

LOOKING FORWARD

**Can you rebuild
your home after the
wildfire?**

Plus -

**Covid-19 and smart
growth.**

Is your field a wetland?

*A publication of Oregonians In Action Education Center
and Oregon Property Owners Association
Volume 27 Issue 1*

LOOKING FORWARD

VOLUME 27 ISSUE 1

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**OIA Education Center
Board of Directors,
Officers & Staff:**

Executive Director:

Dave Hunnicutt

Directors:

Kay Finney

Mike Gougler

Kristi Halvorson

Ken Leahy

Lynn Stafford

Mitch Teal

Ted Urton

The Looking Forward is

Produced by:

*Oregonians In Action
Education Center staff.*

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Oregonians In Action
Education Center

PO Box 230637

Tigard, OR 97281

Phone: 503-620-0258

Email: oia@oia.org



www.oregonpropertyowners.org

REPLACING HOMES AND STRUCTURES DESTROYED BY WILDFIRE



Hint: It's Not As Easy As It Should Be

The recent Labor Day wildfires that devastated communities throughout western Oregon have disrupted the lives of thousands of Oregon families. As of September 28, the Oregon Office of Emergency Management estimated that the various wildfires across the state that began on Labor Day had destroyed nearly 2,300 homes and over 1,500 other structures (barns, accessory buildings, commercial/industrial buildings, offices etc.). Other sources claim many thousands more homes and structures were destroyed. No matter the final total, it is a loss of unprecedented number in Oregon history.

Now that the fires have been contained, property owners are beginning the process of rebuilding their lives. For most, that involves dealing with multiple

issues, from insurance company policies to temporary shelter to obtaining the necessities to live. Having dealt with those immediate issues, families are now in the process of figuring out how to rebuild their home or business that was lost to fire. Unfortunately, that means dealing with some pretty complicated and unforgiving Oregon laws. And that's not as easy as it should be.

Unlike earlier times, building a home or other structure is no longer as simple as buying the land and materials, preparing the site, and beginning construction. In today's modern world, there are permits and other government approvals necessary to complete almost any construction project, no matter how small.

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REPLACING HOMES AND STRUCTURES DESTROYED BY WILDFIRE

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Oregon is not unique in requiring permits and approvals for construction – every state will have some form of requirement to ensure that a new home or other structure is built safely. Oregon, however, adds many permit requirements that go well beyond what most states require, and many of these are due to our complex and bureaucratic land use laws, in which uses as trivial as building one home for your family on a large acreage property in a rural area are treated as comprehensively as building a multi-story skyscraper in downtown Portland.

Compounding the problems are multiple factors. First, the losses from the most recent wildfires have impacted property owners in nearly every type of zone in Oregon. Homes and businesses have been destroyed in commercial, residential and industrial zones in cities, as well as in farm, forest, rural residential, rural industrial, and rural commercial zones subject to county jurisdiction. The laws that regulate rebuilding in each zone vary from jurisdiction to jurisdiction, and the level of state regulation varies significantly from the tight overregulation in farm and forest zones to the more loose state oversight in urban zoning. This means that the types and levels of regulation are going to vary significantly from property owner to property owner. Some owners may find it easier to rebuild, while others may find it extremely difficult.

Second, although the wildfires destroyed homes and structures in nearly every zone, they were concentrated

“SOME OWNERS MAY FIND IT EASIER TO REBUILD, WHILE OTHERS MAY FIND IT EXTREMELY DIFFICULT.”

primarily in six counties. Wildfire losses occurred primarily in Jackson, Lane, Linn, Lincoln, Marion, and Clackamas Counties, in the cities of Talent and Phoenix in Jackson County, and in smaller cities in Marion and Linn Counties - Detroit, Mill City, Idahna, Gates, Lyons etc. It is beyond the capacity of these local governments to process the number of claims that will come pouring in to each government from property owners seeking to rebuild, particularly if they are required to follow every requirement of Oregon land use law, including holding public hearings, requiring multiple studies and consultations, and allowing for appeals by land use “watchdogs” (i.e. NIMBY’s) to the state appellate courts.

Third, the cost of complying with the various permitting processes will be beyond the scope of what many property owners can afford. The cost to apply for a development permit can range from a few thousand dollars to hundreds of thousands of dollars.

