CENTRAL OREGON LANDWATCH

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

June 3, 2013

Representative Chris Garrett, Chair
House Rules Committee
State Capitol
Salem, OR 97301

**Re: Opposition to HB 3536**

Dear Chair Garrett and Members of the House Rules Committee:

I am writing on behalf of Central Oregon LandWatch in opposition to the above bill. Central Oregon LandWatch is a land use and conservation organization that has worked for over 25 years in Central Oregon, addressing development and conservation issues on both public and private lands. This letter is not only to address HB 3536 but also to answer responses of the sponsor of the bill, Representative Huffman, that have been sent to people opposed to this bill. There are a number of reasons why this bill should be rejected.

**Last-Minute, One-Off Legislation.**

This bill is the latest in a series of "one-off" special entitlements bills proposed to the Oregon Legislature over the past several years that are designed to benefit one family or business and to avoid application of state laws and local county codes (that would otherwise have provided public processes and protections to people who would be impacted by the subject matter of the legislation).

It is the kind of special interest legislation that breeds public distrust and cynicism and that undermines public confidence in our legislative and legal systems. It also violates fundamental notions of fairness.

Taking advantage of this late introduction of the bill in this legislative session, the supporters of HB 3536 have released misleading information that seriously misrepresents both the character and the intent of this legislation. It incorrectly states that this bill eliminates the possibility of resort development in the Metolius Basin, as if the purpose of the bill is to protect the Metolius. The Metolius Basin was protected from resort development in 2009 and this bill would do nothing to further that. Because so little time is available for the Legislature to consider this bill, there is insufficient time for the public to expose all such inaccuracies.

This bill is somewhat unique in that it attempts to hide the fact that special entitlements are being given to one family. Past iterations of this bill (such as HB 3372 in 2011) clearly referred to the "Cyrus Heritage Farm." HB 3536 proposes to create a seemingly generic "Heritage Guest Ranch," but the definition of that resort is obviously designed only to apply to the Cyrus family. It is limited to Deschutes County (Section 1, page 1, line 14), to situations where two-thirds of the land is mapped as eligible for destination resort siting (Section 1, page 1, line 21), specifies that a portion of the land adjoins Whychus Creek (Section 1, page 1, line 23), etc. Also unique about this bill is its timing. It was released only late in the session when there would be little time for the public to respond.

**One-Off for Water Rights.**

Yet another unique quality to HB 3536 is the extent to which it exempts the Cyrus family from Oregon law. Much of the one-off legislation in the past has been in the context of land use law, but HB 3536 also extends to state water law, granting the Cyrus's special water rights:

> "(f) If the developer or owner transfers a surface water right to an in-stream use of water, the developer or owner is entitled to receive a ground water right in an equal amount for the use of the developer's or owner's choice upon request to the Water Resources Department." Section 3(3)(f), page 3, lines 21-24.

In other words, the Cyrus family, by statute, would be entitled to a ground water right if they transfer a surface water right instream, regardless of whether the surface water right was used or not, without regard to whether the surface water right is so junior as to be essentially worthless and without regard to the existing 200 cfs cap in the Deschutes Basin which applies to other groundwater applications. Also, even if the surface right was limited to certain uses, the ground water could be for any use of the "owner's choice."

**Changes in 2009 Metolius Legislation Allowing for TDOs.**

Legislation in 2009 established transfer of development opportunities (TDOs) for the hopeful resort developers in the Metolius. Note that the term TDO was used instead of the traditional Transfer of Development Rights (TDRs) because no "rights" for development existed. Not only had no resorts been approved by Jefferson County, but no maps identifying where resorts could be sited had even been approved and no applications for resorts had even been submitted to Jefferson County. Under that legislation (HB 2228, now found at ORS 197.430 Notes), the owners of the TDOs could transfer them elsewhere to allow development of a "small-scale recreation community."

