



Ed King and TV Butte: Nine Years And Counting of Oakridge Oppression

PHOTO: OAKRIDGE STRONG

A third hearing on King Estate Winery owner Ed King's application to obliterate T.V. Butte in Oakridge was held before the Lane County Board of Commissioners (BCC) October 15, 2024. Over the course of nine years, the Lane County Planning Commission has denied the application three times, and it has been remanded by the Oregon Court of Appeals for its failure to address the certain impacts on an elk herd that inhabits the butte and its immediate surrounds.

In a 20 minute presentation on 10/15, Bill Kloos, King's attorney, offered no new argument to justify the hearing—or the time taken by his presentation—and certainly no justification for the BCC to agree to his request to keep the record open for yet another 30 days. He was also the only one in attendance supporting the application, as was the case in the most recent Planning Commission meeting, while 20 people at each hearing

took time off their work to voice their opposition.

As they've done for almost a decade, the citizens of Oakridge and others demonstrated how united they are in their resistance to an out-of-town enterprise that would eradicate a feature of the natural ecology essential to their quality of life and economic prosperity. The city administrator, city councilors, and a resident and Oregon State University professor in the field of environmental toxicology joined others in pointing out the dangers to nearby streams, wells and a fish hatchery that would be generated by mining activities from a highly toxic waste dump on the site, as well as cancer-causing silicone dust that would compound an already unhealthy air shed.

Oakridge is a world-renown destination for mountain biking enthusiasts, and members of the local biking community testified to the economic impact of

mining a butte in the heart of it. Others mentioned the harmful effects of a full-scale mining operation—the noise and dangers from blasting and machinery, as well as gravel truck traffic—on the resident elk herd and on the stability of a citizenship with some of its members recovering from substance abuse and mental health issues. Mining T.V. Butte would also eradicate a culturally significant site for the Chakgeenkni-Tufti band of Molalla Indians.

Though King's attorney had nothing new to offer, he succeeded in getting the application to the present Board because he's counting on the right wing, anti-regulation, pro-development approval of its three male members.

Commissioner Ceniga thanked the opposition for their heart-felt comments, but confessed that all those tons of un-mined rock were weighing heavily on his mind, and he better think about it a little longer. Commissioner Farr,

too, made a show of being swayed by the turnout and the thoroughness and passion of the presentations. He even asked county counsel if he could meet with a few of the presenters in Oakridge, almost certainly knowing that would not be permissible. Notwithstanding the turnout and substance of the testimony in opposition he had just praised, Farr said he needed to hear more and wanted

to keep the record open. For his part, Commissioner Loveall, speaking as a Springfield real estate developer, thought the whole issue might be laid to rest if the City of Oakridge, with maybe the help of some other party, could buy the property. Perhaps to allow the city time to scrape up the many millions it would take, he voted with his two colleagues to keep the record open another 20 days

for the applicant and 20 days for the opposition, with the Land Management Division's next report to come sometime in January, 2025.

Commissioners Trieger and Buch voted to deny the application.

Robert Emmons



The Big Game Against Big Game

In the Nimkish case, one of the most important legal decisions for protection of Lane County's rural lands, the Land Use Board of Appeals (LUBA) in 2021 sided with LandWatch Lane County in ruling that a template dwelling on F-2 land must be sited on a minimum of 80 acres if it's in Major Big Game Habitat and a minimum of 40 acres in Peripheral Big Game Habitat. This judgment, based on ODFW recommended density standards, put a considerable crimp in the expectations, practices and profits of developers and their agents, and they've been seeking ways to overturn it ever since.

That opportunity arrived with the election of Ryan Ceniga in the West Lane District and David Loveall in the Springfield District, who joined North Eugene's Pat Farr to form a right wing majority on the Board of County Commissioners (BCC). These three would provide the bias Bill Kloos, big time developer Ed King's attorney, could count on to abolish the density restrictions protecting big game, other fauna and flora and return to the pre-2021 business

of growing bumper crops of housing in Lane County's forest land.

To accomplish this the new Board majority directed the Land Management Division (LMD) to "elevate" applications the majority would deem to have county-wide significance to hearings before the Commission. This was the first step Kloos needed to get three King applications for template dwellings on lots of 14 acres and less near the Oakridge Airport—denied by the Lane County Hearing Official because they did not meet the minimum acreage established in Nimkish—before the Board for its expected decision. The decision would be based on a Board "interpretation" of Goal 5's Policy 11 having to do with big game protection, allegedly because the policy language is ambiguous and provides a pretext for the majority to reverse the Hearing Official's denial and gain deference for their interpretation in an appeal to LUBA.