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People who lost homes to wildfires didn't budget for these costs, and it's unfair they should be expected to do so. They were living in their home one day, and their home burnt down the next. Most just want to go back to what they had.

Fourth, especially for property owners within cities, there may be inadequate city infrastructure to serve their home. The fires destroyed city infrastructure as well as private structures. In some cases, a property owner seeking to rebuild will not be able to access city services until the city can rebuild them and make them available.

Finally, it's not just land use issues that will cause problems for property owners seeking to rebuild. State and federal environmental regulations related to the clean-up of structures destroyed by fire, removal of the debris, siting of new septic systems and a litany of other issues will also impede or sometimes prevent rebuilding.

In short, it's going to be a difficult, time consuming process for many homeowners who want to rebuild their homes. Fortunately, there are things that the state can do to ease property owners burdens.

First, both state agencies, local governments, and the Oregon legislature should take a comprehensive look at all of the various regulations that a property owner must satisfy in order to be allowed to rebuild. If a regulation is not needed to protect the safety of the

public or the property owner, it shouldn't be required in order to rebuild a home. Fortunately, a number of local governments and agencies like the Oregon Department of Land Conservation and Development (DLCD) are doing just that, with encouraging results.



The Marion County skyline at the height of the recent wildfires.

For example, DLCD is in the process of enacting temporary emergency rules which greatly eliminate normal land use regulations that would slow or in some cases prohibit a property owner from establishing temporary emergency housing for families to live in while they rebuild. We are working closely with DLCD to ensure that property owners who need temporary shelter on their property (usually a RV) while they work to obtain permits to rebuild can do so.

That's a good first step. Kudos to DLCD for working hard to get these rules in place quickly.

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The permit process for rebuilding the permanent structure also needs to be streamlined. A property owner wishing to rebuild their home should not be required to go through the normal land use process, pay an exorbitant fee for a permit, be subjected to a public hearing, and forced to notify the public of their intent to rebuild. All that should be required is a permit from the local government showing that their home can be rebuilt safely, and that adequate services exist to support the home. That's enough.

In order to accomplish this goal, it will take the work of the Oregon legislature, as many of the impediments to rebuilding are codified in state statute, meaning

only the legislature can change them. OPOA has already received approval from legislators in both the Oregon Senate and House to work with legislative lawyers on legislation for the upcoming 2021 legislative session to create a streamlined process that eliminates unnecessary requirements and process, making it easy (and cheap) for property owners to get permits to rebuild quickly. Drafts of those bills should be available soon.

We'll work hard to ensure that agencies, local governments and the legislature work quickly to provide relief to property owners who lost homes to wildfires. It's the right thing to do. ■



The aftermath of the Almeda fire, Talent, Oregon

IN THE WAKE OF COVID-19, IS SMART GROWTH REALLY SMART?



Burnside Street, downtown Portland

The COVID-19 pandemic, and more specifically the government response to the pandemic, has fundamentally changed American's lives, and the way we work, play, and live. From restrictions on large recreational gatherings to state park closures, the shutdown of several types of businesses, and stay at home recommendations for businesses that remain open, fundamental questions are being raised that are likely to extend well beyond the end of COVID-19 restrictions.

What will American society look like in five years? Will people still go to the movie theater, to concerts, or to

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sporting events? Will restaurants and shopping malls look the same? Will workers still gather in offices each day, or will the “work from home” patterns of the last few months become permanent? Nobody was talking about this at the start of 2020, but now everyone is.

But one area where there's been little discussion is the concept of “smart growth”. For the last 15 years, “smart growth” has been the mantra of every urban planner. As you'd expect, it's been the bible of the Portland elite, led by Metro, for years. Given the lessons we've learned from COVID-19, it's time to start asking if “smart growth” is really all that smart.

So what is smart growth? It's a plan dedicated to the idea that nearly all growth in a community will occur by increasing residential, commercial, and industrial density in the existing urban core. At the beginning of the movement, the typical slogan was “build up, not out”.