The negotiations for this TDO were extensive and very specific. Such a small-scale recreation community had to be located on lands of 320 acres or smaller and involve 240 or less units whose primary purpose would be overnight units. Additionally, a developer would have to pay $1.5 million in off-site restoration of public lands. The development specifically could not

include a golf course and would have to have at least 50% open space. The development would further be required to use reclaimed water and utilize sustainable designs for its units and restaurant. It was further required that a nonprofit stewardship organization be set up to carry out conservation work in the area.

HB 3536 essentially erases all those provisions by making them not applicable to a "heritage guest ranch." Those provisions of HB 2228 would be applicable to everyone except the Cyrus family. It is inappropriate not only to grant this one family this special exception, but it is also inappropriate to essentially gut all of the carefully crafted conditions of HB 2228 for TDOs.

**Open-Ended, Vague Provisions.**

The bill has so many open-ended provisions that its impacts are difficult to predict. The location of the proposed development isn't clear where it can be on land zoned EFU, surface mining, rural residential or multiple-use agriculture and on land in ownership "by related family members or by entities owned by related family members." (Section 1, page 1, lines 8-9 and 19-20) Is there a significance to the term, "related" family member?

The "Development area" is defined as "certain property" within a heritage guest ranch that is not more than 50% of the total heritage guest ranch. (Section 1, page 1, lines 10-11) Not only is it not clear what lands are in the heritage guest ranch, it isn't at all clear where the developable lands are. Why doesn't the bill just come out and clearly identify the affected lands?

The proposed development is also not clear where the bill merely states that it "may include" various things which are defined as "including but not limited to." Section 3(2)(b), page 2, lines 19-20.

Roads are permitted as outright uses not only in the development area but "on nearby lands." Section 3(4). What roads would there be on whose lands?

Section 3(6) of the bill, page 4, lines 6-9, provides that the developer or owner "may submit" an application for a master plan and, if that is done, the county "shall approve" it if the developer or owner merely "demonstrates its intention" to only "substantially comply" with such unquantifiable standards as promoting energy conservation and expanding tourism opportunities. Section 3(7), page 4, lines 10-34 (emphasis added). This bill not only takes away local county control but forces the County to go through a meaningless exercise of approval.

**Representative Huffman's Responses to Opponents.**

For the benefit of you and the other legislators, I am attaching a copy of Representative Huffman's apparently standard responses to opponents of the bill. These responses are incorrect or disputed in a number of respects.

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1. That this legislation is a proper process.

Representative Huffman in his response states:

> "The contents of HB 3536 have not been sneaky, last minute, or favoritism of a constituent. The process being followed is the state process available to individuals and developers in Oregon."

The true "state process available to individuals and developers in Oregon" is that provided by state and county laws and rules providing land use and water law application processes. The "process" is not for everyone to go to the Legislature for a special bill. It is not clear how Representative Huffman can say this is not "last minute" and "favoritism."

2. That the land is limited to RR-10 zoning.

Representative Huffman asserts that the "property in question is zoned RR-10 with a destination resort overlay." That is inconsistent with the language of his bill which at Section 1, page 1, lines 19-20, provides that the bill applies to land "either zoned for exclusive farm use or subject to a local zoning classification that allows multiple-use agriculture, rural residential use or surface mining." The bill is written with such broad application because the Cyrus family apparently has land in all of these zones.

3. Past designations of "open space."

In response to the argument of opponents that some of the land proposed for development in this bill could include land that was previously designated as "open space," Representative Huffman asserts that the "'open space' label is a temporary designation for a multi-phase development." Representative Huffman's claim that this "open-space" designation is merely a "label" for "a temporary designation for a multi-phase development" is a disputed characterization, to say the least. But in any event, the determination of the legal effect of the open space designation properly rests with Deschutes County which should be interpreting its own code and land use decisions. Representative Huffman's bill takes away the County's authority to do so. It also resolves a legal dispute by legislative fiat instead of by the more appropriate County quasi-judicial process.