Before the hearing on these applications began on 10/8/24, our attorney, Sean Malone, challenged Commissioners

Ceniga, Farr and Loveall for ex parte contact and bias, based in part on declarations made by these commissioners in an earlier hearing (see the transcript of this meeting in the lead article of our Summer 2024 newsletter). Mr. Malone requested that they divulge the substance of any conversations and emails they had had with Kloos and other consultants and parties who have a vested interest in overturning the Nimkish decision.

The charges and request were met with indignation, contempt and denial, and, as the banter and evasion continued at length, with some confusion by county counsel about how to satisfy our attorney's request. Ultimately, a motion to have the three commissioners provide for the record the substantive content in email exchanges with relevant correspondents was unanimously rejected, and the hearing on the issue commenced.

Kloos began his presentation by complaining that he was allowed too little time—five minutes—to present his 22 pages of arguments, notwithstanding that any new material contained in those pages should not have been permitted in this "on-the-record" proceeding (See the following article on this issue). Kloos assured the Board that what appears to be complex is actually very simple: Just return to the halcyon days pre-2021 before herds of trespassing elk were allowed to stomp on the rights of property owners to build on any little bit of land they chose. And to do that, to keep those elk at bay—according to Commissioner Loveall considered no more than a nuisance and meat by the property owners and hunters he's heard from—all the BCC would have to do is offer an alternative interpretation of Policy 11 that ignores the 80 and 40 acre minimum

densities supported by ODFW and return to clustering dwellings and other siting standards, regardless of acreage, to supposedly “protect” big game.

In his response, Sean Malone mentioned a man he had heard offering public comment who was almost in tears because he had been told he couldn't build on his property. Mr. Malone pointed out that this was both untrue and typical of the misinformation and disinformation deployed as yet another maneuver by unscrupulous, biased officials and developer agents in their mission to eliminate land use regulation. In fact, he said, an Economic, Social, Environmental and Energy (ESEE) analysis is available to property owners that could result in a decision consistent with Goal 5 to allow some, or all conflicting uses—such as a dwelling—for a particular site. Goal 5

covers the protection and conservation of resources ranging from wildlife habitat to historic sites, wild and scenic rivers and groundwater.

Our attorney cautioned that, while deference may be granted by LUBA to lower court decisions, those decisions must be based on legally defensible argument. Given the insubstantial, political basis of the King applications, he warned, the county could be found liable for the opposing attorney's fees with an unfavorable decision.

Lane County staff have indicated they will accept reduced minimums of 40 and 20 acres for lots on lands designated as major and peripheral big game habitat. However, because King's properties of 14 acres and less would not even meet this lower threshold, Kloos and his enablers

on the Commission made it clear that it should be Kloos's findings, not staff's, that will be considered by the Board.

Ceniga, Farr and Loveall ended their charade on 12/17/24 by approving a motion to use Kloos's findings to “interpret” Policy 11. This foregone conclusion would remove the 80 acre and 40 acre minimums required to site a template dwelling in big game habitat and allow big time developer Ed King, his fellow developers and their agents to return to the business of carving Lane County's rural lands into smaller pieces for bigger profits.

LandWatch will return to LUBA with an appeal of this political decision.

Robert Emmons

Predator Still On The Prowl For Big Game

In the Spring Newsletter I covered the ongoing saga and status of Ed King's Oakridge forest template dwellings located in a Major Big Game area. Now, seven months later, the issue is no further along than it was last spring, and there has been yet another “on-the-record” hearing requested by Ed King's attorney, Bill Kloos. This is the same attorney who argued land use decisions would be more efficient if the Board of Commissioners, i.e. the politicians, were the final hearing authority for the County.

“On-the-record” hearings are typically held only for procedural reasons, as no new arguments or evidence are supposed to be allowed. In this case, however, Kloos has twice been able to get the three right-leaning Commissioners to reopen the record anyway, supposedly only for “arguments based on the record.” Now, for a third time, the Board majority ignored the advice of staff and county counsel, who told them the applicant did not meet the criteria for additional argument, and allowed Kloos to proceed.

After a year and a half of proceedings, why would King's attorney still need to make additional arguments based on the record? The short answer is that he's still hunting for his best argument and has had unlimited seasons to find it.

As it stands now, the Board of Commissioners is scheduled to hand Mr. Kloos his desired decision on December 17th.

