

# **Written Testimony in Support of HB 4113**

Chair Marsh, Vice-Chair Breese Iverson, Vice-Chair Anderson, and Members of the Committee:

Thank you for the opportunity to submit written testimony in support of HB 4113.

## **1. Response to the Assertion That We “Did Nothing for 17 Years”**

From 2009 through 2020, my business partner Shane Lundgren and I actively pursued placement of the Transfer of Development Opportunities (TDOs) created by the 2009 legislation. Our efforts spanned multiple counties, including Lincoln, Deschutes, Wasco, Clatsop, and Columbia, and involved discussions with Mt. Bachelor, Mt. Hood Meadows, Weyerhaeuser, Fidelity Investments, Bandon Dunes, and numerous private developers.

We worked with DLCD staff, county planners, legislators, and legal counsel. Site visits, feasibility work, and legislative amendment discussions occurred over many years. The Legislature extended the TDO mechanism multiple times, reflecting recognition that it had not yet functioned as intended. The TDO ultimately expired during the COVID-constrained 2020 session.

The mechanism proved structurally infeasible because local jurisdictions reverted to standard land use processes, undermining the intended transfer framework.

## **2. Clarification Regarding the 25/10 Narrative**

Early 2009 draft discussions referenced a limited 25-residence / 10-lodge concept.

However, the Metolius ACSC Management Plan provided that if the Legislature enacted a bill allowing development of a sustainable eco-community outside the ACSC — which occurred through HB 2228 — then in-basin development would be limited to two forest dwellings.

Once HB 2228 established the TDO framework, the 25/10 concept was not available as a practical option. We did not experience a post-enactment election between two development pathways. We relied on the substitute framework enacted by the Legislature.

For clarity, HB 3298 established the Area of Critical State Concern, and HB 2228 created the TDO framework.

## **3. What HB 4113 Does**

HB 4113 does not undo Metolius protections. The Basin remains permanently protected.

HB 4113 seeks to:

- Secure permanent conservation of the 627-acre parcel through title transfer.
- Align the substitute framework with documented workforce housing shortages.

- Attach development to communities that need housing.
- Include appropriate land-use guardrails.

If Oregon is resolving unfinished business from 2009, it should do so in a way that addresses today's housing needs.

#### 4. A Personal Perspective on Housing

I have three adult children who are educated and working hard to build their lives. Like many younger Oregonians, they increasingly face a constrained housing market.

Oregon has protected extraordinary landscapes. We should also ensure we are creating room for people. HB 4113 aligns conservation with responsible housing supply.

#### 5. Integrity of State Commitments

The conservation outcome of 2009 was permanent. The substitute framework intended to balance that outcome never functioned as intended.

HB 4113 offers a responsible path to complete that framework — delivering conservation, housing alignment, and resolution.

I respectfully request that the Committee allow HB 4113 to move forward for refinement.

Respectfully,

Jim Kean

## Dutch Pacific Resources TDO activity

- November 2009      Term sheet with Castle Cairn (Lincoln County). Buyer unable to fund due to uncertainty with entitlement process at State level.
- January 2010      Met with Equilibrium Capital regarding possible sale of TDOs for environmental credits. Was introduced to Ecotrust as an outcome of the meeting.
- March 2010      A number of meetings with Mt. Bachelor owner Powdr Corporation, and the USFS regarding TDO siting on land adjacent to the ski area. Traveled to Utah to meet. USFS was not in favor us allowing TDOs on Federal land. Same discussion with Hoodoo ski area but less progress.
- June 2010      Issue of which counties were eligible came up for discussion as we were in the midst of the great economic downturn. We tried to get the TDOs included in Deschutes county as we needed to be able to use where there was a viable market and financing.
- July 2010      William Smith (Old Mill developer in Bend) undertakes due diligence on TDOs for use in Deschutes County. Politically powerful in Central Oregon and gets negative feedback from the various State officials.
- August 2010      Discussion with Forrest Rheinhart, manager of the Younglife ranch (Big Muddy) about TDO use on their property. Again found that they were not workable.
- September 2010      Begin discussion with Aspen Lakes, near Sisters (Deschutes County) about selling them the TDOs.
- October 2010      Met Stimson Lumber about selling TDOs for use on their timberland.
- March 2011      Correspondence with DLCD to ensure that TDOs were being pursued by, and thereby “owned” by Dutch Pacific. This action effectively eliminated the Colson’s from making a claim to any of the TDOs as they were not actively pursuing using them.
- March 2011      Developed Conservation Easement concept for TDOs and began sharing with Perkins Coie clients as well as other HNW parties interested in this.
- April 2011      Initiated discussions with Hank Hickox, CEO of Bandon Dunes Golf course.
- June 2011      Discussion with Duncan Campbell from Campbell Group about TDO use on their land or as a Conservation easement.
- September 2011      Met Spencer Beebe, CEO of the EcoTrust in Portland who had an idea for a carbon offset with TDOs. Tax shield for taking the TDOs off the books and stopping development was the idea he had.
- December 2011      Dialogue with Cylvia Hayes (Governor Kitzhabers partner) about creating a conservation easement.