The goal of a typical smart growth plan is to maximize the number of people living in areas close to the central city and combine residential

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development with commercial development, known as “mixed-use” development. By fitting more people into a confined area, the need to convert more undeveloped land into residential and commercial development is lessened.

Since the primary goal of “smart growth” is to increase the number of people living in areas close to the urban core, sacrifices have to be made to make space. Typically,

those sacrifices include loss of private open areas (i.e. backyards), extreme parking limitations, and gentrification of lower income neighborhoods, as older single-family dwelling areas are torn down and replaced by high-rise condominium towers. Make one trip through Portland and you can see it first/hand.



Pioneer Place, downtown Portland

In addition, since parking spaces are being eliminated, the primary transportation focus for smart-growth planners is based on mass transit and other multi-occupant travel. Despite the automobile continuing to be the overwhelming transportation choice for Oregonians, billions of dollars have been spent by planners and smart-growth politicians on public transportation in the hope that someday it will be the only choice for people to get to and from home to work, shopping, etc.

Fundamentally, the goal of smart-growth planning is to force people into more confined community spaces. People will live closer together and share residential areas, they’ll ride public transportation together in the same confined space, and they’ll shop in crowded community stores, all the while being in close quarters with strangers, everywhere they go, all the time.

Based on what medical researchers have discovered on the transmission pattern of the COVID-19 virus, isn’t it about time to have a serious discussion about whether smart-growth makes sense?

The facts about COVID-19 (at least what medical research has demonstrated, although there remain a number of unknowns) show that in many ways, it is a typical virus. The primary method of spreading the virus is through the air, passed by one sick individual to a healthy person through coughing, sneezing, breathing, talking etc. In essence, a sick person exhales, a healthy person inhales, and the virus is transmitted.

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What's most frightening is that the most recent research from the National Institute of Allergy and Infectious Diseases' Laboratory in Hamilton, Montana (how'd you like to work there?) demonstrates that the COVID-19 virus remains airborne for up to three hours. In other words, if you get in an empty elevator at your Pearl District condo tower, it doesn't mean that there isn't virus in the air.

The virus also appears to be transmitted by surface contact with dirty surfaces. Elevator buttons, handrails on stairs, doorknobs, tables, chairs etc. Current research from the United States Center For Disease Control (CDC) confirms that the virus may remain viable for hours or even days on particular types of surfaces.

Given the nature of the virus, the steps taken by most state and local governments, including in Oregon, have been to limit human interactions to the extent tolerated by the public. Governor Brown has enacted emergency orders imposing social distancing requirements, requiring people to wear facemasks in public spaces, and limiting gatherings, large and small, for both work and social. Whether you agree with the Governor's orders or not, the requirements of the order are consistent with the recommended methods of limiting the transmission of an airborne virus.



The Vera Katz statue on the Eastbank Esplanade, Portland

Let's examine COVID-19 in relation to smart-growth development plans. Under older, more established development models (i.e. the kind that most people prefer), cities were split into areas by the type of development authorized. Residential areas were kept for residential uses, commercial areas were for commercial development, and industrial areas were designed for industrial uses. Mixed-use development was discouraged.

For residential areas, development was predominantly single-family residential, with a home on a larger lot with a front yard, side yards, and private backyard. Apartments and other types of multi-family development

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IN THE WAKE OF COVID-19, IS SMART GROWTH REALLY SMART?

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were allowed, but were confined to designated areas, and represented a small percentage of residential housing in each community.

Applying the typical COVID-19 prevention methods to this older model of development, it's obvious that it would be easier to control COVID-19 spread with this type of development. Social distancing is much easier, families have private spaces that they can control to the exclusion of others, there are no high traffic common areas to travel through, and people could travel to and from their homes via their own cars, without getting on a crowded bus or train with a bunch of strangers. Every step recommended to control the spread of COVID-19 is easier when people don't spend their lives in a crowded, dense urban environment.