Lauri Segel

Consultants Produce Tardy and Incompetent Report at Taxpayer Expense

A pair of inexperienced consultants hired by the County Commissioners to assess “Barriers to Affordable Housing in Lane County” have finally produced their predictable report. As previously described in the Winter 2024 issue of the LandWatch newsletter, the right-wing majority commissioners hired Kent Howe and Jim Mann to conduct a sham study with pre-ordained conclusions. They had no experience as consultants, and the fee they charged for their work was exorbitant. One reason

it took a year to complete the report is that Howe and Mann spent months setting themselves up as a legitimate business, never having done this type of work before. The Board majority hired them to recommend changes to county code, changes to state law, and changes to County Land Management Division (LMD) procedures in order to further the goal of urbanizing rural land.

The most glaring deficiency of the study is that it never defines “affordable housing” or “affordable rural housing.”

It never considers costs of housing such as the price of land, building materials, labor, utilities, property taxes, or insurance. The type of rural housing that Howe and Mann are championing will never be “affordable,” no matter how that word is defined.

The consultants somehow overlooked—or ignored—a document recently produced by the University of Oregon's Institute for Policy Research and Engagement entitled “Barriers to Housing Production in Oregon” for the Department of Land Conservation and Development. The introduction to that report states “This report summarizes

research conducted by faculty from the Institute for Policy Research & Engagement (IPRE) on barriers to housing construction in Oregon. The research team conducted a literature review, reviewed municipal housing-related documents and plans, and conducted a survey of local government staff, private sector housing developers and nonprofit housing developers. The summary report highlights key barriers and offers recommendations on how local and state policy might soften key barriers.” The research included in this report is exactly what Howe and Mann were supposed to conduct but never did. It is one of the many tasks detailed in the “scope of work” that Howe and Mann were contractually obligated to perform but failed to do.

Possibly the most useless, and clearly biased, section of the report is the so-called interviews with attorneys, consultants, and “owner applicants.” Howe and Mann cherry-picked a small number of disgruntled “owner applicants” to interview, along with their develop-

ment-friendly attorneys and consultants, and used a push poll to conclude that the main barrier to affordable housing is the staff at the LMD.

When Howe and Mann, as Howe Mann Consultants (HMC), presented their report to the Board, they faced serious and critical questioning by Commissioners Heather Buch and Lauri Trieger. Howe and Mann had no answers for why they never interviewed key authorities about housing, like the County’s own non-profit housing developer, Homes For Good, why they never provided any financial analysis, why they never sought information and ideas from the LMD, why they never considered state and local building codes, and why their report lacked the basic, readable format required of it (including a table of contents). When asked point-blank to define affordable housing they refused or weren’t able to.

LandWatch agrees with Commissioners Buch and Trieger that the Barriers to Affordable Housing Report is wholly

inadequate, that the consultants hired to write the report were uniquely unqualified, that the consultants failed to perform most of what was required of them by contract, that the report merely re-litigates past land use decisions and criticizes county staff, and that the finished product is a poor use of \$60,000 of taxpayer money.

To see how incredibly inept and skewed the Howe-Mann report is, check out the responses from the LMD and from former hearing official and present county counsel, Anne Davies at https://cdns5-hosted.civillive.com/UserFiles/Servers/Server_3585797/File/Government/BCC/2024/2024_AGEN-DAS/121024agenda/T.10.B.pdf. Davies’ retort, especially, provides a thorough account of how Oregon’s Land Use Program works and how the HMC report violates and attempts to subvert its land use regulation and protections at almost every turn.

Jim Babson,
Fall Creek

Voters Soundly Reject Gerrymandering Measure

In a huge win for election integrity, Lane County voters overwhelmingly rejected the gerrymandering measure on the ballot in November. Commissioners, Ryan Ceniga, David Loveall and Pat Farr forced Measure 20–362 onto the ballot at the last minute in a cynical effort to redraw their own voting district boundaries and gain a political advantage before they have to run again.

The failed gerrymander effort attempted to contravene a routine once-a-decade review of the Lane County charter. An independent Charter Review Committee met for over a year to draft recommended amendments to the charter, Lane County’s governing document. Among their recommendations were revisions to clarify the county’s redistricting process. Redistricting should occur every 10 years in conjunction with the US census, when voting district boundaries are reconfigured to reflect changes in population. The last redistricting in Lane

County occurred in 2021 and would normally reoccur in 2031, after the 2030 census. The Charter Review Committee suggested codifying this 10-year cycle into the charter; Charter amendments must be approved by Lane County voters.