4. Current Cyrus family development in the area.

Representative Huffman in his response to the opponents claims that the current development of the Cyrus family "has had no demonstrable negative impacts on neighboring property" and that "the expansion will have negligible impacts." With all due respect, the neighbors of the Cyrus family obviously disagree. Again, the proper forum for an assessment of impacts and compatibility is Deschutes County, not the Oregon Legislature.

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5. The Cyrus family successes/failures in land use applications.

Apparently in response to opponents pointing out that the legislation would allow the Cyruses to do what Deschutes County has heretofore not allowed the Cyrus family to do, Representative Huffman states that "the Cyrus family has been successful in most all of their applications." That is certainly a disputed statement with regard to the land use applications particularly associated with resort development. But, in any event, if Representative Huffman is correct then what need is there for this legislation? Deschutes County has well-established processes for handling destination resort applications and the Cyrus family should follow them as everyone else in Deschutes County has to do.

6. Water rights and impacts.

It is not clear why Representative Huffman refers to water permits being granted in 1991 and there is no basis for his claim that there will be "no additional water impacts." Given the open-ended nature of the development, allowing at least one more golf course, 480 residential units, over 100 overnight units (which includes single-family houses) and other development, it is inconceivable how the development could not have additional water impacts.

7. Impacts on the wildlife.

With regard to wildlife impacts, Representative Huffman makes the following assertion:

> "Wildlife inventories of the developed versus the undeveloped property clearly indicate a significant increase in wildlife where development has occurred."

This assertion by Representative Huffman that development actually benefits wildlife might be disputed by wildlife biologists and the Oregon Department of Fish and Wildlife, among others. The proper forum for that assessment is again with Deschutes County which would review wildlife impacts of any proposed resort development.

8. History of earlier platted subdivisions.

Representative Huffman's reference to the property as being a platted subdivision before many people bought their homes in the area is both incorrect and irrelevant. There is no existing right for the Cyrus family to build any such platted subdivisions and the proposed development in HB 3536 is a significant threat to surrounding property owners and their reasonable expectations for what the Deschutes County Code would allow to be developed next to them.

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Thank you for this opportunity to comment.

Very truly yours,

PAUL DEWEY,
Executive Director

cc: Rep. John Huffman
Rep. Brian Clem
Rep. Tina Kotek
Sen. Peter Courtney
Sen. Diane Rosenbaum
Sen. Richard Devlin
Sen. Betsy Johnson
Sen. Ginny Burdick
Sen. Jackie Dingfelder
Richard Whitman

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Bill,

The contents of HB 3536 have not been sneaky, last minute, or favoritism of a constituent. The process being followed is the state process available to individuals and developers in Oregon. I have worked with state officials and the Cyrus family since coming into the legislature in 2007. The following are some of the facts I am familiar with from those years of work....

- The property in question is zoned RR-10 with a destination resort overlay. The "open space" label is a temporary designation for a multi-phase development. The property has never been zoned agriculture or timber and has always been a non-resource property, set aside for development.
- The current development has had no demonstrable negative impacts on neighboring property, and the expansion will have negligible impacts.
- The "huge" outcry was from a minority that seem to oppose development proposals in general, and the Cyrus family has been successful in most all of their applications. Most notably the ability to successfully defend against attempts to have the property removed from the resort map.
- Water permits were granted in 1991 and have already been accounted for in the State's groundwater inventories. There will be no additional water impacts.
- Wildlife inventories of the developed vs. the undeveloped property clearly indicate a significant increase in wildlife where development has occurred.
- The property was a platted subdivision with a resort overlay when many of the surrounding property owners bought and chose to build their homes on this nearby or adjacent property.

HB 3536 uses the Transfer Development Credits allowed under a 2009 bill that was created out of the Metolius Basin Area of Critical Statewide Concern (ACSC). Though I understand the concern that neighbors might have, due to the unknowns of new development, there is nothing happening on HB 3536 that is outside of a normal state land use process. I also understand that some will challenge proposed developments, as is their right. However, it is also the right of developers to work through proper and legal channels to gain project approval.

Sincerely,

Rep. John Huffman