelihood that staff will identify and prevent fraudulent documents in support of applications.

Moreover, recent reviews have demonstrated that staff is acting efficiently in processing applications, so it is unclear why staff would be the focus of almost every question. Staff is not the problem, and their expertise has nothing to do with cost of housing. Overall, according to LMD's own statistics, processing time for applications has improved. This is important because counties are statutorily obligated to take final action on an application within certain timelines. Staff is already under pressure to efficiently review applications and any reduction in staff numbers or review could result in the violation of stat-

utory deadlines. Staff's role is significant, and their review can identify errors, omissions, and even fraud. Your review will have to draw a direct connection between the questions directed at staff and affordable housing, a connection that is not evident on its face.

Finally, I am concerned about the lack of transparency involved in this review. If your goal is to identify and present solutions to the Board of Commissioners regarding affordable housing in the county, then the information that will lead to those ends should be open to public review. You suggest that these interviews and answers will be confidential. Lack of transparency can result in a lack of trust in the outcome. For example, if criticism of staff is a result of not obtaining an approval for their application, then that criticism is not legitimate. Instead, it is simply an unhappy applicant criticizing staff, instead of taking responsibility for their own actions and the actions of their consultants. If the study does not disclose the underlying information, then the results will be problematic. I cannot, in good faith, participate in your review unless the information is made available to the public and not kept confidential.

Thank you,
Sean

Some words from LandWatch's Newest Board Member: Leslie Hildreth

I grew up in California in the East Bay, just over the hills from Berkeley. My early memories of school are hazy, with a few exceptions: the assassination of President Kennedy in 1963. And in 1967 our kind math teacher was drafted out of the classroom and sent to Vietnam.

In April of 1970, the first Earth Day was celebrated by hundreds of students walking, biking, riding horses, and pulling wagons to school. There was a sea of smiles throughout the five-mile hike. Despite causing a huge traffic mess, most drivers honked their support.

College years were difficult. I bounced from one school to another: UC Davis, to UC Berkeley, to San Francisco State University, where I eventually graduated with a degree in writing.

Three months later, I impulsively moved to a small logging town in northeast California. At first I worked for a newspaper in Susanville in Lassen County, where I was the only employee with a college degree. It was a good learning experience but a very long 35-mile drive. Many months later I was offered a position as a reporter/editor at the Chester Progressive, less than a mile from where I lived.

I learned a great deal during the following 4+ years by covering everything from accidents to forest management,

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to the workings of the Collins Pine sawmill and anything else that merited interest. Something was always going on in a town of 2000 people. (Such as the uproar that occurred when the high school custodian ran off with the operator of the 50-seat movie theater, on her Harley.)

There was also much to learn from and write about the Forest Service. Waiting at a landing deep in the mountains, watching a massive helicopter carefully descend and drop its cargo of huge logs. Riding in a tiny 4-seat copter with no doors, flying over the foothills to check out possible timber sales.

In the summer of 1982, a close friend invited me on a hiking trip in the Sierras. I shared lunch with Mark, one of her roommates. The two of us met again at a wedding. (It was a long meeting. Neither of us can remember what we talked about.) We got married two years later, in a field in upstate New York.

Ultimately we ended up in Eugene. Mark began his medical practice, and I started volunteering at KLCC, the local NPR station. Two years later I started hosting the Celtic music program “Mist Covered Mountain,” sharing wonder-



Leslie Hildreth and her husband at the top of Piute Pass in the Sierras

ful music for 20 years with listeners throughout Oregon.

In my free time I raised sheep and learned to make “coats” to keep fleeces clean. I brought lambs to kindergarten classes and talked about being a shepherd. For five years I was the coordinator of the Black Sheep Gathering, an event that brought hundreds of fiber animals (and people) to the Lane County Fairgrounds.

Sometime during our first 10 years on Lorane Highway, the hillside just north of us had been approved by the county for a parcel division: a total of 5 five-acre

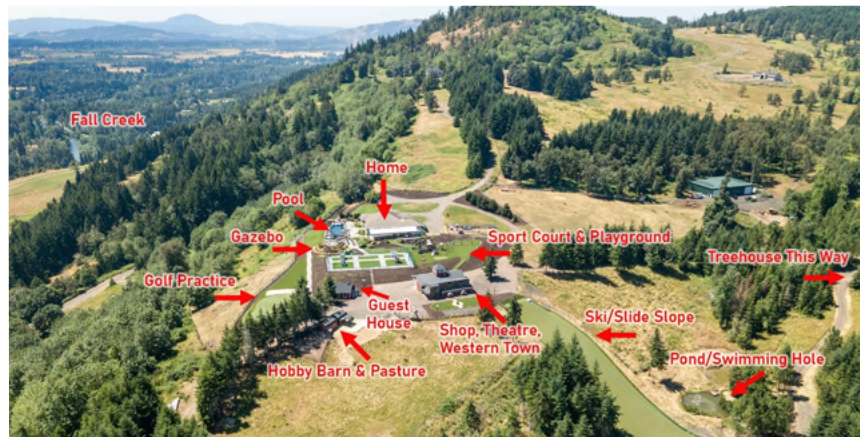
plots. Fortunately, the year-round creeks that supplied our wells were in the way.

