

Looking Forward

*A publication of Oregonians In Action Education Center
on land use and property rights*

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A Short, Quiet, But Successful 2018 Legislative Session For OIA



The 2018 Oregon Legislature recently concluded their short legislative session. The session lasted approximately one month. For Oregonians In Action, the session was quiet, but nevertheless productive.

“Not much happened on the land use front in the short session,” said OIA President Dave Hunnicutt. “Since the session can only last for a maximum of 35 days, it is typical that land use bills take a back seat until the long sessions in the odd-numbered years. That was the case this year.”

Although land use bills were not prominent in this year’s short session, OIA managed to get two changes in the short session. House Bill 4031 allows guest ranches to be sited in central and eastern Oregon. Guest ranches, also known as dude ranches, offer tourists the chance to experience life on a working cattle ranch.

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The guest ranch operates as part of the main ranching operation, and guests stay at the ranch and participate in a variety of outdoor activities, from horseback riding and hiking to actual ranching operations. The ranch gives tourists the chance to experience life as it was in the Old West, with the exception of having great meals and comfortable accommodations.

Until 1997, guest ranches were outlawed in Oregon, as ranches operate in farm zones and guest ranches were prohibited in farm zones. However, OIA worked with the legislature in 1997 to establish Oregon's first guest ranch law, and the law has been changed a number of times in the intervening years as guest ranches became a popular destination for tourists on the other side of the Cascades.

Unfortunately, the last guest ranch law had a sunset date of January 1, 2018, and the legislature failed to extend that sunset date. So as of January 1, 2018, guest ranches were again a prohibited use in farm zones across the state. OIA received a phone call late in 2017 from a guest ranch owner asking to extend the sunset, and in turn, we asked State Representative Brian Clem, chairman of the House Agriculture and Natural Resources Committee, to renew the law.

Since the law had already sunsetted by the time the legislature reconvened in February, the legislature had to re-create the entire law and pass it all over again. OIA was able to convince Rep. Clem and his committee to re-pass the law, and extend the sunset to April 15, 2020. The bill was approved by both the House and Senate Committees, was approved by both the House and Senate, and was signed by Governor Brown in mid-March. OIA will return to the legislature in 2019 and seek a bill which removes the 2020 sunset, making the guest ranch provisions a permanent part of Oregon law.

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HB 4031 also contained an important amendment to help the owner of property in the Metolius River Basin make use of the Metolius TDO's that he received from the Oregon legislature in 2009. The acronym TDO is short for "transferable development opportunity".

In 2009, the Oregon legislature designated the Metolius River Basin as an "area of critical statewide concern". The result of this designation was a significant restriction on two property owners who wished to site destinations resorts in the basin. In order to provide a small amount of equity to the two property owners whose developments were regulated out of existence, the legislature provided each owner with a TDO to allow that owner the ability to transfer the development rights from the Metolius Basin to another area in the state.

The goal of the TDO's was to allow the TDO holder to work with a willing property owner outside of the Metolius region to plan and develop the property. The legislation made siting easier, enabling the TDO holder to develop in places where development would otherwise be prohibited by state and local law.

Unfortunately, the legislature's TDO bill was not well drafted or thought out, and has required multiple amendments since it was first approved in 2009. HB 4031 made more amendments to the original TDO bill, and hopefully the last set. The property owner has identified property in a coastal county for the siting of the resort and use of the TDO's, and the latest changes should make that development finally possible. OIA worked closely with Rep. Clem on this portion of HB 4031 as well, and the bill was approved and signed by Governor Brown.

The long session beginning in February, 2019 is the next opportunity to make changes to Oregon land use law. OIA is already working on legislation for the 2019 session, where land use bills will take a much more prominent position in the list of legislative "to do's". ■

Standing Up For Property Rights Is Important, Even When It Isn't Popular



The right to private property is a fundamental right of American society. Property ownership encourages creativity, ingenuity, hard work, and productivity. Simply put, the right to private property is the single most fundamental driver of the American economy.

But protecting property rights isn't always popular, and sometimes OIA takes on controversial issues. We wouldn't have it any other way. Below are two examples.

In 2014, Oregon voters approved Ballot Measure 91, which legalized the use of private property for marijuana production, processing, and distribution.

After Measure 91 passed, the OIA Board decided that we should defend the rights of property owners who wanted to take advantage of the new law, not because we agreed (or disagreed) with the measure, but because property owners had a new use they could make on their land, and we needed to defend that use.

Since that time, OIA has counseled many property owners on the new law, and what is allowed and doesn't allow. If a rule or local regulation goes too far, we stand ready to challenge that rule. Supporting property rights cannot mean that OIA can support only those uses that the public approves.