The three conservative commissioners seized on the charter review process to attempt a gerrymander of the district maps. They ignored the good work of the Charter Review Committee and advanced their own redistricting rule changes, which were drafted by local attorney Stanton Long. Long’s proposal was long on his ideas and opinions about supposed independent redistricting commissions, but hidden in the verbiage were provisions giving the majority commissioners substantial control over the redistricting process. And, most importantly, the scheme required that the county conduct a mid-cycle redistricting starting in 2025 and concluding before the 2026 election cycle.

Concerned citizens showed up in force at subsequent commissioner meetings expressing their outrage at the proposed gerrymander. About 50 people and organizations testified eloquently to the many improprieties of the proposal. They spoke of the complete lack of need for a special redistricting, the lack of necessary new population data, the expense, the suspicious last-minute timing of the proposal, the transparency of the three commissioners’ motives, and the integrity of the Charter Review Committee’s rigorous work. County Clerk Dena Dawson testified that conducting an additional redistricting would overburden her department’s workload and pose significant risks to the integrity of elections in Lane County. The Eugene Weekly published several articles and letters to the editor opposed to the Long proposal.

Having underestimated the backlash to their end-run around established procedures, the Board agreed to recon-

vene the Charter Review Committee to have them evaluate Long's submission. The Committee recommended many changes to his envisioned independent redistricting commission and recommended against the mid-cycle redistricting. Farr and Ceniga attended some of their meetings and even praised the Committee's work publicly. But late at an August 6th meeting, the last possible moment for the Board to refer charter amendments to the State Elections Division, Ceniga, Farr and Loveall chose to ignore the Committee's advice and send their ruse to the voters.

LandWatch was part of a quickly organized campaign that overcame an onslaught of misinformation to prevail

on election day. The proponents of the measure falsely claimed that it would shift the power to create district maps from politicians to the voters when, in fact, the opposite was true. They never breathed a word about the scandalous mid-cycle redistricting, which was the main goal of their ploy. Their deceitful messaging did not fool the voters, however, who ultimately rejected the measure by a margin of 75% to 25%. Critical to its defeat, former congressman DeFazio wrote to his constituents, "Republican-lead members of the Board working with a wealthy right-wing attorney are attempting to lock in their future re-election by stacking the deck... I dedicated my life to good, honest, representative government and

am appalled by the backroom dealings of these Commissioners."

Commissioners Buch, Ceniga, and Loveall will be up for reelection in 2026. Barring any further attempts by the Board majority to hijack democratic processes, those races will be decided using the current district maps created by an independent, nonpartisan committee just 3 years ago. Ceniga and Loveall will have to face reelection without the aid of district boundaries gerrymandered to their favor. And Commissioner Buch's district will not be redrawn in an attempt to achieve a conservative supermajority on the Board.

Jim Babson, Fall Creek

Oregon Fish Hatcheries and Leaburg Dam: Decadent Anachronisms

Discussions are underway to determine the future of fish hatcheries in Oregon. It appears the Oregon Department of Fish & Wildlife wants to get out of the fish hatchery business. This is another indication that what our state desperately needs is a 100-year Fish and Wildlife plan which addresses the broader, critical issue of restoring and maintaining the health of our fish and wildlife over at least the next 100 years. Unfortunately, in our experience, ODFW's fish and wildlife policies have been driven more by politics than by what is best for the resource.

As we see it, the condition of fish and game in the State of Oregon is so bad that it is on the verge of collapse. Our organization joins many Oregon residents now calling for defunding and dissolving the Oregon Department of Fish & Wildlife and appointing those responsibilities to the Confederated Tribes of Oregon.

■ ■ ■

EWEB doesn't know how many juvenile salmon are killed every year trying to migrate past Leaburg Dam. The only evidence the utility could provide was a 15-year-old study conducted to determine the effects of raising the level of Leaburg Lake. This study was conducted at a flow of 600 cubic feet per second.



