

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

March 24, 1999 Hearing Room D

1:00 P.M. Tapes 79 - 82

MEMBERS PRESENT: Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Richard Devlin

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

STAFF PRESENT: Kristina McNitt, Administrator

Danielle Hamilton, Administrative Support

MEASURE/ISSUES HEARD: HB 2419 Public Hearing.

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 79, A		

004	Chair Welsh	Calls meeting to order at 1:15 and opens a public hearing on HB 2419.
<u>HB 2419 PUBLIC HEARING</u>		
005		Staff distributes (EXHIBIT A, B, C, D).
007	Kristina McNitt	Summarizes HB 2419.
019	Rich Angstrom	Managing Director, Oregon Concrete Aggregate Producers Association (OCAPA). Testifies in support of HB 2419. Discusses the purpose of HB 2419. Explains the two separate issues in HB 2419.
069	Angstrom	Comments on maintaining mining privileges. Discusses how it is known when a mining activity is complete.
090	Lloyd Town	Vice President, General Manager, and Owner of C.C. Missal Company. Testifies in support of HB 2419. Discusses the Missal Company and gives examples of how the company works.
140	Town	Provides example of a small quarry. Discusses the City of Tigard verses Stevens case.
190	Town	Explains the differences in the type of rocks that are quarried.
215	Angstrom	Comments that as he and Town testify they will answers any questions not related to current court cases without using the names of quarries involved in litigation.
237	Scott Ericson	Explains existing case law. Urges the committee to pass HB 2419. Comments that the state and public need quarried rock.
288	Ericson	President, Esco Quality Concrete (EQC). Testifies in support of HB 2419. Discusses the EQC company. Expresses Oregon's need for quarried rock. Addresses the complaints that the committee may hear. Stresses that the quarries have to go somewhere.
339	Rep. Taylor	Asks Ericson if a reclamation can be delayed indefinitely as long as the annual permit is paid.
350	Ericson	Answers as he understands yes. Asks for clarification of the question.
367	Rep. Taylor	Asks, if under HB 2419, a reclamation can be delayed simply by the purchase of an annual permit.

372	Angstrom	Answers there are many procedures and rules that apply. Comments on those rules.
411	Ericson	State, there is an economic incentive for quarries to reclaim.
TAPE 80, A		
002	Angstrom	Comments on two points; <ul style="list-style-type: none"> • Value of land • Best use of the property Gives examples of the two points.
019	Town	Comments that delaying reclamation is not economically sensible.
037	Rep. Taylor	Asks if HB 2419 would allow reclamation to be delayed by the purchase of an annual permit.
040	Angstrom	Answers practically speaking no it will not.
046	Rep. Taylor	Expresses concerns with HB 2419. Expresses frustration with not being able to receive information on the potential of delayed reclamation. Discusses section 2 of the -3 amendments (EXHIBIT B). Asks how can it be assured that operating permits will not be granted unless the mining site is properly zoned.
069	Angstrom	Reads the ñ3 amendment and explains the specific wording (EXHIBIT B). Discusses the counties that will preserve their own reclamation authority.
110	Rep. Merkley	Asks about HB 2419 -3 amendments.
118	Angstrom	Refers the question to DOGAMI.
129	Chair Welsh	Asks if Angstrom wants to overview the -3 amendments or refer them to DOGAMI.
131	Angstrom	Answers that DOGAMI will be able to add to the discussion of the -3 amendments.
143	Gary Lynch	Oregon Department of Geology and Mineral Industries (DOCAMI). (EXHIBIT E) Recaps the progression of HB 2419 since the last public hearing before the House Water and Environment Committee. Discusses the term "abandonment." Notes the abandonment language has been tailored to follow the national model.

185	Knudson	<p>Attorney Generals Office, representing DOGAMI. Explains the language of "abandonment" in HB 2419. Expresses two major concerns with the current "abandonment" language;</p> <ul style="list-style-type: none"> • Requires operator reclaim a site • Requires bi-annual excavation
235	Knudson	Comments on the ñ3 amendments EXHIBIT B .
270	Knudson	Comments on regulatory authority of Columbia County. Points out a typographical error section 9 of the -3 amendments.
288	Chair Welsh	Asks for clarification on the error with section 9 of the -3 amendments.
290	Knudson	Clarifies the proper reference. Discusses effective dates and retro-active effectiveness. Overviews section 10 and 11 of the -3 amendments.
315	Chair Welsh	Asks if Knudson has seen the -5 amendments EXHIBIT C .
318	Knudson	Answers no.
322	Chair Welsh	Points out the emergency clause in the -5 amendments.
326	Knudson	States an emergency clause is fine.
328	Rep. Devlin	Asks Lynch what the impact would be if the quarry litigation stands, in terms of non-conforming uses, and HB 2419 is not passed.
350	Lynch	States that a significant number of quarries are non-conforming in some area.
384	Gaig Greenleaf	Deputy Director, Transportation Development Division, Oregon Department of Transportation (ODOT). Discusses ODOT mine sites.
435	Greenleaf	Comments on the different classifications of ODOT is mine sites.
TAPE 79, B		
008	Rep. Devlin	Asks if the closed mines are considered abandoned.
011	Greenleaf	Answers that some of the mines would be considered abandoned.
020	Rep. Kruse	Asks if ODOT has any mines they have decided to no longer mine