That wasn't the only controversial issue for OIA this year. We were recently approached by a group of property owners who own land along the Willamette River. These owners have been losing land

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along the riverbank to erosion caused by summertime wakeboat activity on the river.

Wakeboats are large recreational boats designed to create large artificial waves. Unlike water skiing or jet skiing, the waves created by wakeboats are so large that riders can actually “wakesurf” behind the boat, without holding a rope.

Wakeboating is the new watersport for people, and from all accounts, it's a lot of fun. But in the wrong stretch of a river, the wakes cause significant erosion to private property.

We know that riverfront owners should expect to gain or lose land as the river meanders and nature takes its course. But this group of property owners were losing land to erosion because of the constant pounding of the shore by these large wakeboat waves.

That's why the Oregon State Marine Board, the state agency that regulates boating, already had rules that prohibited wakeboating in that section of the Willamette. But the rule was being ignored, so the property owners asked OIA to help.

We asked the legislature to introduce a bill to reinforce and put some teeth in the Marine Board rule. The result was a political firestorm. The boating community, spurred on by emails claiming that the property owners were attempting to stop all boating on the Willamette (which was certainly not true) demanded that the legislature halt any further work on the bill, and the bill died.

It was clear from the start that the number of boaters greatly outnumbered the property owners. For OIA and our friends in the legislature, this wasn't a popular bill to stand on. But we did it anyway, because it was a property rights issue, and the right thing to do. ■

View From Scholls

By David Hunnicutt

The Cost, in Human Terms, of “Protecting Farmland”

As many of you know, one of the fundamental tenets of Oregon land use law is “protecting farmland.” It is the primary argument from those who defend our system at all costs.

Why? Because the argument resonates with the public. I hear it all the time, typically from people who wouldn’t know a shovel from a tractor. Questions like, “you don’t want to destroy all the farmland do you?”, or statements such as “we have to preserve all our valuable farmland, or we won’t be able to eat!”

Setting aside the gross overgeneralizations in these declarations, there is nothing wrong with the premise of protecting farmland for farming, at least to some extent. But there’s a cost in doing so that’s just as important to discuss.

After all, farmland protection is just another form of zoning, like commercial, industrial, or residential. Before planners decided it was smart to create “mixed use” zoning, where uses were all jumbled together into one neighborhood, cities practiced “Euclidean” zoning, where cities were zoned so that different uses were clustered together. One part of the town was the industrial area, another part (usually downtown) was the commercial area, and the rest of the town was a residential area.

Cities practiced Euclidean zoning as a way of preventing conflicts between the types of uses. In that sense, farmland protection is a textbook example of traditional zoning, albeit in a rural area and on a far greater scale.

But like seemingly everything in Oregon land use law, LCDC took an unremarkable concept and massively overdid it. LCDC did this in two ways – 1) by zoning everything outside of cities as “farmland” or forestland, whether or not it was actually useful for farm or forest purposes, and 2) by making it nearly impossible for

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local governments and property owners to ever change a farmland definition, once adopted. Today, Oregonians are paying a huge price for LCDC's overregulation, and not surprisingly, "farmland advocates" never want to talk about it.

Two recent articles highlight the problem that hyper-aggressive zoning has created nationwide. In the other states, this zoning is the result of local governments. In Oregon, it's the result of LCDC. And farmland protection is a prime example.

In "Why Washington Can't Fix the New Housing Crisis," published recently in Politico (one of the few publications that slants neither to the left or right side of the political spectrum), author Lorraine Woellert describes the inability of the housing industry to supply the houses demanded by growing urban populations. As Woellert notes, when builders build fewer homes than needed to meet a growing population, housing prices rise. That's simple supply and demand.

Rising housing prices create multiple problems, as Woellert notes. First, it prices an entire class of homebuyers out of the market. Since 2011, wage growth has been remarkably weak across the United States, but housing prices have risen 33%. Nationwide, the average housing price is \$349,000. Portland is right at average, at \$345,000. As housing prices continue to grow, fewer people can afford homes. That forces more people into rentals, causing rents to rise, and resulting in a surge in homelessness for those on the bottom who are squeezed out.

This problem shows up in data on first homebuyers. Woellert notes that homeownership among young people is at its lowest level in generations. Today's low entry-level wages make it difficult for a young couple to buy a first home. And if they manage to qualify for a loan, the lack of available housing makes them compete with a horde of other people for the tiny supply of "affordable" houses in the market. Ask anyone who's tried to buy a starter home in the

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Portland Metro area, Salem, or Bend. The house goes on the market, and within hours, there are multiple offers, most of which are over the asking price.