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As perverse as it seems, given the economic and social upheaval that has occurred due to the COVID-19 outbreak, we are actually quite fortunate that this is the virus that highlighted the issue. COVID-19 mortality rates are extremely low, and appear to have the highest impact on people with pre-existing medical issues. That's cold comfort for the families who have lost loved ones due to the virus, but imagine a virus with a mortality rate of 5%, or 10%, and that impacted children to a significant degree. The government and public response would make the COVID-19 orders look insignificant by comparison, and the ability of people to limit contact with outsiders would be even more important. It only makes sense that it would be easier to do so when it's easier for people to social distance – suburban and rural living make that possible. Maybe that's the “smart” way to plan for the future. ■

RURAL PROPERTY OWNERS BEWARE - YOUR FIELD MAY BE CONSIDERED A WETLAND

In 2016, two barns on Jesse Bounds' property in Lane County were destroyed by fire. Jesse operated a hay and straw business on the property, buying, selling, baling, and transporting hay both nationally and internationally. The loss of the barns was devastating to Jesse's business.

Fortunately, Jesse was financially able to rebuild the barns. He knew what needed to be done, since he had obtained all the necessary permits from Lane County when the barns were first constructed. It seemed simple enough – the barns had been approved, were destroyed by fire, and should be able to be rebuilt. Right? Unfortunately, it didn't turn out to be so simple.



Is this mud puddle really a “wetland”, or just a mud puddle?

Before Jesse could receive his approvals from Lane County, one of his neighbors contacted the Oregon Department of State Lands (DSL). DSL is the state agency charged with enforcing Oregon's wetlands law, including laws requiring a property owner to apply for a permit before filling or removing material from a “water of the state”, which includes most wetlands.

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After receiving the telephone call from the neighbor, DSL intervened, claiming that Jesse's property contained wetlands, including the area where Jesse's barns had stood before they burned. DSL demanded that Jesse obtain a removal/fill permit, which DSL is not required to issue, before he could proceed to rebuild his barns.

This news was quite a shock to Jesse. His property did not appear on any federal, state, or county maps as a wetland, and Lane County had already approved his earlier application to build the barns. In short, Jesse got his approvals, built the barns, and ran his business. When the barns burnt down, he tried to get approval to rebuild them, and only then did DSL claim the land was wetland, and only because a neighbor had complained.

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Unfortunately, what happened to Jesse is happening to property owners throughout western Oregon. In the last couple of months, OPOA has worked with farmers in Linn County, Benton County, and Washington County who have each received certified letters from DSL claiming they are working in “wetlands” and demanding that they schedule a site visit for DSL to come out and “help” them. To a farmer, nothing that DSL has done has seemed particularly “helpful”.

A primary source of the problem is the broad definition of “wetland” in Oregon law. When people think of a wetland, they think of a marsh, or a pond with cattails and heron. They don't think of a dry, open field that has no standing water, or the occasional mud puddle that forms after a hard rain in the middle of the winter. Sadly, the state definition of “wetland” allows DSL to designate a “wetland” based on the presence of “hydric soils”, regardless of the actual property.

Making things even worse, in a majority of cases, the “wetlands” that DSL finds are not listed as such on any map, and don't appear anywhere in the public record. Without hiring a wetlands expert to complete a wetland delineation of a property - which is an expensive proposition - most property owners (or purchasers) don't know that DSL considers their property to contain wetlands, and have no way of finding out before they begin the work or purchase the land.

Instead, the property owner only finds out after they've started working or after they've bought the land that some portion of it is considered a wetland. That's a “gotcha,” and an expensive one at that.

Solving the problem isn't easy either. In one case in Linn County, DSL has demanded that a farmer “restore” four acres of unmanaged blackberries and hawthorn bushes that the farmer cleared to plant hazelnuts.

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The land was part of a larger parcel purchased by the farmer to put into agricultural production. DSL's definition of "restore" was for the farmer to create a pristine wetland complete with DSL selected plants and design, at a cost in excess of \$100,000. When the farmer suggested that he just let blackberries and hawthorn take over, just as they were when he bought the property, DSL demanded he turn it into something it never was.

In another case, DSL told a property owner that 9 acres of his 11 acre parcel that was zoned for residential development was a wetland, and demanded the property owner purchase \$700,000 of mitigation credits to be allowed to "fill" the wetland. The "wetland" in question consists of a field that has been farmed for decades, and has been tilled for that same length of time. While the property may have been a wetland a century ago, it hasn't been that way since it was drained by a farmer, sometime in the mid-20th century. The cost of purchasing the credits has stymied the property owner's ability to build an affordable housing project on the site, something the city desperately needs.