023	Greenleaf	Answers yes, but the inventory work has not been completed.
030	Rep. Kruse	Asks if ODOT has mines with available resources that will never be mined completely.
038	Greenleaf	Answers no
043	Rep. Kruse	Comments on concerns with the term "abandonment."
052	Rep. Kafoury	Asks if there has ever been a court case that challenged any ODOT sites.
055	Greenleaf	Answers yes. Provides an example of the City of Mosier case.
061	Rep. Kafoury	Asks for more detail in the example made by Greenleaf.
065	Greenleaf	Clarifies the City of Mosier litigation.
068	Rep. Kafoury	Asks for the rational behind allowing the Mosier site to stay open.
072	Greenleaf	Answers that he believes it was a jurisdiction problem.
075	Rep. Kafoury	Asks if there had been other court cases.
078	Greenleaf	Answers that there was a case involving a mine site in Clackamas County.
080	Rep. Kafoury	Asks if there has ever been a time when ODOT has been forced to close a mine site.
084	Greenleaf	Answers not to his knowledge.
091	Chair Welsh	Asks if Greenleaf has had the opportunity to look over the -2, -3, -5 amendments.
100	Greenleaf	Answers he has seen the -1, -3, -4, -5, -6 amendments. States that ODOT could agree with the language in any of those amendments.
111	Chair Welsh	Asks if ODOT is in favor of HB 2419 with the -3 amendments.
118	Greenleaf	Answers yes.
139	Jeff Stingstack	Home owner, Stafford area. (EXHIBIT F) Introduces the members of the

		Stafford neighborhood.
141	Larry Harvey	Stafford Alliance for Environment (SAFE). Notes the community is not opposed to HB 2419, but have some concerns with the possible effects. Comments on local planning commissions.
190	Harvey	Addresses current state law. Suggests to the committee that the language in HB 2419 may not resolve the real issues.
240	Harvey	Expresses concerns with some of the language of HB 2419. Urges the committee to adopt the ñ6 amendments (EXHIBIT G).
269	Rep. Merkley	Asks for a short history on the legal mining problem.
279	Stingstack	Provides overviews of the mining legal case. [witness was unable to identify parties involved in litigation for this case].
310	Rep. Merkley	Asks for a summarization of the basic issues at stake.
318	Jeff Klienmen	Lawyer, Representing the Stafford Community. Addresses the specific issues involved in the litigation.
369	Stingstack	Provides overview of the process the Stafford community has been through with Tigard Sand and Gravel. Reads comments of the planning commissioners. Addresses specific concerns expressed in the litigation.
TAPE 80, B		
020	Stingstack	Continues to discuss the concerns of the Stafford community in the Tigard Sand and Gravel case. Expresses frustration with the possibility of Tigard Sand and Gravel being able to operate again.
060	Stingstack	Urges the committee to support the -6 amendments. Reads (EXHIBIT G).
082	Rep. Gianella	Asks if Stingstack said that the state Supreme Court refused to hear the case.
084	Stingstack	Answers yes.
086	Rep. Gianella	Asks why the Supreme Court refused to hear the case.
088	Klienmen	Answers that the state Supreme Court does not have to hear every appeal.

