

Keep Our Water Safe Committee

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Testimony submitted in opposition to Senate Bill 538 Senate Committee on Rural Communities and Economic Development

Dear Committee members:

For five years my wife and I represented many neighbors who live on small acreages in the south Salem hills (Spring Lake Estates, Twin Hills Estates, and Liberty/Stonecrest areas). About 75 people contributed over \$30,000 to the Keep Our Water Safe committee, and many more supported the committee's efforts.

These efforts were directed at protecting local ground and surface water from a 217 acre, 43 lot, subdivision that threatened wells and the springs that feed a community-owned lake. The subdivision was to be built on high-value farmland under a Measure 37 waiver.

After being approved by the Marion County commissioners on a series of 2-1 votes, this development was stopped after a Circuit Court judge found that the two commissioners in favor of paving over farmland had misinterpreted the law.

So we and our neighbors have experienced first-hand the problems that arise when county land use decisions are made on a "political" basis -- using this term broadly to mean preconceived biases unrelated to the facts of a land use situation.

We strongly urge the Committee to reject SB 538, which calls for a change to Oregon's land use laws that would allow two or more counties to rezone agricultural and forest lands. This would work against fairness and equity for all Oregonians affected by land use decisions.

Many counties in Oregon have three member commissions, as Marion County does. This means that one person often holds sway over land use decisions, casting the deciding vote in favor of additional development even in the face of factual information (in our case, a water study conducted by the county's own hydrogeology experts) that shows the folly of permitting a subdivision to sprout on farmland.

What SB 538 would do is politicize the Oregon land use planning system to a even greater degree. Citizens in general, and local residents in particular, are almost entirely shut out of the rezoning process. The Land Conservation and Development Commission is required to only hold one public hearing in each county on a proposed regional planning approach to farm and forest lands. Seemingly county governments wouldn't have to involve the public at all.

Here's our prediction of what would happen if SB 538 became law:

Owners of agricultural and forest lands who dream of profiting from alternative zoning would lobby county commissioners to rezone their land via the SB 538 "regional

definition” process. This would largely occur outside of public view, making a mockery of the fair and equitable land use planning process that people expect will happen when they purchase property.

For example, several families active in the Keep Our Water Safe committee bought small acreages and then built homes. They knew adjacent land was zoned EFU (exclusive farm use). They trusted that if the agricultural land ever were to be rezoned, this would happen via an open, fair, transparent, and deliberate planning process. But such wouldn't be assured if SB 538 were to be applied to Marion County.

All it would take to initiate a redefining of farm and forest land is for a majority of members on two county commissions to join together and say, “Let's go for it.” Again, neighbors who would be affected by a rezoning of resource lands would have very little opportunity to express their concerns and knowledge of the problems that large-scale residential development would have on the area -- including, but not limited to, drying up of residential wells.

It appears to us that the regional planning provision of SB 538 is intended, in part, to be an end-run around Measure 49 and the clearly expressed will of Oregon voters -- who said loud and clear at the ballot box in November 2007, “Protect this state's farm and forest land from unneeded development.”

We want to stress that those who support the Keep Our Water Safe committee, which includes the vast majority of residents in our area, are not radical environmentalists. Our supporters are Republicans and Democrats, conservatives and progressives, older retired people and youngish working types.

What united us through years of often intense and time-consuming efforts to combat a subdivision on farmland that lacks adequate water for large-scale residential development is our shared belief that those who would be most affected by a land use decision need to be listened to by planners and other land use decision-makers.

It is our understanding that Oregon already allows for regional variations in what sometimes is erroneously called a “one size fits all” planning system. Further, HB 2229, which became law in 2009, allows a county to review farm and forest lands which may be inaccurately designated.

So it seems to us that SB 538 is a solution desperately looking for a problem. In truth, there is no problem -- except in the eyes of those who want to circumvent the above-mentioned will of Oregon voters in the name of short-term profit.

SB 538 wouldn't promote more citizen involvement in local land use decisions. Instead, it would give politicians a green light to attempt to circumvent existing zoning of resource lands. Neighborhood groups like ours would be on the outside looking in as would-be subdivision developers bend the ear of county commissioners, urging them to rezone their property so it could grow asphalt and concrete rather than crops or trees.

Please keep in mind that for every property owner who considers that his or her farm/forest land is wrongly zoned and wants to turn it into a subdivision, there are many

more neighbors of the property who also have property rights -- such as the right to not have their wells go dry from excessive development.

Sponsors of SB 538 appear to be focused on unfairness in the land use system as perceived by the first relatively small group of people. We can assure you, from extensive contacts with large numbers of neighbors, that many more people are concerned about another type of unfairness.

This occurs when local land use decisions are made not on the basis of facts and statutory standards, but from preconceived notions of decision-makers that stem from their political and philosophical beliefs regarding property rights, environmental protection, and other issues.

Obviously there's nothing wrong with having such beliefs. However, the land use system needs to be founded on a "rule of law" that is seen as applying to everyone equally. Our court system works as well as it does because judges generally are viewed as being able to let universal legal standards guide their decisions, not their personal biases.

So we can assure you that allowing county elected officials to initiate changes to how farm and forest lands are defined on a local level will be viewed by most people in our area as a movement away from fairness and equity for all Oregonians.

Oregon's land use system currently is working well. It is protecting irreplaceable farm and forest land, while allowing considered, carefully thought-out regional variations in land use practices. It would be wrong to pass SB 538 and encourage a politicalization of land use decisions. This isn't the direction Oregon needs to go.

Sincerely,
Brian Hines

submitted by email