Lauri Segel of LandWatch Lane County and Goal One Coalition, a now-dissolved gathering of Willamette Valley non-profits, helped me navigate a complicated process to appeal the decision. I attended hearings, sat through long meetings, barely tolerated the commissioners and, in the end, prevailed. Now, 30 years later, I’m a Board member of the land use organization that came to my aid.

Leslie Hildreth
Marcola

McDougal Scofflaw Files in Circuit Court

Attorney Mike Reeder has taken the McDougal Lane County enforcement order, reported in our Winter 2024 newsletter, to circuit court. Reeder alleges that McDougal’s constitutional rights have been violated by the penalties levied on him by Lane County for constructing 11 structures on his property without permits. These include a guest house, miniature western town, swimming fountain, hobby barn, tree house with electrical and plumbing, and several hundred feet of high-intensity lights on poles set along his ridgeline and burning all night.



Reeder contends that his client has been subjected to an unfair process resulting in “an invalid exercise of the county’s police power.” An article on this audacious filing may be found in *The Capitol Press* (May

3, 2024) at online@capitolpress.com and includes a response to the case from our research analyst, Lauri Segel.

Robert Emmons

Big Game Guide

For the entire three-year period between the time LandWatch Lane County won meaningful protections for Big Game in Lane County in January of 2021 (LUBA No. 2020-030/Nimpkish) and today, Bill Kloos and California replant Ed King, owner of King Estate Winery and wholesale Lane County developer, have been trying to get those protections erased. In mid-2021, following the January 2021 LUBA decision, Kloos used King and his war chest to apply for two dwellings in an area designated Major Big Game, knowing they weren’t approvable. Following the Planning Director and Hearings Official denials, they filed an appeal to LUBA which included both applications, and then an appeal to the Court of Appeals, none of which went Kloos’s and King’s way.

But in November of 2022, two anti-regulation right-wingers were elected to the Lane County Board of Commissioners, and beginning in 2023 both collaborated with Chair Pat Farr, who had usurped the chairperson position from Commissioner Trieger, to do the bidding of Kloos on behalf of Ed King.

LandWatch Participates In Salem Summit Meeting

On April 30, 2024 LandWatch Research analyst, Lauri Segel and I met in Salem with other representatives from statewide land use organizations. Over the course of the day, co-ordinator Robert Liberty compiled a hefty list of proposed issues relative to the protection of farm and forest land that might be crafted into bills prior to the next legislative session.

Topics and concerns include forestland conservation; commercial and non-farm uses on farmland; houses and land divisions in farm, forest, and natural resource zones; short-term rentals on the coast; wildlife protection; urban growth bound-

The first thing Kloos did was to inform the Board they needed to direct staff to bring before them, for their review, “the next land use application” that was denied by the Hearings Official because of conflicts with Big Game. It was a wink wink nod nod type of action where the three Commissioners pretended to not know the next application would be from Ed King. The code provision that allows staff to bring land use decisions to the Board for their review, under certain circumstances, is not intended as a loophole for privileged developers to use when they want a political decision.

As shown in the transcript of this issue, at a June, 2023 work session, Farr, Loveall, and Ceniga pushed and prodded planning staff regarding their recommendation on how to proceed with the Goal 5 policy, and they proclaimed a concern about the process taking too long and infringing on the rights and expectations of the many residents they claim to have heard from. In the end staff was directed to bring “the next relevant land use decision from the Hearings Official” to the Board for review, relevant here meaning related to Goal 5 Policy 11 protections.

Almost a year later, and just a week before the item was scheduled for the Board’s

review, Kloos apparently decided that his sure-fire scheme needed one more maneuver to enable the desired outcome of no protections for any big game species in Lane County, lots more houses in their habitat and many more names on his list of clients. Forthwith, he began sending emails to staff, with many people copied, demanding they adhere to his newest scheme and warning that, if they wouldn’t do as he demanded, he would go to the Board to get what he wanted.

Because what Kloos now wants is not allowed by the Code, his position is to just ignore it. His newest ploy required Staff to send yet another notice of a rescheduled hearing, following a postponement caused by one of the commissioners not being available at the scheduled time to give Mr. Kloos the vote he needs.

In the June 2023 work session Chair Farr had expressed concern about the “uncertain timeline” for a hearing on the Goal 5 policy interpretation matter. Ten months elapsed before a hearing before the Board was scheduled on 4/16/24. But Kloos could afford to be patient, because he knows the Board majority will ultimately hand him the outcome he desires.

Lauri Segel

aries and exception areas; limiting the number of bills a legislator can introduce in a session; requiring legislators to view “An Oregon Story” that documents the history and importance of Oregon’s land use program and requiring a consideration of carrying capacity, the tragedy of the commons and climate change as part of a legislative committee’s review of land use bills. We also agreed that conservation easements, especially for prime farmland, need to be popularized.

Before the next meeting in September, our organizations will focus on key land use protection proposals and seek

support for them from their legislative representatives.

Robert Emmons



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