089	Rep. Gianella	Asks if Stingstack said the planning commission said that "the Tigard Sand and Gravel site was the wrong place to put a quarry."
092	Stingstack	Answers no. Clarifies his statement.
098	Chair Welsh	Asks Stingstack if the houses or the quarry were there first.
100	Stingstack	Answers that some of the people were there before the quarry, but the quarry has been in the Stafford area for quite a while.
103	Chair Welsh	Clarifies that the biggest share of the home owners were not there before the quarry.
108	Stingstack	States Chair Welsh is correct.
105	Klienmen	States that many of the people moved to the Stafford community during the eight year closure and were told the quarry would not reopen.
129	Stingstack	Refers to eight home owners that researched the mine closure and were told the quarry would not reopen. Notes that he called and was told that the quarry was abandoned.
151	Diana Madarieta	Representative, Stafford Alliance for Environment. Discusses the reason why the -4 were amended to be the -6 amendments.
155	Marge Esley	Stafford. Testifies on the difficulties that the Stafford community has experienced with the quarry. Address frustration with the noise of the quarry. Discusses the litigation with Tigard Sand and Gravel.
205	Esley	Urges the committee to study the documents of the Tigard Sand and Gravel case.
275	Alta Fetterman	Stafford resident. States she lives about 150 feet away from the quarry fence. Discusses concerns with her well and the money she has spent fixing it numerous times.
325	Fetterman	Reviews the testing results by the Water Resources Department. Displays a chart that underlines the declining water level in her well. Expresses her opinion that the blasting has had a significant adverse effects in her area.
388	Rep. Merkley	Asks if Fetterman was surprised to discover that the court process could be overturned by the Legislature.
395	Fetterman	Describes her surprise and disillusionment.

405	Rep. Merkley	Asks if Esley was also surprised.
408	Esley	Answers yes.
411	Rep. Merkley	Asks if in all the years the litigation was in process if it ever came up that litigation could be overturned by the legislature.
415	Fetterman	Answers no.
TAPE 81, A		
006	Cathy Greene	Stafford. Describes the location of her home in relation to the quarry. Expresses concerns with the traffic caused by the trucks from the quarry. Addresses the issue of well water levels dropping.
034	Chair Welsh	Asks how constant is the blasting.
036	Greene	Answers that depends on the time of year, ranging from 1 - 3 times a week.
043	Rep. Gianella	Asks how many times a during the day would the blasting occur.
045	Greene	Answers that she does not know.
049	Dr. Darrion Fann	Stafford. Comments on the medical research on the effects of noise on a person. Expresses concerns with the impacts of noise on the residents in the community.
090	Rep. Kruse	Asks for the source of the medical data on the effects of quarry noise.
095	Fann	Cites the source of the data. Clarifies the data is also about other types of noise.
099	Rep. Kruse	Asks if Fann has taken a general category and has extrapolatrd.
103	Fann	Answers that some of the studies included quarry noise and some other sources of noise. States as he understands the literature, it is not where the noise comes from, but how people react to the noise.
105	Rep. Kruse	Asks if Fann has taken decimal reading from his home.
110	Fann	Answers no.
115	Rep. Kruse	Asks if Fann is suggesting that once a person is exposed to the noise of a quarry

		they will be permanently affected.
120	Fann	Answers no. Clarifies his comments.
124	Rep. Gianella	Points out the Fann house is quite far away from the quarry. Asks if he is speaking on what the neighbors that are closer to the quarry are experiencing.
134	Fann	Answers he has been personally impacted by the blasting and the traffic.
144	Ruth Hardy	Stafford resident. Notes that her home is about 75 feet from the quarry fence. Expresses concerns with the smell of diesel fumes. Urges the committee to support the -6 amendments.
187	Rep. Gianella	Comments that it seems when she visited the Stafford area that there was a forest of trees between the quarry and Hardy's property.
200	Linda McKnight	Stafford. Expresses concerns with dropping well water levels and the effects it will have on her farm. Urges the committee to support the -6 amendments. Mentions that she had a water resources expert visit her farm.
243	Rep. Kruse	Asks who was the water resource expert.
245	Stingstack	Answers Dr. Richard Keenley.
256	Cindy Tyree	Stafford. Testifies on her experiences with the traffic issue. Comments on the structure of Stafford road. Expresses concerns with her well water.
305	Tyree	Continues to express concerns with her well water and the amount of money she has spent deepening the well.
363	David Zeps	Stafford. States he has been a resident since 1978. Points out that he also has had to deepen his well. Notes that he is a physician. Agrees with Fann's statements on the impacts of environmental noise.
TAPE 82, A		
010	Zeps	Continues to discuss the impacts of noise. Encourages the committee to consider the #6 amendments.
019	Rep. Kruse	Asks Zeps who told him that the quarry would no longer be in operation.
021	Zeps	Answers the Clackamas County Planning Commission.