These examples, and many others like them, demonstrate a need for reform. It is patently unfair for DSL to fine property owners for "illegal" fill/removal activities that cannot be discovered unless the property owner hires a wetland consultant before buying the property, or to make them create nature preserves in places where they never were.



*This "wetland" is in the Willamette Valley.
If you look closely, you can see the old clay tile.*

Property owners should be expected to consult state and local wetland maps before buying land or doing any grading or excavating, but they shouldn't have to pay thousands of dollars to have a consultant look at land that no rational person would consider to be "wetlands". If DSL wants to protect wetlands, they need to make it easy for property owners and real estate professionals to access information in DSL's database. If the land is not on the database, then DSL should not be able to consider it a wetland.

Finally, the legislature should change the definition of "wetlands" to reflect reality, and not some fantasy of restoring Oregon to its natural state predating the arrival of humans. OPOA will continue to work on these issues and try to fix them in upcoming legislative sessions. ■

VIEW FROM SCHOLLS



I got a call the other day from a longtime friend and OPOA contributor asking for an update on what OPOA is working on. She said that she just doesn't hear from us as often as she used to. Depending on how you get your information these days, there may be some truth to that, as I'll explain. But that certainly doesn't mean that we aren't as active as ever and working as hard as we ever have for Oregon property owners and property rights.

When I started at OIA nearly 25 years ago, we published Looking Forward six times a year. We had multiple people writing articles, mailing and printing each edition was cheap, and delivering by mail was the only way to communicate. Remember, this was before the internet/smartphones changed the way people get their information. Back then, people still received their news primarily through newspapers and magazines. Boy have times changed!

As the internet slowly but surely replaced newspapers, email replaced letters and other correspondence, and magazines went the way of the dinosaur, new communication tools were needed. Like any non-profit, our goal is to get news out to you as quickly and inexpensively as possible. If people prefer the internet, then that's where we need to be. So we created a website and cut down on the issues of Looking Forward we printed each year.

In 2019, we realized that the Looking Forward format was old and, quite frankly, not very appealing. We were told by media experts that it didn't matter how important or interesting the content, if Looking Forward was not appealing to the eye, it wouldn't be read. In other words, the design is as important as the message within.

Based on that advice, in 2019, we completely revamped the style of Looking Forward. We moved to a full-size, full-color layout, with more pages and more articles. The design and postage costs jumped significantly, but there's no sense putting out a magazine style newsletter that doesn't look nice and might not be read. We really like the new format, and hope you do too.

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At the same time, our old website had gotten really dated. You shouldn't have a 2009 website in 2019. As we made our name change from OIA to OPOA, we built a brand new website, www.oregonpropertyowners.org. We're thrilled with the new website, and all the features. You can access Looking Forward, watch important land use videos, view recent legislation, and keep track of what's current in Oregon land use. We update our website frequently, so there's always new content.

We also created a new Facebook page (Oregon Property Owners Association), and a YouTube channel (Oregon Property Owners Association). We post to the Facebook page weekly, and it automatically posts to our website as well. And the best part for a small non-profit like ours is that it's free! If you use Facebook, go to our Facebook page and click the "like" button. You'll get news much faster that way.

You can also subscribe to our YouTube channel. Every video we film goes directly to our YouTube channel. It brings a smile to my face when I get an email from someone who knew nothing about our organization and "discovered" us by seeing one of our videos on YouTube.

We're also excited about getting back on the road to host more of our Land Use Forums around the state. We had four Forums scheduled for 2020 across the state, but as you all know, COVID 19 put the end to that. We like seeing people in person, and our meetings always qualify for Continuing Education credits for Oregon realtors, so we'll keep doing that as soon as we can.

We still love the Looking Forward and all the work that goes into it, which is all done in-house. We'll continue to print and mail it to you, and we hope you enjoy reading it. At the same time, if you want to hear from us more frequently, which we LOVE, then check out our website, our Facebook page, and our YouTube channel. Our goal is to give you as much information on those pages as we gave you in print back when we were publishing Looking Forward every two months. ■



**Dave Hunnicutt, President
Oregon Property Owners
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