



CENTRAL OREGON LANDWATCH

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*Protecting Central Oregon's natural environment
and working for sustainable communities.*

In Support of SB 452

Central Oregon LandWatch (“LandWatch”) is a 501(c)(3) not for profit organization located in Bend, Oregon. Our mission is to help achieve a balanced and integrated approach to land use planning that will safeguard our natural resources and foster economically thriving communities. We encourage effective land use planning by: providing information and support for meaningful public participation; researching, drafting, and disseminating ideas on public policy; and pursuing litigation when necessary to enforce federal, state, and local land use and environmental laws and codes.

LandWatch was founded by Attorney Paul Dewey in 1986. Mr. Dewey served under two Oregon governors reviewing roadless areas and was on Governor Kitzhaber’s Eastside Forest Advisory Council for 6 years. He has over 25 years of litigation experience representing clients throughout Central Oregon in land use cases before local governments, the Land Use Board of Appeals, State Circuit Court, the Oregon Court of Appeals and the Oregon Supreme Court.

In 2009, LandWatch played a leading role in the campaign to designate the Metolius Area of Critical State Concern while also ensuring the private property rights of affected landowners were protected and respected. That session, LandWatch was also active in proposed destination resort reforms and efforts to protect Skyline Forest that allow for sustainable timber management, recreation, and residential development. LandWatch maintains an active database of well over 2500 supporters from all across Oregon.

LandWatch will continue its legislative advocacy for:

- Sound solutions that lesson the tension within our land use system
- Protections of special places and natural resources for this and future generations
- Fair, open, and accessible decision making processes.

It is out of concern for this third principle that I testify today in support of SB 452.

PROBLEM: Governments Are Denying Citizen Access Through Excessive Appeal Fees

SB 452 is needed because some local governments are denying citizens access to participation in land use decisions by charging exorbitant fees to appeal low level, quasi-judicial decisions. These actions are highly inconsistent with Goal 1.

An applicant often initiates the land use approval process by submitting an application to a hearings officer or planning commission at the local government level.

ORS 215.422(1)(c) allows fees to defray the cost of a local appeal from a lower decision-maker to the governing body. The fees shall be “reasonable” and “no more than the average cost of such appeals.”

Furthermore, ORS 215.416(11)(b) establishes: “The maximum fee for an initial hearing shall be the cost of local government of preparing for an conducting the appeal, or \$250, whichever is less.”

However, there is no limit to how much a local government can charge to appeal the lower level decision to the full board of County Commissioners or the County Court.

This appeal to the full Board of County Commissioners or County Court and its subsequent decision are requisite local steps for an applicant or interested party to undergo before having access to the more formal appeal process of the Land Use Board of Appeals (“LUBA”).

The fees being assessed in order to have an appeal heard before the full Board of County Commissioners or County Court vary widely from county to county and in some cases are so high as to deny access to the system to all but the most affluent.

Examples of widely varying and in some cases, exorbitant local filing fees include¹:

- \$250 in Washington County
- \$250 in Clackamas County
- \$6,850 in Crook County
- \$7,425 in Jefferson County
- \$5,011 in Deschutes County
- \$571 in Wasco County
- \$250 in Lake County
- \$200 in Benton County
- \$3,812 in Lane County

¹ Please see attachment to testimony with results from phone survey of all Oregon counties



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By comparison, once a party exhausts all local appeals and takes their case to LUBA, LUBA charges a filing fee of \$400.

Solution: SB 452

SB 452 limits the amount a local governing body (both counties and cities) may charge for an appeal fee to 10 percent of the original application fee or \$1,000, whichever is less.

SB 452 also allows for an additional reasonable fee to cover the preparation of a written transcript. SB 452 would limit the amount charged for a transcript fee to the actual cost of preparing the transcript, or \$500 whichever is less.

If a city or county charges an appeal fee and or transcript fee and then declines to hear the appeal, SB 452 establishes that the city or county must refund those fees.

Finally, SB 452 prohibits a city or county from charging an additional appeal fee of its final decision in when that decision gets appealed up to LUBA. (LUBA charges \$400)

This information has been provided by Central Oregon LandWatch. Please contact Jonathan Manton (541) 729-2923, or jmanton2008@gmail.com for any inquiries or additional information.



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