- December 2011      Discussion with land investor/developer Dike Dame about sale of TDOs.
- January 2012      Meetings with developer Don Bauhofer (Tetherow in Bend) about sale of TDOs.
- March 2012      Meeting with Curry County Commissioners about placement of TDOs. Positive response. However, interest died after examining how to implement.
- March 2012      Partnership proposal received from Chris van der Velde (investor at Tetherow) regarding use of TDOs on coastal property pending due diligence.
- April 2012      Discussion with Mick Humphries, developer of Ranch at the Canyons, for TDOs.
- April 2012      Meeting with Scott Dahlquist of Weyerhauser (introduced by Steve Pfeiffer of Perkins Coie) regarding land owned near Cannon Beach for TDOs.
- July 2012      Looked at 400 acres in Tillamook County (Tierra del Mar) but was discouraged by the County Commission due to them not being on the list of available counties.
- January 2013      Re-engage with Steve Pfeiffer from Perkins Coie to attempt to “list” the TDOs. Difficult to describe how they could be utilized, no path forward.
- March 2013      Begin working to entitle Aspen Lakes Golf (Deschutes County) with TDOs. Rep. Huffman looks at ideas.
- May 2013      Rep. Huffman drafts legislation to allow TDOs to be utilized on Aspen Lakes property, HB3536.
- May 2013      Sean Keys of Metropolitan Land visit me at Aspen Lakes to review property for potential purchase and TDO use. Doesn’t get comfortable with TDO viability.
- May 2013      Public Hearings on Aspen Lakes begins. COLW gears up constituents to fight.
- Summer 2013      Work on getting legislature to approve Aspen Lakes as TDO site. Rep Huffman and Rep Helm.
- September 2013      Meetings with Nick Lelack, Deschutes County Planning Director.
- Autumn 2013      DLCD and public input on Aspen Lakes as TDO site.
- October 2013      Bill Smith/Todd Taylor reach out regarding TDOs on their property west of Bend. Feel that they have a better working relationship with the community than the Cyrus family of Aspen Lakes.
- November 2013      Multiple meetings and hearings on Aspen Lakes and TDOs. Full time work on this and it dies in December.
- Winter 2014      Series of meetings with Wasco County land use planning department about TDOs. Received a comprehensive map with a list of potential properties that included Camp Baldwin (Boy Scouts), SDS Lumber (+10 parcels), and Ken Thomas (5 parcels). Spent most of 2013 and 2014 reviewing list as well as doing site visits within Wasco County.