However, average flow during salmon downstream migration (December, January, February) is 6,000 cubic feet per second. Bottom line: EWEB and ODFW have no idea how many juvenile salmon are killed each year migrating past the dam, which also blocks and inhibits the downstream migration of all fish

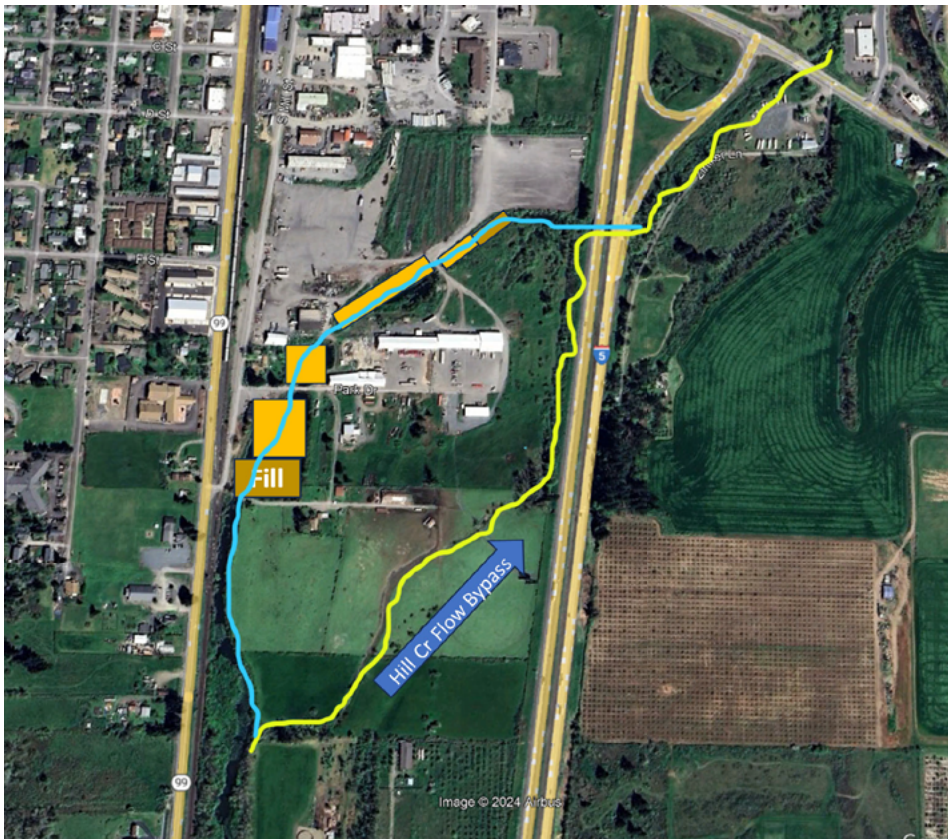
Why do cormorants return every year to Leaburg Lake? Cormorants are voracious feeders of migrating juvenile salmon. As salmon school up in Leaburg Lake because they are reluctant to go under the dam, they become prime targets for hungry cormorants.

Millions of dollars are being spent each year on salmon restoration projects in the upper McKenzie. This is good work and needs to continue. But why spend all that money and effort and then subject the juvenile salmon raised as a result of these projects to the impasse at Leaburg Lake and to cormorant predation.

The simple solution is to open the gates of Leaburg Dam. The dam would remain open to bridge traffic, and fish would be free to migrate upstream and downstream. All this at no cost to EWEB rate payers.

EWEB hires Portland-based engineering firm McMillen Inc. as a demolition contractor. McMillen managed the dam demolition on the Klamath River, a three-dam project in 2023, that has already shown salmon returning to traditional upstream locations. With any foresight and compassion, McMillen will help EWEB be more open-minded to the plight of salmon, steelhead and trout on the McKenzie and advocate for opening the gates of Leaburg Dam immediately.

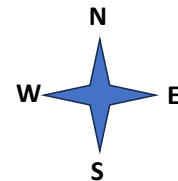
Bob Spencer
McKenzie River Protective



Hill Creek Restoration Old Bald Knob Mill Site Creswell OR

Lat: 43.912098 Long: -123.017922

- Fill for project
- Fill by landowner
- Current Hill Cr. Channel



Hills Creek Diversion in Creswell

Another Step Toward the Restoration of Creswell's Hill Creek

For many years the condition of Hill Creek, which flows through the city of Creswell, has been of concern to area residents. Now ODFW, in partnership with Coast Fork Willamette Watershed Council, has submitted a proposal to the Private Forest Accord Mitigation Action Committee to reroute a portion of the Hill Creek channel around the former Bald Knob veneer mill site that lies in Creswell's UGB.

The existing channel directs water through a former mill pond and dam on the Bald Knob site. The dam's gate is no longer functional, and the pond and channel on the site are polluted. Also, the dam is on ODFW's priority fish barrier list.