024	Rep. Gianella	Asks if the noise and dust affected Dr. Zeps personally.
028	Zeps	Answers yes.
031	Rep. Kruse	Asks Zeps if he knows who it was at the Planning Commission that he spoke with.
035	Zeps	Answers no.
039	Kleinmann	Discusses blasting and the other sources of noise.
080	Kleinmann	Comments on the concerns relating to dust and water.
092	Chair Welsh	Asks if a state agency has confirmed the water problem
096	Kleinmann	Answers yes. Discusses the issue of traffic. Reiterates that there is not hostility with the industry as a whole. Explains the ñ6 amendments EXHIBIT F .
145	Kleinmann	Discusses the hearings officersí decision in the litigation. Overviews Tigard Sand and Gravel's reaction to the litigation.
195	Kleinmann	Continues to discuss the litigation.
245	Kleinmann	Comments on the ability of the quarry, through new technology, to minimize the noise and other issues. Reiterates that he believes that Tigard Sand and Gravel seems to be the only mine that will be affected by HB 2419.
269	Rep. Devlin	Asks Kleinmann if a large portion of his legal practice is in the land use arena.
278	Kleinmann	Answers yes.
280	Rep. Devlin	Asks if many of the neighbors in the Stafford area are on exceptions land.
285	Kleinmann	Answers some of them are.
290	Rep. Devlin	Asks if there is quite a bit of exceptions land in the Stafford area.
293	Kleinmann	Answers yes.
295	Rep. Devlin	Asks if the Tigard Sand and Gravel case is a common land use case, in terms of the conflict between exceptions land and agriculture resource uses.

300	Kleinmann	Answers yes.
307	Chair Welsh	Asks if the quarry was operating six days a week, twelve hours a day.
310	Stingstack	Answers yes, at times.
315	Kleinmann	Comments that those operating times were occurring even though the nonconforming use was limited to business days and hours.
318	Chair Welsh	Asks what are business hours.
320	Kleinmann	Answers five days a week, from 9:00 -5:00 or 9:00 - 6:00.
325	Stingstack	Explains nonconforming use relating to business hours.
333	Chair Welsh	Asks if any of the property owners in the Stafford area have lost water completely.
340	Stingstack	Answers yes.
342	Chair Welsh	Asks if the property owners had to redril their wells.
343	Stingstack	Answers yes. Mentions that the purpose of speaking before the committee was to paint a picture of the long process that has taken place in the Tigard Sand and Gravel case.
373	Glenn Higgins	Chief Planner, Columbia County Board of Commissioners. (EXHIBIT H) . Testifies as neutral on HB 2419. Discusses surface mining authority. Asks the committee to preserve Columbia County's unique situation regarding surface mining permit issuance.
TAPE 81, B		
015	Rep. Taylor	Comments her concern is that the county is clearly allowed to continue with its own permitting. Asks if Higgins has seen the -3 amendments.
027	Higgins	Answers yes.
029	Rep. Taylor	Discusses the -3 amendments. Asks Higgins to review the -3 amendments.
033	Higgins	States that Columbia County would be willing to work with the authors of HB 2419.

042	Rep. Taylor	Comments on the possibility of splitting the land-use and the mining issues as two different issues rather than both in HB 2419.
052	Steven Sanders	Resident close to the Stephens quarry. (EXHIBIT I) Testifies in opposition to the "abandonment" language of HB 2419. Explains his interest in HB 2419. Discusses the term "abandonment."
100	Sanders	Provides overview of his litigation with the Stephens quarry. Expresses frustration with the possibility of legislation to be able to overturning the litigation.
150	Sanders	Discusses the current abandonment statute. Proposes a possible task force to address the definition of "abandonment."
183	Jamie Sanders	Resident close to the Stephens quarry. Discusses the present law regarding "abandonment" of surface mining. (EXHIBIT J) .
230	J. Sanders	Overviews statutory test and operating plan of surface mining quarries. Addresses her specific court case with the Stephens quarry.
280	J. Sanders	States she feels HB 2419 is too extreme.
305	Chair Welsh	Closes Public Hearing HB 2419 and adjourns at 4:20 pm.

Submitted By, Reviewed By,

Danielle Hamilton, Kristina McNitt,

Administrative Support Administrator

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EXHIBIT SUMMARY

A - HB 2419, -2 amendments, staff, 1 p.

B - HB 2419, -3 amendments, staff, 13 pp.

C - HB 2419, -5 amendments, staff, 1 p.

D - HB 2419, -7 amendments, staff, 13 pp.

E - HB 2419, letter, Gary Lynch, 5 pp.

F - HB 2419, -6 amendments, Larry Harvey, 13 pp.

G - HB 2419, written testimony, Jeff Stingstack, 1 p.

H - HB 2419, written testimony, Glen Higgins, 1 p.

I - HB 2419, written testimony, Stephen Sanders, 1 p.

J - HB 2419, written material, Jamie Sanders, 10 pp.