January 2014	Work with Rep Clem and Steve Pfeiffer on amending TDO Bill  Meeting with Brooks Resources, Mike Hollern, to discuss how to utilize the TDOs.  Meetings with Fidelity investments regarding placement of TDOs on their 33,000 acre property adjacent to Bend.
Spring/Summer 2014	Work on amending the TDO legislation to clarify the parameters for the utilization in Deschutes County. Kirk Schueler, now CEO of Brooks Resources working as our consultant.
September 2014	Finalize amendments to HB 3313
October 2014	Contact with Erik Kancler regarding Landwatch position and development for Deschutes County.
Nov 2014	Visited Tillamook County properties owned by a client of Eileen Day a Portland CPA. None of the properties were a good fit for the TDOs.
Winter 2014/15	Discuss political position with Rep Harrison, Lobbyist Kancler, Steve Pfeiffer, and Rep Clem.
January 2015	Steve Otos from Marcus and Millichap circulated the TDOs as an opportunity to their local land development clients. All passed because of the logistical challenges with the TDOs.
February 2015	Governor Kitzhaber resigns in a scandal.
March 2015	Work on Legislation to amend Counties for TDOs.
April 2015	Begin work to add Clatsop County to TDO list. Outreach to 1000 Friends regarding language in the Bill.
June 2015	Steve Otos left Marcus and Millichap. He put the TDOs in front of one of his development partners that had 3 sites in Clatsop County. Also reviewed Tillamook County land owned by Weyerhaeuser.
June 2015	TDOs extended. Jim Rue, Director of DLCD states that Oregon "owes DPR resolution" on the TDOs and starts to help with getting the agency to participate in the details.
July 2015	News article on Clatsop inclusion.
August 2015	Begin working on the Bradwood entitlement.
August 2015	Dialogue on TDO sale with Greenwood Resources – Jeff Nuss, CEO
September 2015	Discussion with Weyerhaeuser on TDO sites in Clatsop County.
Q3-4 2015	Worked extensively with Clatsop County land use and planning to prepare a map and socialize the TDOs. Numerous trips to Clatsop as well as meetings.

Q4 2015	Worked with Todd Dugdale, planning director of Columbia County as well as Angie Brewer from Wasco County.
October 2015	Introduced to Ken Leahy, owner of the Bradwood Landing site on the Columbia River.
Nov 2015	Introduced to Kevin Leahy of Executive Director of CEDR – Clatsop's economic development arm.
Nov-Dec 2015	Work on Clatsop County entitlement specific to Bradwood Landing.
Mar- May 2016	Steve Otos put together a study on Columbia County and Weyerhaeuser lands. Engaged engineers, architects, private development capital. Unable to bring the plan to completion given structural issues with the TDOs.
Spring 2016	Full time work on sale of TDOs to Bradwood Landing. Land use work in Clatsop County.
May 2016	Introduced to Zachary Blank of Boerum Hill Houses, a large land developer in Oregon. After initial enthusiasm declined given structural difficulties with the TDOs.
Summer 2016	Work on Bradwood Landing design details as well as try to get the County/State to come to consensus on how to implement the TDOs.
Aug 2016	Stoel Rives memo by Ken Leahy on the complications and issues of TDOs related to Clatsop and Bradwood Landing.
Fall 2016	Entitlement work with Perkins on Bradwood.
Jan 2017	Dave Hunicutt begins to work as our lobbyist for Bradwood Landing.
June 2017	Met with Matthew Drake of Mt Hood Meadows to talk about placing the TDOs in Wasco County. In the end, they had a difficult time seeing where to place them and were concerned about the inability to implement.
1 <sup>st</sup> half 2017	Work during the 2017 legislative session.
Aug 2017	Letter from Clatsop County land use outlining why the TDOs aren't really exempt from normal Oregon land use rules.
2015-2017	Worked with SDS Lumber during this time. They were receptive to a partnership but in the end their properties weren't economically suitable or eligible within the TDO requirements. The Boy Scouts finally took a meeting in 2017 but declined as the logistics were daunting to them. Ken Thomas had really viable properties and we talked quite a bit but in the end he couldn't get comfortable with the mechanics of the TDOs and how to make them work.
Oct 2017	Was introduced to Kurt Stonex of Olsen Engineering of Vancouver, WA. Olsen has a large bank of existing clients who do large scale development in WA and OR. They are very knowledgeable in the area of entitlements, etc... Introduced

to Arthur Ryapolov of Hurley Development. They were unable to get their client base comfortable with the mechanics of the TDOs. Tried to work with DLCD to provide a clarifying letter so that Counties wouldn't have to interpret an untested concept.

- Oct 2017      Introduced by Mike Holzgang of Colliers to Jim Whitney of Whitney Land Company in Eastern Or. Jim represents a clientele of large landowners that would be potentially interested in entitling their land with the TDOs. Same issues working with various counties and the efforts petered out.
- Q3 2018      Based on input from Clatsop County that, TDOs notwithstanding, DPR would still need to go through the regular Oregon land use process, that effectively tabled our efforts to find a home for the TDOs. This started our process of seeking legal compensation.
- Sept 2018      City of Bend looks to utilize TDOs for entitlement of 640 acres on east side of Bend.
- 2021      State to renew TDOs and allow utilization on Jefferson County property – Rep Bonham.