The proposed 3-mile rerouting would be done along the perimeter of the Bald Knob site. According to ODFW, the result of the rerouting would "restore connectivity of 8.5 miles of upstream habitat in Hill Creek and the Coast



Fork Willamette river for native migratory fish, create additional wetland habitat for native aquatic species, provide a cleaner, unpolluted aquatic ecosystem downstream that will benefit beaver, northwest pond turtle, Pacific lamprey, coastal cutthroat trout, and Pacific giant salamander."

ODFW says the present owners of the Bald Knob site support the project. In her letter of support Creswell's City Manager, Michelle Amberg, cites aesthetic, ecological and economic benefits for the city. Filling the mill pond and channel would mitigate liability for pollutants and facilitate development of the industrially zoned site. And the clean, rerouted water would enhance Garden Lake Park, owned by Creswell,

which lies downstream of the Bald Knob property. ODFW has offered in-kind financial support for gear and personnel hours to monitor numbers and species of fish and for help obtaining permits. If the project is completed, the agency said it may restock the lake with fish.

A long-range plan of restoring the riparian channel of Hill Creek from the Coast Fork Willamette River through Creswell's UGB to Lynx Hollow Creek will rely on larger future proposals. Lynx Hollow Creek joins Hill Creek at the upstream end of Hill Creek. A diversion dam built by the Army Corp of Engineers keeps most Lynx Hollow Creek water from flowing into Hill Creek. Currently there is no plan to modify or remove the diversion dam, but ODFW's current proposal is a positive step toward completing the restoration of historical Hill Creek.

John White
Creswell

FROM THE PRESIDENT

With the White House, both houses of Congress and the Supreme Court comprising a trifecta co-opted and dominated by right wing extremism, it will largely depend on states to hold what ground is left.

Oregon has a Democratic governor, and Democrats have retained their super majority in the legislature. Moreover, we have blue states both above and below us. All the more reason to dig in our heels, explore and utilize the advantages we have and continue to “think globally, act locally.”

Indeed, it is incumbent on us to realize that, despite D.C. turning blood red and regardless of efforts to weaken and destroy it, Oregon’s precedent-setting land use program—now celebrating its 50th birthday—remains a citadel of protection against the wholesale, unhinged exploitation and development pressure we can expect from the federal government in the years ahead.

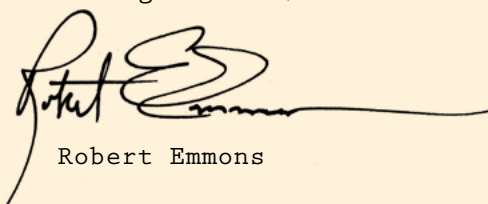
Now, therefore, is the time to build on the strengths of our land use program by increasing support for local organizations, such as LandWatch Lane County, and other public interest non-profits and allied politicians, administrators and planners that, with strapped resources and in stressed workplaces, have nevertheless helped conserve the forests and farms, the natural areas and open space that define our sense of place and our place in it.

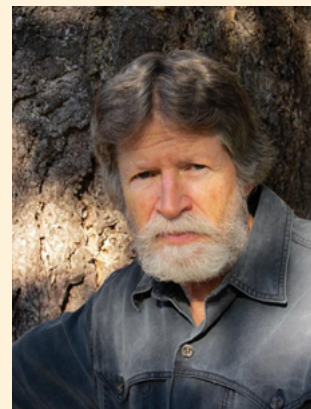
LandWatch depends on our supporters’ monetary donations, and we ask that you remember us again this year and, if possible, increase your yearly contribution and/or consider contributing on a monthly basis. Certainly, we will be a stronger and more effective force with more funding behind us, but also if we can count on your active participation in our work in any way you feel you can offer: by oral and written testimony; by writing letters and op-eds; by assisting our research analyst Lauri Segel with her research and outreach; by co-ordinating with neighbors impacted by a proposed development; by joining our board of directors.

Participation begins with information, and, in addition to our newsletter, LandWatch soon will be sending out email reports and action alerts to interested parties, supporters, fellow advocates and activists. If you would like to get up-to-date reports about our efforts to preserve farmland, forestland, and open space in Lane County, please send a message to info@landwatch.net. and write your name and “Sign Me Up” in the subject line or the message body. Rest assured that LandWatch will never share your contact information with anyone.

LandWatch is the only organization in Lane County monitoring land use applications and challenging those that violate state and local regulations. With your continued support, we’ll continue our successful work with neighbors from the coast to the cascades to protect our rural lands.

With gratitude,


 Robert Emmons



Join Us!

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