Second, high housing prices create gentrification of established neighborhoods. Neighborhoods that once provided housing for lower and middle-class families become “hipstered”, forcing out low-income and elderly homeowners and requiring them to seek housing farther away from the city core. In the Portland-Metro area, this effect is seen in East Portland, where people are forced out of working-class neighborhoods and into outer neighborhoods in Gresham, Troutdale, Hillsboro, Cornelius or Forest Grove. Ironically, this places more pressure on growth in these communities, further from the downtown city core, causing transportation issues and putting pressure on surrounding farmland in these outer cities.

Third, Woellert notes that high housing prices reduce mobility and add inequality to the housing market. A job that would be considered a step up is now rejected, because the successful applicant cannot find suitable housing near the job. And as we’ve witnessed in many neighborhoods in Portland, inequality becomes apparent as people use local zoning to keep density (i.e. apartments, duplexes, etc.) and the “undesireables” that occupy those units out of their neighborhoods, while bleating like sheep about the importance of “saving farmland”.

Ask your fancy Portland friends if they want to “save farmland” and you’ll get a resounding yes, as long as that 40-unit low income apartment complex slated for down the street is instead shoved into someone else’s neighborhood.

It is the inequality argument that is the focus of the second article, a New York Times op-ed from David Brooks entitled, “How We Are Ruining America.” In the article, Brooks cites to a recent book, “Dream Hoarders”, published by the left-leaning Brookings

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Institution. The premise of the book is that the well-educated in American society “rig the system” to keep middle and lower income families from rising. That sounds like the traditional class warfare arguments raised by the left.

What Brooks notes, however, is that it is the well-educated left that is using government to favor themselves and keep lower classes down. And zoning is a primary method for achieving their goal. As Brooks notes, the country’s most “progressive” cities, like Portland, San Francisco, and New York City, use zoning to “keep the poor and less educated away from places with good schools and good job opportunities,” thus ensuring that they are unable to compete on a level playing field.

Maybe this is why both the Obama and Trump administrations have decried over-aggressive state and local zoning laws. How many times have those two administrations agreed on anything? The left sees the problem as a social justice issue (correct). The right sees the problem as an economic and property rights issue (also correct).

So what does all this have to do with LCDC’s farmland rules? Easy – in its zeal to “preserve farmland,” LCDC has made it nearly impossible for cities to expand their urban growth boundaries. Yet in the Willamette Valley, which has the state’s best farmland, the population continues to rapidly multiply. For the past 20 years, the Portland-Metropolitan area has added 1,000 new residents every 12 days, and that number is holding steady.

When you add 1,000 people to a community every 12 days, you have to find somewhere for those people to live. But if you’re hyper-focused on “saving farmland,” like LCDC is, it is virtually impossible to expand the urban growth boundary to find additional land. In fact, in the last decade, only one city (Redmond) has successfully managed to expand its urban growth boundary, absent intervention by the Oregon legislature. Metro made a modest adjustment to the Portland-Metropolitan area in 2012, but that

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adjustment only succeeded when the Oregon legislature stepped in in 2014 and passed a law affirming that boundary expansion.

So if it is nearly impossible to expand the boundary (yes), and there is increasing demand for housing resulting from population growth (yes), then the inevitable result is an insufficient supply of land for housing (yes), and higher housing prices (yes), which fewer and fewer people can afford (yes). In Oregon, the numbers bear this out. According to Oregon's State's economist, new housing starts are well below the numbers needed to satisfy the demand. Why is this surprising?

LCDC's preoccupation with saving farmland has created an insufficient supply of land for new units. The end result is an increase in housing prices, which is precisely what we have in Portland, Salem, Medford, Bend, Corvallis, Eugene etc. As Woellert and Brooks note, the various inequities that result are obvious, and fall primarily on the lower and middle classes. That is just one of the human costs of "saving farmland".

And if anyone claims that "saving farmland" was the whole point of Senate Bill 100, they're flat out wrong, and you should encourage them to read Senate Bill 100 for themselves. Preserving farmland was one aspect of Senate Bill 100, but so was livable communities, economic development etc. LCDC has spent 40 years ignoring those goals, while remaining fixated on making sure that some poor family out in Deschutes County can't build a house on 40 acres of scab land and rocks that LCDC has forced the County to zone as "farmland". We're all paying the price for that incomprehensible policy choice.

So what's the solution? LCDC should focus its attention where it will do the most good for all Oregonians – ensuring that city zoning policies are fair, and that there is an adequate supply of land to meet demand, even if that means that development must occur on "farmland". If they won't, then the legislature should do it for them. We'll all be the better for it. ■

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